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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC-16-0002]

RIN 0563-AC53

Common Crop Insurance Policy Basic Provisions (7 CFR § 457.8)

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final Rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Policy Basic Provisions (Basic Provisions) and makes amendments to the final rule, with request for comment, published in the Federal Register on June 22, 2016, that clarified and revised the policy definition of “practical to replant” and “replanted crop,” and policy provisions regarding double cropping. The changes to the policy made in this rule are applicable for the 2018 and succeeding crop years for all crops with a contract change date on or after the effective date of the rule, and for the 2019 and succeeding crop years for all crops with a contract change date prior to the effective date of the rule.

DATES: This rule is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

This final rule makes changes to the Common Crop Insurance Regulations, Basic Provisions that were published by FCIC on June 22, 2016, as a notice of final rule with request for comment rulemaking in the Federal Register at 81 FR 40477-40480. The public was afforded 60 days to submit written comments and opinions.

Comments were received from 59 commenters. The commenters included persons or entities from the following categories: insurance company, insurance agent, farmer, financial, producer group, academic, trade association, and other.

The public comments received regarding the final rule with request for comment and FCIC's responses to the comments are as follows:

Practical to Replant

Comment: A commenter stated the practical to replant provision should be adopted as written. The dates are reasonable and producers who desire to plant a crop will often plant at these dates or beyond. Claiming a replant unnecessarily has negative impacts on other producer's premiums and on supporting industry operations. Ultimately, the local economy is the loser.

Response: FCIC thanks the commenter and appreciates their input.

Comment: Several commenters supported the clarity intended by the revisions to the definition of "practical to replant." Consistency between all insurance providers was always a challenge with the ambiguous language with the previous definition. The commenters always supported clear and concise definitions. A commenter stated it

generally supports any effort to take subjectivity and ambiguity out of the crop insurance program and efforts to prevent fraud from occurring.

Response: FCIC appreciates the commenter's support for the clarity and consistency intended by the revised definition of "practical to replant."

Comment: A commenter stated there certainly is a need to provide a clear deadline for that period (or date) when replanting of a crop is considered to be practical and that *if not replanted, insurance coverage should not be provided for the initial crop*. This information is important to standardize practices at the farm and state insurance agency levels to ensure that the highest standards of fairness and consistency are practiced. The crop insurance program in Louisiana is an essential risk management tool that must be sustained into the future. The food security of this country could be at risk without a viable Federal crop insurance program that is compatible with the needs of U.S. agriculture. If changes in the definition of "practical to replant" are accepted and become mandatory without exception, then stakeholders, scientists, and policy makers should be given the opportunity to develop workable solutions based upon the best available information. This process does not appear to have been followed regarding these proposed late planting dates. The commenter has concerns, because the rule states that for "Impacts and Effects" (None) and for "Priority" (Substantive, Nonsignificant), information is lacking for a full understanding of unintended consequences.

Response: Consistency is necessary in any program and FCIC is striving to attain that in this final rule. Further, FCIC values the input from stakeholders and other knowledgeable persons. FCIC has revised this final rule in response to the comments

received with a goal of maintaining consistency but also allowing flexibility when circumstances warrant.

Comment: A commenter was concerned about the definition change in that it creates internal inconsistencies in the program that will not make sense to the producers this program is meant to serve. For example, a producer can be declared prevented from planting as of the final plant date. But, now, under the change, if the producer did get a particular field planted before the flood occurred, the producer would be held to replant rules on that field through a late plant period which might be 10, 15, 20, or 25 days later, depending on which county the producer is in. This could create confusing and inconsistent results that only restrict the most prudent options and the deference paid toward a producer in attaining the best outcome.

Response: As stated previously, the revisions to the practical to replant provisions were intended to provide clarity and consistency. Given the differences in the programs and purposes, there should be no confusion between prevented planting and practical to replant. Prevented planting only provides payments for the pre-planting costs lost due to the inability to plant the crop and does not provide a payment for any loss in production. However, once the crop has been planted and fails, the producer may be entitled to an indemnity. While the deadlines may be different, so are the purposes of the provisions. Replant payments are intended to mitigate losses that impact both the producer and taxpayer, as well as minimize disruptions to local agricultural economies.

For producers, the replant payment provides the opportunity and financial support to replant the crop. Since the initial planting generally takes place at an optimal time period available to the producer, replanting the crop likely takes place at a less optimal time in

the future. While the odds of producing an above average or high yielding crop are potentially lower, the producer still has a reasonable chance to produce a crop that is worth more than the indemnity payment from the insurance policy. In addition, to potentially avoiding an indemnity, the producer's actual production history yield for that crop year is likely to be higher, having less impact on future crop guarantees. At worst, if the replanted crop fails, the producer still receives the same indemnity payment he or she would have had without replanting – but at least had the chance to earn a larger gain from the marketplace and preserve future crop guarantees.

From a taxpayer's perspective, the replant payment is a way to reduce the cost of the crop insurance program. This is because the replanted crop may produce an average or even above average yield, which results in a reduced (or even no) indemnity payment to the producer. The reduction in indemnity payments reduces the cost of the crop insurance program for taxpayers and mitigates impacts to future premium rates producers would otherwise experience.

Finally, the replant payment provides stability to the local agricultural economy. Encouraging producers to replant their crops helps ensure a more consistent supply of the agricultural commodities that others depend on for their livelihoods – such as livestock producers and grain or food processors thus helping maintain a more consistent supply of agricultural goods for consumers.

Comment: A commenter stated instead of revising the replant dates, FCIC should be asking why there are replant dates associated with crop insurance. The commenter questioned if a person wrecks a car does that person only get paid if they buy a new one. The commenter questioned why if a crop fails to make a stand there is a requirement to

replant associated with the claim being paid. Several commenters stated the definition of “practical to replant” should not be made a part of the policy. The planting period and the replant requirements should remain the same as they are now. A commenter stated the revisions to the definition of “practical to replant” are ill-advised and will result in reduction of important benefits to producers who will possibly be in a precarious financial position due to the circumstances that brought this particular situation.

A commenter stated they are in total opposition to the proposed change that would require a producer to have to continue replanting his crop all the way through the end of the late planting period. This type of change would only benefit the insurance companies and not the producer, who is the one the policy is intending to protect. A commenter stated that this change could cause a tremendous financial burden on our producers. With the low commodity prices, the yield expected with corn planted that late will not allow a producer to stay in business. A commenter stated the new definition would guarantee producers take a loss in an impossible situation to succeed.

