DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB69

Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Policy; Basic Provisions for the purpose of: Clarifying certain provisions; adding definitions and provisions to allow enterprise and whole farm units; allowing the use of a written agreement to insure acreage that has not been planted and harvested in one of the three previous crop years; removing the requirement that a minimum amount of prevented planting acreage be contiguous before a prevented planting payment can be made; and removing the requirement that the Palmer Drought Severity Index be used to determine eligibility for a prevented planting payment in certain circumstances. The intended effect of this action is to create a policy that best meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that of all the changes in the final rule, eliminating the contiguous acreage requirement to determine eligible prevented planting acreage will have the most impact. The impact is greatest in certain regions of the Northern Plains, but the effect on overall crop insurance payments is expected to be small. Additional indemnities resulting from this change are estimated to average $500,000 per year. Premium rate adjustments have been made to cover the additional indemnities. Additional costs to the Government will be about $250,000 for premium subsidies, $110,000 in administrative subsidies, and $38,000 in underwriting losses. Other provisions of the rule serve to clarify provisions or make changes that may cause slight changes in expected indemnities and premiums. Removal of the use of the Palmer Drought Severity Index is not expected to significantly impact indemnities over those that were expected to be covered. Previous premium rates reflected this risk. Other than removal of the contiguous land requirement indicated above, little impact is foreseen.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

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 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 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

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 requires 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. 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, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 52194–52198 to amend the Common Crop Insurance Policy; Basic Provisions (Basic Provisions) (7 CFR part 457) effective for the 1999 and succeeding crop years for all crops with contract change dates after the effective date of the final rule, and for the 2000 or 2001 and succeeding crop years for all crops with contract change dates prior to the effective date of the final rule.

The public was afforded 15 days following filing of the proposed rule at the **Federal Register** to submit written comments and opinions. A total of 59 comments were received from an insurance service organization, reinsured companies, crop insurance agents, and a national commodity

group. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization stated that sufficient time was not allowed to deal with the proposed rule. It stated that a fifteen day comment period is simply inadequate to deal with the magnitude of concerns and is an inadequate amount of time to sufficiently consider the implications and to solicit and compile comments from member companies.

Response: To meet the needs of producers and for ease in administering the policy, it was important the provisions be revised and effective for 1999 spring crops. This requires the rule to be made effective prior to the contract change dates for the specific crops. In order to accomplish this, the comment period could not be longer than 15 days. Most of the changes in the proposed rule arose from requests from producers and insurance companies. All individual members and other interested parties had an opportunity to comment.

Comment: A reinsured company and an insurance service organization made the following comments regarding enterprise and whole farm units: (1) Definitions should be consistent among policies such as Crop Revenue Coverage (CRC), Revenue Assurance (RA), the Basic Provisions, (2) The phrase ''and at least 50 insurable acres'' should be deleted from the definitions of enterprise unit and whole farm unit. The commenter stated that as long as at least two basic units were involved, the number of acres should be irrelevant. (3) Clarify whether the enterprise unit discount is based on the number of acres or the number of sections in the enterprise unit. (4) A producer who farms in four different sections, owning the land in one section but cash-renting the land in the other three sections would qualify for one basic unit and not for enterprise units under the proposed definition. However, if the other three sections were share-rented, the producer would qualify for at least two separate basic units and, therefore, for an enterprise unit. This does not seem equitable. (5) Whether the sentence referring to at least two basic units and at least 50 insurable acres mean cropland (plantable) acreage that may be counted for more than one crop or is it crop specific, meaning a small operation may qualify for an enterprise unit on a crop one year but not the next because of crop rotation or other factors, and whether it includes acreage that was prevented from being planted. (6) The provision that requires producers to report acreage and production at the basic unit level defeats the purpose of unit consolidation offered by enterprise and whole farm units and should be eliminated. (7) Allow an insured to report acreage and production on an optional unit basis if the producer chooses (currently allowed under CRC). This would allow flexibility in succeeding years to insure optional units. (8) Failure to report information at the enterprise or whole farm unit level, if those levels are chosen, should not result in premiums and indemnities being based on basic units. It would be more logical to treat basic units that were not reported as such as enterprise and whole farm units rather than as basic units. This reversion to basic units is logical when the insured wanted further division into optional units but did not certify accordingly. The commenter questioned why enterprise and whole farm units would revert to basic units when the required information, on a basic unit basis is not provided. This could result in more units and a higher possibility of a loss, although at a higher premium. Section 34(a)(5) may not be necessary if enterprise or whole farm units do not revert to basic units if acceptable production reports are not provided.

