

commenter was concerned with the directive that organic farmers establish buffer areas to prevent contamination. The commenter has spent much time working in the area of biotechnology and is aware of the lack of scientific understanding of the mechanisms of drift and how to prevent it; (4) A commenter stated RMA should responsibly address liability issues regarding contamination of organic crops by genetically engineered crops. The commenter stated it is a new concern, with far-reaching consequences for all involved in the production, distribution, marketing and consumption of food. They asked what insurance is available to organic growers in the event of contamination of their crops and from whom it would be available; (5) A few commenters stated over a year ago, the organic community raised the issue of the need for insurance against risks of drift and GMO contamination, which are still not addressed in the proposed rule; (6) A commenter stated failure to insure against a major price risk (drift and GMO contamination) is unfortunate. The commenter understands coverage of this type of loss could be difficult in terms of premium structure and affordability; however, they believe the U.S. government needs to continue to pursue ways to protect certified organic growers from the economic risks of genetic contamination from genetically modified varieties. They believe contamination of a crop in spite of the presence of a buffer zone should be a covered loss under Federal Crop Insurance regulations; (7) A commenter believes failure to cover these perils is discriminatory and indefensible in light of the purposes of the Federal crop insurance program; (8) A few commenters stated the proposed rule specifically excludes insurance for the risks of drift and contamination, despite their growing damage to organic products. They stated this failure to insure against a major price risk is expected, though unfortunate; and (9) A commenter believes the crop insurance policy should provide this coverage for organic producers if it is the result of a natural disaster, the same as it does for conventional producers, because the producers cannot control it if it happens. The commenter added yield loss should be exempted when establishing the crop yield.

*Response:* FCIC agrees the risk of contamination by application or drift of prohibited substances is a major risk to organic producers and has significant economic implications. Unfortunately, under section 508(a) of the Act, FCIC

can only insure losses due to natural causes. It does not have authority under the Act to provide crop insurance coverage for any loss of production directly caused by contamination of prohibited substances because the contamination is the cause that damages the crop and it is not a natural cause, even if the contamination is spread by a natural cause. Section 107 of ARPA states that all the conditions must be met for such additional quality adjustment coverage to be provided. While they may meet the condition of identity preserved, organic producers have not demonstrated that they meet all the conditions. If all conditions can be met, the quality loss adjustment will be applicable. In order to qualify for an organic practice, the producer must have an organic plan. If the buffer zone is required in the organic plan, FCIC does not have the authority to change the requirement in the plan. Therefore, concerns with the buffer zone should be directed to the certifying agency. For the reasons stated above, FCIC cannot cover contamination from genetically engineered crops. Such losses are not due to a natural cause. FCIC is unaware of any insurance coverage currently available to cover contamination from genetically engineered crops. While FCIC sympathizes with the organic producers, unless the Act is revised, FCIC is unable to provide coverage for this peril. FCIC cannot exempt yield loss caused by contamination when establishing the crop yield. The Act requires the APH yield be based on the actual production history for the crop, if the crop was produced. Therefore no change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Amended the definition of "second crop" to add provisions that allow a replanting of the first crop to be considered a replanted crop if replanting is required or it is specifically made optional in the policy, and the insured elects to replant and insure as the first insured crop. Policies, such as the small grains policy, state that replanting of wheat after the failure of a winter wheat crop is optional, not required. In these circumstances, FCIC does not want to require replanting because the producer paid for a separate endorsement to have the option to replant and continue insurance on a winter wheat basis, replant and insure as a separate spring wheat crop, or continue to care for the damaged winter wheat crop. If the producer elects to replant and insure the crop under the first insured crop policy, such replanting should not be considered as

a second crop because the producer does not get an indemnity for the first crop. If the producer elects to replant and insures the replanted crop as a separate spring wheat crop, the replanted crop would be considered a second crop. The definition is also amended to include cover crops planted with the intention of haying, grazing or otherwise harvesting at a later time. The proposed definition included only those cover crops actually hayed, grazed or otherwise harvested. This change will require cover crops that are destroyed prior to being hayed, grazed or otherwise harvested but that are covered under FSA's noninsured crop disaster assistance program (NAP) or receive other USDA benefits associated with forage crops, to be considered a second crop; and

2. Section 15(g) is revised to clarify indemnity payments, prevented planting payments, and premium calculations in other parts of the policy do not conflict with the reductions specified in section 15. This section is also revised to remove the requirement to reduce an indemnity when a volunteer or cover crop is harvested from acreage on which a first crop was planted. Since the volunteer crop or cover crop is not insurable, it could never sustain an insurable loss, which is a prerequisite for an indemnity reduction for the first insured crop. This section is also revised to require the prevented planting payment reduction when a volunteer crop is harvested after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop.

3. Section 15(g)(3)(ii) is revised to clarify that a prevented planting payment reduction will apply if the insured cash rents to another person the acreage for which a prevented planting payment was received. This addition is made to be consistent with the current prevented planting provisions that specify that an insured is not eligible for a prevented planting payment if the insured cash rents the acreage that was prevented from being planted.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The changes that remain in this rule are statutorily mandated.

With respect to the provisions of this rule, it would be contrary to the public interest to delay its implementation.