Response: The Federal Crop Insurance Act does not authorize coverage for losses if the producer is able to replant to the same crop in such areas and under such circumstances as is customary to replant, but fails to do so. If an initially planted crop is damaged, and in that area and under such circumstances it is customary to replant, the producer must replant for insurance coverage to continue on that crop, and a replant payment is provided to compensate the producer for the costs of replanting. Past experience has shown that some producers were paid a full loss on the initially planted and insured crop and were allowed to plant an alternative crop, even when replanting the initial crop was practical. The practical to replant provisions were intended to balance

the needs of the producer with the requirements of the Act and the best interests of the Federal crop insurance program and taxpayers. This balance has not changed in the final rule.

If it is practical for the producer to replant, it is in the best interest of the program and for the producer to replant the crop and potentially make a full crop rather than paying the producer an indemnity, which only covers part of the loss. Further, since the guarantee is not reduced even if the crop is planted during the late planting period, if there is a future yield loss due to an insurable cause of loss, the producer will be indemnified to the same extent as the originally planted lost crop. The final rule was simply intended to add more consistency to determinations of practical to replant so that all producers are treated fairly and equitably. However, as stated more fully below, FCIC is revising the current provisions to lessen the time in which it will generally be considered practical to replant, and provide the general circumstances to be considered by insurance providers in making such a determination to find a proper balance.

Comment: A few commenters stated that agricultural lending officers rely heavily on the value of crop insurance when underwriting agricultural loans. The extension of the late planting dates would be detrimental to producers' overall farming operation. The commenters were opposed to the extension of the late planting periods. Several commenters were concerned with the final planting dates, earliest planting dates, and late planting period for crops in their area being incorrect.

Another commenter stated southeast Nebraska and northwest Nebraska producers have to manage their acres completely different. The commenter questioned why these producers should be constrained by one set of dates limiting yield potential and the most

key element of farming, flexibility to work around the curve balls that Mother Nature throws producers each year. The commenter stated the same could be said for the state of Missouri and Iowa. Producers in southeast Nebraska, southwest Iowa, northeast Kansas and northwest Missouri all experience similar climates and plant many of the same corn hybrids and soybean varieties and maturities. The commenter stated they could easily be treated the same, but having varying earliest, final, and late period plant dates within this region truly makes no sense to the commenter or the producers the commenter works with in each of these states. Freeze, wind, rain, heat, drought events typically affect all these areas similarly. The commenter states that as farm operations become much larger and they expand their acres, many large producers the commenter works with are farming in three or four of the corners of these states but confused by different dates, when all should be treated the same. They all start planting at the same time and manage their acres in these states the same. The commenter stated it was frustrating that if it's dry in southeast Nebraska, producers have to wait until April 10 to plant but could have started April 5 in Missouri where for sake of argument, say it rained. The commenter asked that the date be changed.

The commenter stated planting in proper soil conditions has the largest impact on final yield in the commenter's opinion. Planting in wet conditions and fighting sidewall compaction limiting plant root ability to get to water and nutrients, uneven emergence forcing plants to compete with each other and runts failing to make an ear. The commenter stated that within this geographic region, an April 1 initial plant date makes sense. Producers in the corners of these four states have started planting April 1 for the last four to five years and for good reasons. It is typically dry and planting conditions are

perfect the first half of April. About mid-April each year the “rainy season” will begin on and off through June 1. Producers will try to “mud it in” in desperation, and will fight compaction, achieve uneven stands, or be delayed to a May dry spell and lose yield by date of planting even with a perfect stand. These May plantings will also force the hybrid to directly deal with the heat and dryness of July. Two weeks before and two weeks after pollination is when the corn plant is most successful to yield loss from stress. The commenter stated that planting early allows hybrids to beat this hot period and pollinate in late June or first week of July. These April 1 plantings, nine out of ten years will yield higher or at a minimum the same as these later plantings even if the hybrid corn has to lie in the ground for three weeks waiting to accumulate enough Growth Degree Units (GDU’s) to emerge. The commenter stated that today’s hybrids are specifically bred for earlier planting dates and better cold stress emergence and they are typically planted in the best soil conditions of the year limiting sidewall compaction, rooting, and uneven emergence. Finally, the commenter stated that as farming operations get larger, and this trend will continue without a doubt, they have to start planting sooner to give them the best opportunity to successfully get the desired crop planted around rain events.

Several commenters stated the proposed change to the planting date will be detrimental to profitability of crops. The commenters stated that there is a potential for dramatic reduction in yield as proven by University research from multiple states. The commenters stated the economic impact to the producers is enhanced because of the fact it is a replant. Most all of the input costs are already spent. This change will require producers to spend more with no choice of making a profit. The commenters asked that FCIC not change the planting dates.

A commenter stated there is resistance to the requirement of replanting the initial crop until the end of the late planting period. A commenter stated they were frustrated by the late planting period. Every producer wants to be as profitable as possible, and have the ability to plant corn and soybeans in the best soil conditions possible. The commenter stated that pushing this date out 20 or 25 days (need aligned as mentioned above) just seems like the producer is being penalized. The producer can go back with soybeans and still have a chance to attain the highest yield before at least June 10. A soybean has an amazing ability to compensate with more branches and pods after weather events, but are day-length sensitive and only have a certain amount of time to build the factory that will feed the pods that will be set. Planting a soybean June 25 will limit plant height, node, and most importantly pod and seed set ability of that plant.

The commenter stated the program should provide flexibility. The commenter has seen this happen. A producer is in a river bottom area. The area hit an extended wet period in late April and May. The producer is not able to plant corn, or if he did, it would drown out. The producer wants to plant soybeans. Another extended wet period is expected (typically mid-June is wet) and the producer cannot plant in early June while it's dry but tries to mud in the soybeans on June 26. Now the soybean stand will also be heavily affected and poor rooting from compaction will allow drought later to "burn them up." The commenter believed that there should be a period where a conversation between the adjuster and the producer should be had that discusses all these variables and allows a producer to plant ahead of the current date or any date to give the producer the best chance at success and profitability. It seems senseless for the planter to set when it could be planting in ideal soil conditions because of the date in a program. Mother

Nature forces the producer to be extremely flexible, especially in a region where the Missouri River or similar geographies, causes a lot of intense weather events through the spring and early summer. The commenter asked FCIC to give the producer flexibility.