The insurance service organization stated that adding to the definition of ''enterprise unit,'' the requirement of separate legal descriptions and at least two optional units, may cause need for some clarification. The insurance service organization also asked whether the following can qualify for enterprise units: (A) Multiple legal descriptions as well as multiple basic units when two or more basic units (by share arrangement in the same section) are not divided into optional units; (B) Multiple optional units as a substitute for multiple basic units when one basic unit is divided into two or more optional units by legal description; and (C) When a basic unit is divided into two optional units, such as irrigated and non-irrigated practices within one section, rather than by legal description.

The reinsured company stated that section 34(a)(1) provides that an election of enterprise or whole farm units must be made before the earliest sales closing date for the insured crops. The company stated this language would be appropriate for whole farm units (multiple crops for a whole farm unit); however, language should also be added to specify the sales closing date for the crop for enterprise units (single crop). The insurance service organization stated if the enterprise unit definition is changed to match the CRC wheat definition, section 34(a) would need to be revised accordingly.

Response: With respect to the first set of comments: (1) Consistency among crop insurance policies is desirable. However, FCIC is required to offer its programs at an actuarially sound rate. Private insurance products need only be offered at an actuarially appropriate rate. Therefore, consistency may not always be achieved. (2) FCIC has deleted the 50 acre requirement from both the enterprise and whole farm units. (3) For enterprise units, the discount will be based on the number of sections, not the number of acres. (4) FCIC has revised the definition of ''enterprise unit'' to allow acreage to qualify for an enterprise unit if the acreage would qualify for either two or more basic units of the same crop located in separate sections, section equivalents, or farm serial numbers or two or more optional units of the same crop located in separate sections, section equivalents, or farm serial numbers. Therefore, both scenarios discussed in the comment would qualify for an enterprise unit. (5) As stated above, the definition of ''enterprise unit'' has been revised to require two or more basic or optional units of the same crop. (6) and (7) Producers will still be required to report acreage on a basic or optional unit to ensure eligibility for an enterprise unit, although when determining premiums or indemnities, all the acreage within the enterprise unit will be used. FCIC has eliminated the requirement that producers report production on a basic or optional unit basis. Production must be reported for the enterprise unit. However, a provision has also been added to specify that any required production records must be maintained separately by basic or optional units if the producer wishes to change the unit structure in subsequent crop years. (8) FCIC has eliminated the provisions that specified that if the producer fails to report information at the enterprise or whole farm level, premiums and indemnities will be based on the basic units. Instead, if the producer fails to provide any required production reports for the enterprise unit, the producer will be assigned a yield in accordance with section 3(c)(1) of the Basic Provisions. It is only if the acreage never qualified for enterprise units will the acreage be divided in basic units.

With respect to the second set of comments: (A) When there are basic units in multiple sections, the acreage will qualify for an enterprise unit. (B) When there are multiple optional units in multiple sections, the acreage will qualify for enterprise units. (C) When there are multiple optional units in the

same section, the acreage will not qualify as an enterprise unit.

Comment: A reinsured company suggested the wording in section 2(e) should clarify that administrative fees that are not paid also make a person ineligible to participate in crop insurance programs.

An insurance service organization asked if sections 2(e)(1)–(10) would remain after revising section 2(e) introductory text. The insurance service organization also stated that the phrase ''you may be determined to be ineligible'' suggests that a company may choose to not make that determination even though payment is past due. They recommended saying ''You will be determined to be ineligible.''

Response: FCIC has added a provision in section 2(e) to include administrative fees as ''any amount due'' for clarity. This provision was not intended to permit insurance companies to allow insureds to remain eligible even though they may be indebted. FCIC has revised the provision to change the word ''may'' to ''will.'' Sections 2(e)(1)–(10) were inadvertently deleted in the proposed rule and will remain in the policy.

Comment: A reinsured company stated that the provision in section 9(a)(1)(iii) that allows a written agreement to provide insurance coverage for acreage that has not been planted and harvested within one of the 3 previous crop years must recognize that this is most likely to occur at acreage reporting time. The written agreement process must be very streamlined and flexible.

Response: The written agreement provisions allow written agreements to be requested after the sales closing date if the producer was not aware, or should not have been aware of the condition that required the existence of a written agreement before the sales closing date, or if it is submitted in accordance with written agreement regulations. Written agreements will be prepared and submitted in accordance with the provisions in the Basic Provisions, written agreement regulations and FCIC approved procedures. Therefore, no change has been made.

Comment: An insurance service organization suggested that, if perennial crops are limited to trees, vines or bushes, this should be stated in the definitions instead of in section 9(a)(1)(i)(D).