Response: The final rule with request for comment did not change planting dates or the late planting period. The final rule with request for comment was intended to provide a clear, known deadline for when replanting of the crop is considered practical, ensuring that the provisions are consistently and equitably implemented across all insurance providers and producers. If the commenter or any interested party is concerned about the dates for specific crops or counties, they should advise the RMA Regional Office. Any interested person may find contact information for the applicable regional office on RMA's Web site at <http://www.rma.usda.gov/aboutrma/fields/rsos.html>.

Comment: A commenter stated that the university studies and agricultural experts agree that April 20 is initially too late to plant the crop so requiring producers to replant through the late planting period is ridiculous.

Response: FCIC has not proposed revising any of the final planting dates or late planting periods so it cannot make any such changes in this rule. If the commenter or any interested party is concerned about the dates for specific crops or counties, they should advise the RMA Regional Office. Any interested person may find contact information for the applicable regional office on RMA's Web site at <http://www.rma.usda.gov/aboutrma/fields/rsos.html>.

Comment: A commenter stated the proposed rule taking the practicality to replant all the way to the end of the late planting period seems too severe and does limit producer's ability to be flexible in the event of a lost crop. Many, if not the majority of crops that

this would impact, have a 25-day late planting period. The commenter stated that this will give an initially planted crop a 25 percent reduction in coverage. In this example, the producer would be reducing a 75 percent buy-up cover to essentially a catastrophic level cover if this was the initial planting. This certainly indicates the policy does not think it is practical to produce a normal crop. The commenter suggested FCIC define “practical to replant” similarly to the prevented planting provisions as it pertains to the final plant date. This is a fair and equitable solution to a difficult circumstance for both the producer and FCIC.

Response: When a crop is deemed practical to replant there is no reduction in the coverage that attaches to the initially planted crop. Therefore, while the yield of a crop planted during the late planting period may or may not be reduced, depending on many factors, the coverage provided by the crop insurance policy is not reduced like it otherwise would be if the crop was initially planted during the late planting period. FCIC agrees with the commenter that taking the practicality to replant all the way to the end of the late planting period may not be appropriate and can limit the producer’s ability to be flexible in the event of a lost crop. Therefore, FCIC revised the definition of “practical to replant” to state it will be considered practical to replant through: (1) the final planting date if no late planting period is applicable; (2) the end of the late planting period if the late planting period is less than 10 days; or (3) the 10th day after the final planting date if the crop has a late planting period of 10 days or more. Changing the provisions to encompass these three scenarios and including 10 days after the final planting date will help bring more uniformity to the amount of time producers are required to replant since the number of days in the late planting period can vary by crop. Based on the

commenter's feedback, the fact that some crops and regions have varying late planting periods and for some crops up to a 25-day late planting period, uniform and equitable treatment to similarly situated producers may not always occur, so FCIC is reducing the presumptive date to no more than 10 days. FCIC also added provisions for determining whether it is practical to replant so that approved insurance providers may consider circumstances as to whether: (1) it is physically possible to replant the acreage; (2) seed germination, emergence, and formation of a healthy plant is likely; (3) field, soil, and growing conditions allow for proper planting and growth of the replanted crop to reach maturity; or (4) other conditions exist, as provided by the Crop Provisions or Special Provisions. This will allow a proper balance between the interests of producers and the interests of the program.

Comment: A commenter stated with the requirement to have crop insurance, premiums are paid every year. The final planting dates are already liberal with the ability of the crop to produce an economically viable yield, depending on any given year's weather, etc. With these proposed changes FCIC is requiring a producer to choose between two options: 1) to spend money (the claim amount plus more) replanting a crop 25 days later than it could be expected to produce an acceptable yield; or 2) call the premium a government mandated donation to the insurance company and instead of replanting (and/or collecting the claim), plant a crop that has potential to produce a yield. The commenter stated, in short, the final planting date should be just that, the final date that the crop should be planted (or replanted). There has been a lot of time and research put into developing the final planting dates by the extension services, etc., and FCIC should be listening to the people whose job it is to determine these dates.

Response: Requiring a producer to replant under such circumstances as is customary for the area has been statutorily mandated and a requirement of the policy for years. Producers have been required to replant the crop after the final planting date if the agronomics allowed in order to receive a replanting payment and continue insurance coverage for the initially planted crop. This final rule does not change this. However, there has been inconsistency in the application of the practical to replant provisions between insurance providers such that if two producers were in similar agronomic conditions one could be required to replant the crop and the other may not. This final rule is intended to address that inequity. However, FCIC agrees that the 25-day period may be too long because of the potential effect on the replanted crop so it is reducing the presumptive date to no more than 10 days. This earlier date for it to be practical to replant is a presumptive date and FCIC has added circumstances to the provisions that insurance providers may consider whether: (1) it is physically possible to replant the acreage; (2) seed germination, emergence, and formation of a healthy plant is likely; (3) field, soil, and growing conditions allow for proper planting and growth of the replanted crop to reach maturity; or (4) other conditions exist, as provided by the Crop Provisions or Special Provisions. This will allow a better balance between the interests of the producers and the interests of the program.

FCIC disagrees with the commenter that if a crop deemed practical to replant is not replanted, the premium becomes a government-mandated donation to the insurance company. If it is determined practical to replant the insured crop and the producer elects not to replant the crop, no coverage for the initially planted crop will be provided and no premium will be due. If the producer decides not to replant, the crop would be

considered as if it never existed, and the acreage is removed from the acreage report. No indemnity is due, no replant payment is made, and no premium is earned nor payable by the producer.

Comment: Several commenters generally support any effort to take subjectivity and ambiguity out of the crop insurance program and efforts to prevent fraud from occurring, but the commenters cannot support this change because it is not supported by research or by Extension recommendations.

A commenter stated that no county agent, no agricultural expert, no university study will agree that planting corn as late as May 5 in the Arkansas, Louisiana, and Mississippi region would be considered a good farming practice. In addition, the commenter believed no ag-lender would provide financing for planting this late.

A commenter stated that if it was practical to replant the crop, the crop should be able to achieve the actual production history yield in most years. Replanting at the end of the late planting period would have a marginal chance at achieving that level of production. The commenter suggested that perhaps part of the solution would be to shorten the late planting period.

Response: FCIC agrees that it should not be presumed practical to replant the crop until the end of the late planting period and, as stated above, has revised the provisions accordingly. This should mitigate any unintended reductions in yield as a result of planting during the late planting period, and producers will not be penalized because they will still receive the full guarantee. This means that if there is a reduction in yield, it can still be indemnified, but these changes allow a balance between the interests of producers and the interests of taxpayers.

Comment: Several commenters had issues with FCIC's wording under the definition of "practical to replant" which states that replanting should continue as long as the seed has the chance to germinate, emerge, and form a healthy plant. A commenter stated that this could be achieved planting much further past May 5 and the crop would mature prior to the end of the insurance period, but the problem would remain the same even if it is planted by the end of April. The producer would not be able to produce a yield that it would take to stay in farming. Their goal is not to make their guarantee; their goal is to make a profit. A commenter stated that producers have other cropping options that may be more economically viable once the original crop is lost. In these situations, producers need all options at their disposal so the best economic and agronomic choices can be made.

A commenter encouraged FCIC to further clarify that the revised definition is not intended to be interpreted in such a way that could potentially force a producer to replant a lost or damaged crop after the end of the late planting period or after the final planting date if there is no late planting period for the crop. The commenter believed it would be prudent for FCIC to reiterate to both insurance providers and insurance agents that the changes made to the definition of "practical to replant" is not intended to be interpreted in such a way that a producer could be forced to replant after the end of the applicable late planting period, and further, that even when a crop is lost prior to the end of a late planting period, all applicable circumstances will be considered before a decision on the practicality of replanting the lost acreage is made. The commenter understood that this revised definition is set to become effective for the 2017 reinsurance year, but urged

FCIC to consider further revisions to improve the understanding and limit the potential for it to be misinterpreted.

Response: FCIC agrees that the definition of “practical to replant” requires replanting during the late planting period as long as the seed has the chance to germinate, emerge, and form a healthy plant and may result in the ability to plant the crop even after the late planting period, which could cause confusion. The provisions have been revised so that insurance providers may consider circumstances as to whether: (1) it is physically possible to replant the acreage; (2) seed germination, emergence, and formation of a healthy plant is likely; (3) field, soil, and growing conditions allow for proper planting and growth of the replanted crop to reach maturity; or (4) other conditions exist, as provided by the Crop Provisions or Special Provisions.

Further, while FCIC does not want to hinder producers from maximizing their profits, it must balance this with the taxpayer interest in not paying indemnities when there is a possibility for the crop to reach maturity. FCIC balances the interests of producers with the interests of taxpayers by making a replant payment to offset the costs of replanting and providing for a full guarantee so that if the yield is later reduced, such costs will be indemnified.

Comment: A commenter stated that a producer should be required to replant until the crop’s final plant date. At that point, if conditions are good and producers are actively planting and replanting, then a producer should go along with what is common in the producer’s area. If not, there should be a maximum of a ten-day period from the final plant date before acres can be released and allow the producer to go to another crop. The late planting period should be an option, not a requirement.

A commenter stated that if a specific date needs to be established for “practical to replant,” the commenter requested FCIC consider the following revision, “An insured should be required to plant and replant through the crop’s final plant date.” At that point, the acres should not be released for an additional ten days. If after ten days an adequate stand has not emerged, the acres should be released and the producer should be able to go to another crop.

Response: Defaulting to the final planting date ignores the possible agronomic circumstances that may allow the crop to be planted and reach maturity after this date. However, FCIC is revising the provisions to require replanting no later than 10 days into the late planting period. It is presumed that replanting is practical during this period and the producer will be required to replant, in order to receive a replant payment and continue full insurance coverage for the initially planted crop, unless the insurance provider determines it is not practical to replant. Replant payments are intended to mitigate losses, as stated above, by requiring replanting when agronomic conditions and circumstances exist to produce a crop that can reach maturity. Allowing producers to pick and choose whether to replant may result in unnecessary indemnities and premium rate increases.

Comment: A commenter stated that producers need an appropriate degree of situational flexibility when adverse conditions arise particularly during the planting season. The commenter believed FCIC will never achieve complete consistency, as even within a small area two cases can be very different. The commenter believed the current practical to replant standard and processes better accommodate the needs of the producers.

Another commenter stated that to restrict a producer's options at planting time where every minute is critical strikes the commenter as an overly broad fix to a very narrow problem. The commenter suggested that a better solution would be to require that when a producer chooses to plant back to the original crop at any time during the late plant period that this definitively be considered a replant until the late plant period has expired.

Response: The problem with the definition of "practical to replant" prior to 2017 is that the provisions were inconsistently applied such that with neighboring farms, one producer could be required to replant and the other not, even when agronomic conditions were the same. The final rule with request for comment and this final rule are intended to make the application of the provisions more consistent, while still allowing some flexibility. This is done by creating a presumed practical to replant date, while still allowing insurance providers to consider certain agronomic factors and circumstances to overcome this presumption. Allowing producers to pick and choose whether to replant may result in unnecessary indemnities and premium rate increases.

Comment: Several commenters felt that requiring producers to replant through the end of the late planting period was not sound policy. A commenter stated the University of Arkansas Division of Agriculture Rice Verification Program has demonstrated this fact over the past 30 years on 430 fields across the state. The planting date of rice has a direct impact on yield. The commenter stated that this policy would result in requiring producers to replant even though data suggests their projected yield could be cut by approximately 40 percent, making it very difficult to make a profit on the crop. The Arkansas Rice Production Handbook, published by the University of Arkansas Division of Agriculture, contains recommendations for optimum planting dates as well as

recommended absolute cut-offs for rice based upon regions of the state. The commenter stated that optimum cut-off recommendations are May 10 for northern Arkansas, May 15 for central Arkansas, and May 20 for southern Arkansas and the recommended absolute cutoff recommendations are June 5 for northern Arkansas, June 10 for central Arkansas, and June 15 for southern Arkansas. While the recommended absolute cutoff does not mean a successful rice crop cannot be grown outside of that time-frame, success will depend on a myriad of factors unique to each individual farm.

A commenter stated that this proposal would force the planting of crops well beyond the recommended dates supported by research conducted by the LSU AgCenter. Yields are reduced by 38 to 52 percent for five of the major crops produced in Louisiana. The economic consequences of which would be devastating to producers which had already suffered losses from the original crop loss.

Several commenters stated that the changes being proposed are considered extreme by LSU AgCenter scientists that work to develop Best Management Practices for the targeted crops. Based upon the best long-term information generated by LSU AgCenter research and extension scientists, the commenters stated they cannot support recommending that producers re-plant at the latest “practical to replant” dates being supported by FCIC. A commenter questioned the origin of these proposed dates and request that FCIC provide science-based information to show Louisiana producers can produce a profitable and sustainable yield if they are required to replant the crops on these late dates. A commenter also stated unfortunately, some of the “practical replant” dates detailed in the FCIC notice are even later than the LSU AgCenter have tested in field trials. The commenter stated that in reality, the actual date that a producer is

officially released (by program adjuster) to plant alternative crops may not be until ten days after the final planting date of the insured crop which makes these changes even more unreasonable. The LSU AgCenter's optimum and latest planting dates are based upon Best Management Practices, as well as risk aversion for Louisiana's crop production systems. The commenter stated that potential increases in production costs, unfavorable weather conditions for crop development, and harvest risk associated with adverse weather events during the late fall are real factors that must be factored into this decision-making process.

A commenter stated the end of the late planting period for corn in Illinois is June 30. Most agronomic experts would not recommend planting corn this late in Illinois but the change in language would, with some exceptions, require it.

Another commenter stated the proposed replant dates are well past the recommended final planting dates as put forth by LSU, the various seed companies, private consultants and anyone else with practical knowledge of best agronomic practices in the state of Louisiana. With the high production costs of these crops today there is less margin for error than ever before and forcing producers to replant as much as three weeks after recommended final planting date is guaranteeing a potentially crippling financial loss on corn and grain sorghum. On rice and cotton it may not be a guaranteed loss but is almost a certainty not just in reduced yield but in increased costs fighting late season disease, insects, irrigation expense and field work due to a late harvest. While soybeans have the best chance of making a profit with the new proposed replant dates of all the crops it would still be an iffy proposition at best. These proposed changes would make buying higher levels of coverage a risky decision for the producer and expose them to even

greater levels of uncertainty, which will lead to more difficulty in securing financing which will ultimately lead to further consolidation with only the largest producers benefitting.

Another commenter stated in the mid-south there is a definite cut off period for corn that is much earlier than the final planting date for late planting (May 5) if a producer wants to make a profitable corn yield in an average weather year. Forcing a producer to plant corn late dooms the producer to a loss and the insurance company to writing a check. If producers need to change crops, allow them to continue to make the switch after the final planting date. The commenter asks that FCIC not make them wait until the final LATE planting date. Producers need to have flexibility to farm the crop that is most likely to produce a full yield in the time period given. Failure to allow that flexibility will cost everyone money. A commenter stated that in light of the unique and unusual conditions that can arise following the failure of the initial crop, the revised definition, in effect, will result in cases where the agronomic realities of planting simply do not align with an assumption the crop will reach physiological maturity. As an example, corn in most of southern Illinois has a final plant date of June 5 followed by a 25-day late planting period. To limit a producer in this situation to the replanting of corn in the last two weeks of June rather than allowing a switch to another crop is not a sound agronomic practice given the low probability of corn reaching maturity before the normal frost date.

A commenter believed that most agronomic experts would not recommend replanting the crop that late, so the producer will be in a position of having to replant a crop at a time that agronomic experts would not recommend. The commenter stated, for instance, the end of the late planting period for corn in Illinois is June 30. Most agronomic experts

would not recommend planting corn this late in Illinois. The change in language would, with some exceptions, require it. While this would limit the level of insurance for crops being initially planted later, the crop would still be insurable at the prevented planting level of coverage. On the positive side of the change to the practical to replant language - it would force more consistency in the industry as to when acreage is allowed to be planted to another crop, instead of replanted to the original crop. The producer receives a replant payment and still has the original coverage on the acreage, so there is still coverage on the replanted crop, even if replanted near the end of the late planting period.

Response: The final rule with request for comment did not change planting dates or the late planting period. The final rule with request for comment was intended to provide a clear, known deadline for when replanting of the crop is considered practical, ensuring that the provisions are consistently and equitably implemented across all insurance providers and producers. If the commenter or any interested party is concerned about the dates for specific crops or counties, they should advise the RMA Regional Office. Any interested person may find contact information for the applicable regional office on RMA's Web site at <http://www.rma.usda.gov/aboutrma/fields/rsos.html>. After considering all the comments, FCIC agrees that requiring replanting throughout the late planting period may not be practical. Therefore, as stated above, FCIC revised the definition of "practical to replant" to state it will be considered practical to replant through: (1) the final planting date if no late planting period is applicable; (2) the end of the late planting period if the late planting period is less than 10 days; or (3) the 10th day after the final planting date if the crop has a late planting period of 10 days or more. FCIC believes it is necessary to provide a clear, known deadline for when replanting of

the crop is considered to be practical, and while this deadline is presumptive, FCIC is also revising the provisions to allow other agronomic factors and circumstances to be considered when determining whether it is practical to replant to provide needed flexibility as necessary.

Comment: A commenter stated they are very much against the new proposal to make a producer continue to replant all the way through the end of the late planting period. The commenter stated that the LSU Ag Department has documented evidence that this would mean an average of a 50 percent yield loss on those acres planted that late. The commenter understood that a producer may still be insured at the full guarantee but that does not really help either the producer or the crop insurance companies. For instance: a producer has a 75 percent coverage policy and a 175 bushel Actual Production History. That means the producer is guaranteed 131 bushels. According to LSU the potential of corn planted that late would be 80 bushels an acre. So that means that the producer would cut their 80 bushels, sell it and then crop insurance would pay the producer for the other 51 bushels. The going market on those bushels right now is \$3.30 and crop insurance is paying \$3.81 per bushel. $80 \times \$3.30 = \264 $51 \times \$3.81 = \194 that comes to \$458 per acre. The cost of production on that acre of corn is \$650 including rent, seed, fertilizer, etc., excluding any profit needed to pay any living expenses or maintenance on equipment. This is where the producer makes a living. This is not just a hobby for the producer but the producer's livelihood. That means the producer is in the hole \$200 per acre plus what it took for the producer to feed their family, pay equipment notes, pay interest at the bank for the money the producer still owes (1,000 acre average producer \times \$200 = \$200,000) at 6 percent average interest, and many other costs. So the bottom line

is the producer has lost money that the producer may never be able to recover from. The insurance company lost by having to pay the producer a \$194 an acre claim. Not to mention the \$30 acre replant claim they paid the producer (which is only about 1/3 of the cost to actually replant). The commenter questioned why the insurance provider could not release those acres for the producer to plant another crop such as soybeans or cotton to at least be able to survive. Note that the longer you wait to release those acres the more the yield on the second crop yield is being hurt also. Lastly, the average producer is not looking to collect on an insurance claim. The producer would rather produce a good yielding crop, sell it for a decent price and survive to farm another year.

Response: As stated above, FCIC realized that requiring replanting up to the end of the late planting period may place too much of a burden on producers and reduced needed flexibility. Therefore, FCIC is revising the period in which to replant a crop to no more than 10 days and revising the provisions to allow additional agronomic factors and circumstances to be considered by the insurance providers. However, while FCIC understands the commenter's concerns about the economics of producing a crop, when production costs exceed the potential value of the planted crop the Federal crop insurance program is not in a position to consider those costs when determining indemnities. It indemnifies lost production at an established price, in part, using taxpayer dollars. FCIC has a responsibility to those taxpayers to ensure that their dollars are properly spent. Replanting a crop when it is possible for that crop to grow and reach maturity is one way of protecting taxpayer dollars, and helps achieve the balance between the interests of producers and the interests of taxpayers.

With respect to the scenario stated above, the claimed losses are outside of the control of FCIC or the scope of this rule. In the example provided, regardless of whether the producer's original crop failed or produced a full crop, the producer would have lost money. If the producer produced the guarantee of 131 bushels and sold it for \$3.30, which equals \$432, this is still far below the claimed expenses of \$650. Even if the producer had produced the 175 bushels actual production history yield, the producer would only have received \$577.50.

Comment: Several commenters believed that a practical to replant determination is best made by the producer and the adjuster on the farm, and that a one size fits all approach could seriously jeopardize a producer's chances of profitability as margins are already tight in a replant situation. A commenter stated that even though the interim rule's revised definition allows for an exception to the standard date if "there is no chance of seed germination, emergence, and formation of a healthy plant," this language raises the question of how such an important and time-sensitive determination will account for different conditions, including soil types and the varying impact of rainfall on farms just miles apart. Because of the significant differences between crops, final plant dates and late planting periods, a thorough assessment by the adjuster for the insurance provider along with the producer's input and experience are a more sensible match for the replant decision than an across-the-board application of a standard date.

A commenter stated that when the final plant date has been reached and during the late planting period, allow and encourage the producer and adjuster in consultation to make a determination and decision; based upon the conditions in the field and area as to when each field is no longer "practical to replant." By doing so this would enable the

producer to fail the first crop and plant to a second different crop, while practical to expect a second crop can reach yield potential and maturity. If the producer should choose to plant back to the original crop, it would be considered a replanted crop.

A commenter stated that the producer and the adjuster have been looked to as the best judge of whether it was practical to replant that crop. Under this definitional change, however, the practical experience and judgment of the producer and the adjuster, which is specifically focused upon that farm, that area, and the unique conditions, would be replaced with a uniform date. Thus, the change effectively declares that it is always practical to replant, not just through the final plant date for the crop but through the late planting period as well. This is not a practical standard given the various adverse situations that trigger replant provisions. Even if the final plant dates and late planting periods were all perfect and consistent across all regions, which they are not, the commenter still strongly believed the producer and adjuster are best suited to make this judgment.

A commenter stated that removing the human and weather elements from the decision-making within this definition and rule would prove detrimental. The decisions should definitively combine both factors. They are not independent of what is decided; only after planting potential has been examined can an accurate determination be made. The word “practical” is at the heart of this issue, even included in the definition; therefore practicality and flexibility become the points of action.

A few commenters stated they have serious concerns about proposed changes to the "practical to replant" definition contained in the interim rule. Beyond the proposed changes, producers were given an inadequate window of time to respond to the changes

overlapping the state's harvest period and currently managing disastrous flooding conditions. The commenter stated that in the Southern U.S., where rice is grown, planting windows and options tend to be longer and more diverse. Important replant provisions of the various crop insurance policies only come into play when a first attempt at planting is ruined in whole or in part. In such an adverse situation, the commenters would maintain the producer needs all options at their disposal. The planting dates and windows of Federal crop insurance, while necessary, cannot reflect the best and most practical options for each farm. The commenters believed this determination is best made by the producer and the adjuster on the farm.

A commenter stated that in many cases, if a first crop is washed or flooded out, but the water recedes and the producer has the ability to plant again, planting the same first crop would not be the ideal financial or agronomic decision even if it is still an insurable possibility by the USDA Risk Management Agency dates. To handcuff the producer in these situations where they can only go back to the original crop through the late planting period seems unreasonable. Again, the commenter thinks the current rules, which show deference to the producer and the adjuster to make the best determination for that farm in that situation in that adverse year, is the better model.

The commenters are very concerned about advancing integrity of Federal crop insurance, and the commenters know that clear rules need to be made and enforced. But every farm is unique and the situation on each farm is unique each year, so the rules have to be balanced against an adequate flexibility that allows the producers to do their work the best they know how. The commenters noted their support for other rules like the first

crop, second crop limitations that protect the integrity of the program while affording the producer flexibility to make the best productive use of the land in any given year.

Response: One of the fundamental principles of the crop insurance program is that all producers be treated fairly and equitably. FCIC also believes that producers working with their loss adjuster can make or reach the best decisions for addressing crop loss on the farm, but to do so requires clear rules and understanding. FCIC realizes that requiring replanting until the end of the late planting period may be too burdensome and has revised the provisions to reduce the presumptive time to replant to not more than 10 days. In addition, when determining whether it is practical to replant approved insurance providers may consider circumstances as to whether: (1) it is physically possible to replant the acreage; (2) seed germination, emergence, and formation of a healthy plant is likely; (3) field, soil, and growing conditions allow for proper planting and growth of the replanted crop to reach maturity; or (4) other conditions exist, as provided by the Crop Provisions or Special Provisions. This will allow decisions to be more tailored to actual agronomic conditions and circumstances for determining whether it is practical to replant. However, as stated above, the goal of replanting is to mitigate losses in those situations where it is still possible to produce a crop that can reach maturity. To effectuate this goal and balance the interests of producers and taxpayers, FCIC provides for a replant payment and allows a full guarantee on the replanted acres, so that if there is any future reduction in yield the producer will be indemnified.

Comment: A commenter stated if there was a change to be made to the “practical to replant” definition in the policy it should have been to shorten the number of days that a

producer has to replant his crops after the final plant date. The definition should not require a producer to replant all the way to the end.

Response: FCIC agrees with the commenter. FCIC is changing the definition of “practical to replant” to state it will be considered practical to replant through: (1) the final planting date if no late planting period is applicable; (2) the end of the late planting period if the late planting period is less than 10 days; or (3) the 10th day after the final planting date if the crop has a late planting period of 10 days or more.

Comment: A commenter stated there are other unintended consequences that the commenter asked FCIC to consider as well. If a producer follows all guidelines of the proposed process and plants an alternative crop after the proposed latest “practical to replant” date for the initial insured crop, they will in most cases be planting the alternative crops after optimum dates and potentially suffer economic losses as well. In addition, the resulting figures for rice, soybeans, corn, cotton, and grain sorghum are considered to be very conservative estimates that do not include the additional production input costs associated with late-planting of these Louisiana crops. The commenter stated that crop insurance should remain a tool to support producers when unforeseen covered events adversely affect their crops. These proposed changes have the potential to drastically affect Louisiana agriculture and create insecurity among the commenter’s producers and which the commenter hopes is certainly not the intended outcome.

Response: FCIC is changing the definition of “practical to replant” to reduce the number of days it is presumed to be practical to replant. Further, other agronomic factors and circumstances can be considered when determining whether it is practical to replant. These changes should create more stability, flexibility, and security.

Comment: A commenter stated that consistency and common understanding of the rule from producer to insurance provider needs to be achieved. If enacted as written, this rule becomes inconsistent with declaration of prevent plant by the producer; which can and is allowed to occur after the final plant date. It becomes the producer's declaration and decision per the assessment of agronomic conditions, weather and human assessment, soil conditions, viability to reach a desired result of the planted crop. It is counter intuitive to require the producer to replant following a peril that destroys their first crop based upon the calendar date, rather than taking into consideration the factors on each farm. Only with "boots on the ground" assessing crop maturity, availability of product, plant vigor, weather and field conditions can good farming, and program integrity decisions be made. Because of the variability experienced by each producer's situation, the geographies that they work within and the unknown weather conditions that can arise at any time, there is no one blanket date that would fit all farms. Creating a definition that allows for these variables will enable consistency, understanding and optimum risk management for producers, insurance providers, and taxpayers.

Response: As stated in the final rule with request for comment, the previous provisions, as written, regarding "practical to replant" can lead to different insurance providers reaching differing determinations as to whether it is practical to replant in the same area. Therefore, it is important to provide a clear, known presumptive deadline for when replanting of the crop is considered to be practical. Further, as stated above, prevented planting and practical to replant are two different provisions, with different purposes, that provide different coverage. Prevented planting coverage only covers the expected costs incurred at the time the crop was prevented from planting, which is

determined by a percentage of the guarantee. It does not indemnify for the crop loss. When a crop fails and the issue is whether to replant, the failed crop could receive an indemnity based on the lost production if it is determined not to be practical to replant. However, the requirement to replant is intended to mitigate these losses when agronomic conditions and circumstances are such that the crop could be expected to grow and reach maturity. In prevented planting situations, insurance providers look at whether it was possible to plant before the final planting date. In practical to replant situations, the determination is made by the insurance provider after considering the agronomics and the circumstances for the area as to whether it is customary to replant the crop. However, FCIC agrees that one size does not fit all and has revised the provisions to shorten the period for practical to replant and has added provisions allowing for consideration of additional circumstances in determining the practicality of replanting.

Comment: A commenter stated aflatoxin is a horrible disease in grain crops. This, as well as other diseases and risks such as hurricane and intense heat and drought would be greatly enhanced by requiring a producer to replant through the end of the late planting period.

Another commenter stated getting the product that will produce the highest yield on a specific soil type, disease environment, is extremely important to the final yield outcome. At the end of the season in the last couple years, the most desired products are sold out, due to seed companies limiting piles of unused units that must be written off at a loss. So, the producer is now forced to use a third or fourth choice corn or soybean product that offers less inherent yield potential for this geography and possibly higher risk of disease infestation and yield loss.

Response: FCIC understands the commenter’s concern regarding increasing risks by requiring the producer to replant through the end of the late planting period. FCIC has revised the provisions to reduce the presumptive time to replant to no more than 10 days and allowing for consideration of additional agronomic factors and circumstances to be considered in the determination of practical to replant. These changes provide a better balance of the interests of producers with those of the taxpayer, whose interests are in paying losses when it is not possible to replant a crop that would grow and reach maturity. Further, since the guarantee is not reduced as a result of planting during the late planting period, any such losses would be fully indemnified.

With respect to the availability of seed and other inputs, the previous definition of “practical to replant” stated it will be considered to be practical to replant regardless of availability of seed or plants, or the input costs necessary to produce the insured crop such as those that would be incurred for seed or plants, irrigation water, etc. FCIC inadvertently omitted this sentence from the final rule with request for comments. Therefore, FCIC has modified the definition of “practical to replant” to add that it will be considered practical to replant regardless of the availability of seed or plants, or the input costs necessary to produce the insured crop such as seed or plants, irrigation water, etc. Since the Act only authorizes coverage due to drought, flood or other natural disaster, things such as seed availability, plants or input costs cannot be a consideration when determining whether or not it is practical to replant the crop.

Double Cropping

Comment: A commenter had some concerns that the wording in the 2017 Common Crop Insurance Policy Basic Provisions (Basic Provisions) under section 15(h) could lead

to misunderstandings and differing interpretations. For example, section 15(h)(5)(i) allows for when a historical double cropping percentage could be used for situations where a producer acquires additional acreage. Section 15(h)(5)(i) implies the double crop percentage would be applied to the total acreage now in the producer's operation. However, the example under section 15(h)(5)(i)(D) says to apply the double crop percentage to both the current year first insured crop acreage and the current year second crop acreage. It is unclear as to which set of determined acreage is ultimately used as the limiting factor when total acreage in the producer's operation as well as first insured crop acres and second crop acres are all multiplied by the determined percentage.

Response: FCIC agrees with the commenter and has changed the language to remove the reference to second crop acreage.

Comment: A commenter questioned if the revised language in section 15(h)(5) of the Basic Provisions only applies to policies with added land or if it includes situations in which there is no added land but the number of double cropping acres have increased through different crop rotations. The commenter assumed based on the language included as a part of the final rule the intent of this new language addresses both added land and other situations where there is no added land but the number of double cropping acres have been increasing. If this is indeed the intent, the commenter recommended that FCIC consider changing or adding to the language in 15(h)(5)(i) that indicates "...if you acquired additional acreage, you may apply the percentage of acre..." which implies that this computation only applies when additional acreage has been acquired.

Response: The phrase "acquired additional acreage" in section 15(h)(5) of the Basic Provisions is intended to apply to a net acquisition of acreage. For example, if a producer

loses 50 acres of land and gains 20 acres, the double cropping multiplier would not apply because the total acreage in the producer's operation is not greater than in previous years. Another example would be if a producer loses 50 acres of land and gains 60 acres, the double cropping multiplier would apply because the total acreage in the farming operation is 10 net acres greater than in previous years. FCIC has revised the language accordingly.

Comment: A commenter questioned whether or not the computations from this new section are meant to apply in the situation where the first insured crop is planted and the second crop is prevented from being planted (also does not specifically address where the first insured crop is planted and the second crop is planted). The commenter did not see any language addressing this situation but assumed that FCIC would calculate double cropping history acres in the same manner. This was addressed in the previous Basic Provisions by the language in section 15(i) as follows (language addresses both planted and prevented planting acreage of both the first and second crop that are double cropped):

(i) The receipt of a full indemnity or prevented planting payment on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 15(h).

The commenters assumption is that the computations laid out in section 15(h)(5) of the Basic Provisions is intended to encompass both situations. However, since the language is no longer included as a part of the lead in to the calculation, FCIC may want to consider adding this language back in so that it is clear this calculation is intended to cover both of these situations (section 15(h) does address a full indemnity or a full

prevented planting payment for a first insured crop when a second crop is planted). At the very least, the Prevented Planting Loss Adjustment Standards Handbook will need to make sure and include additional instructions for computing double crop acres for these situations.

Response: FCIC thanks the commenter for their comments. Section 15(h)(5)(i) is intended to apply to situations where the first insured crop is planted and incurs an insurable loss or the first insured crop is prevented from planting and a second crop is planted. Section 17(f)(5) is the applicable section when a first insured crop is planted and the second crop is prevented from planting. FCIC has revised the language in section 15 accordingly.

Comment: A commenter stated the change to double crop history seems to be a positive move, using a producer's history of double cropping to aid in calculating the use of newly added land. If a producer has a history of double cropping every year, it is highly likely that a percentage of the added land would be double cropped also. The change to the double crop language will add more complexity to the calculation. Before, it was simple - what you had is what you got.

Response: FCIC thanks the commenter and appreciates their input.

Comment: A commenter suggested revising 15(h)(5)(i)(B) to state "... (In the example above, 50 divided by 100 equals 50 percent of the first insured crop acres that were double cropped in 2015, and 70 divided by 100 equals 70 percent that were double cropped in 2016)".

Response: FCIC agrees and has made changes accordingly.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control numbers 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on

State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal

Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss.

Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from beginning farmers or ranchers and limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of Federal crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

2. Amend § 457.8, in the Common Crop Insurance Policy, as follows:

a. In section 1 by revising the definition of “practical to replant” and “replanted crop;” and

b. In section 15 by revising paragraph (h).

The revisions read as follows:

§ 457.8 The application and policy.

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Common Crop Insurance Policy

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1. Definitions.

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Practical to replant. Our determination, after loss or damage to the insured crop, that you are able to replant to the same crop in such areas and under such circumstances as it is customary to replant and that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. We may consider circumstances as to whether: (1) it is physically possible to replant the acreage; (2) seed germination, emergence, and formation of a healthy plant is likely; (3) field, soil, and growing conditions allow for proper planting and growth of the replanted crop to reach maturity; or (4) other conditions exist, as provided by the Crop Provisions or Special Provisions. Unless we determine it is not practical to replant, based on the circumstances listed above, it will be considered practical to replant through: (1) the final planting date if no late planting period is applicable; (2) the end of the late planting period if the late planting period is less than 10 days; or (3) the 10th day after the final planting date if the

crop has a late planting period of 10 days or more. We will consider it practical to replant regardless of the availability of seed or plants, or the input costs necessary to produce the insured crop such as seed or plants, irrigation water, etc.

* * * * *

Replanted crop. The same agricultural commodity replanted on the same acreage as the insured crop for harvest in the same crop year if: 1) the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the insured crop; or 2) replanting is required by the policy. The crop will be considered a replanted insured crop and no replanting payment will be paid if we have determined it is not practical to replant the insured crop and you choose to plant the acreage to the same insured crop.

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, if each of the following conditions are met, regardless of whether or not the second crop is insured or sustains an insurable loss:

- (1) Planting two or more crops for harvest in the same crop year in the area is generally recognized by agricultural experts or organic agricultural experts;
- (2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;
- (3) Additional coverage insurance offered under the authority of the Act is available

in the county on the two or more crops that are double cropped;

(4) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop;

(5) You provide records, acceptable to us, of acreage and production specific to the double cropped acreage proving that:

(i) You have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted and incur an insurable loss or the first insured crop is prevented from being planted and a second crop is planted. If you acquired additional land for the current crop year you may apply the percentage of acres that you have previously double cropped to the total cropland acres that you are farming this year (if greater) using the following calculation:

(A) Determine the number of acres of the first insured crop that were double cropped in each of the years for which double cropping records are provided (For example, records are provided showing: 100 acres of wheat planted in 2016 and 50 of those acres were double cropped with soybeans; and 100 acres of wheat planted in 2017 and 70 of those acres were double cropped with soybeans);

(B) Divide each result of section 15(h)(5)(i)(A) by the number of acres of the first insured crop that were planted in each respective year (In the example above, 50 divided by 100 equals 50 percent of the first insured crop acres that were double cropped in 2016 and 70 divided by 100 equals 70 percent of the first insured crop acres that were double cropped in 2017);

(C) Add the results of section 15(h)(5)(i)(B) and divide by the number of years the

first insured crop was double cropped (In the example above, 50 plus 70 equals 120 divided by 2 equals 60 percent); and

(D) Multiply the result of 15(h)(5)(i)(C) by the number of insured acres of the first insured crop (In the example above, 60 percent multiplied by the number of wheat acres insured in 2018); or

(ii) The applicable acreage was double cropped (by one or more other producers, and the producer(s) will allow you to use their records) for at least two of the last four crop years in which the first insured crop was grown on it; and

(6) If you do not have records of acreage and production specific to the double cropped acreage, as required in section 15(h)(5), but instead have records that combine production from acreage you double cropped with records of production from acreage you did not double crop, we will allocate the first and second crop production to the specific acreage in proportion to the liability for the acreage that was and was not double cropped.

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Dated: June 20, 2017.

Robert Ibarra
Acting Administrator
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