Response: Perennial crops, under its common usage includes any plant that regrows each crop year without replanting and would encompass more than just tree, vine, and bush crops. However, section 9(a)(1)(i)(D) is intended to only include tree, vine and bush crops. Therefore, no change has been made.

Comment: A reinsured company stated the language in section 15(d) of the proposed rule that requires a crop to be destroyed or put to another use prior to payment of an indemnity is unnecessary and should not be implemented. Such language indicates lack of confidence in appraisal methods and will require two contacts to resolve a claim (one contact to appraise and another contact to confirm destruction or other use).

An insurance service organization stated that we should have more confidence in appraisals than section 15(d) of the proposed rule indicates. The commenter stated that if harvest is general in the area, it may not be prudent to require destruction. The producer may want to maintain the damaged crop as a cover crop on highly erodible land. The commenter asked who would be responsible to determine the crop had been destroyed or the acreage put to another use before the indemnity is paid. If this is intended to make insureds aware of their responsibility in this matter and is treated as one of the facts insureds certify to as part of the loss adjustment process, it may be useful.

A reinsured company stated that section 15(d) of the proposed rule appears to put in writing that use of a certification form for this purpose will continue to be acceptable. However, if this section means that such acreage must be physically inspected prior to an indemnity payment, the company definitely opposed it.

Response: FCIC has redesignated proposed section 15(d) as 15(e) to recognize the new section 15(d) that was added in the interim rule that was published in the **Federal Register** on July 30, 1998. Actual production is always more accurate than appraisals. FCIC has revised newly designated section 15(e) to specify that appraised production will be used if the acreage is not harvested. If the acreage is harvested, the insured must report the harvested production, which will be used to determine the indemnity, unless otherwise specified in the policy.

Comment: A national commodity group stated that a producer should be allowed to plant a noninsured ''ghost crop'' on the same acreage without losing a prevented planting payment for a crop that was prevented from being planted due to an insured cause.

Response: Prevented planting ''substitute crop'' coverage was provided for producers with coverage greater than catastrophic risk protection beginning with the 1995 crop year. During the three crop years this provision was effective, FCIC received numerous complaints from agents, reinsured companies, commodity groups, and producers, that the provision was subject to abuse, and that it was difficult to establish ''intent'' as required under those provisions.

If a producer is prevented from planting the ''intended'' crop, it is the producer's choice to leave the acreage idle, plant a cover crop, or plant another crop for harvest. Only one crop normally is produced per acre, per crop year. Instead, FCIC has discovered that producers were receiving windfalls by receiving a benefit from the crop they were prevented from planting and the benefit associated with producing another crop on the acreage. This was never an intended effect of prevented planting. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization stated that the entire prevented planting concept should be reconsidered. The reinsured company stated that the prevented planting provisions are overly complex and not workable. The company recommended that the entire prevented planting process would be more understandable and easier to administer if a set dollar amount per acre was established (the amount could vary by geographic area) that would be paid for acres that remained unplanted due to insurable causes after a set date (which would also vary by geographic area), rather than making prevented planting payments on a crop-specific basis.

The insurance service organization stated that the proposed changes provide only minor remedial relief to the prevented planting portions of the policy that continue to be complicated and burdensome. These areas of the policy are major concerns of the industry that elevate both loss and administrative costs, and subject providers to excessive scrutiny by RMA's Risk Compliance Division. The insurance service organization stated that it was unable to adequately address the prevented planting provisions within the time constraints allowed. It stated that the rule does not remedy larger problems of the current concept and that they will work with FCIC to improve the prevented planting provisions.

Response: The recommended changes, which are materially beyond the scope of the proposed rule, cannot be accomplished without benefit of public comment. FCIC considered similar ideas from the insurance industry in the past and found the

recommendation lacked detail, would create additional administrative burden, and may not be in the best interest of the insureds. FCIC is willing to review any detailed proposal for improving prevented planting for possible use in future crop years. Therefore, no change has been made.

Comment: A reinsured company suggested expanding the definition of ''field'' to be more consistent with the Farm Service Agency (FSA) definition. That definition incorporates references to ''crop lines being acceptable to delineate a field, if past farming practices indicate the crop lines are not subject to change.''

Response: A more permanent boundary, such as those required by the insurance policy, rather than the more liberal definition of FSA, is simpler to administer and best serves the purpose of field designation for the prevented planting provisions. The suggested revision would increase the administrative burden on the reinsured companies, which the current definition avoids. Therefore, no change has been made.

Comment: A reinsured company recommended that the definition of ''Palmer Drought Severity Index'' be expanded to state that the classification is determined on a weekly basis. Also, the rule must clarify how this index is to be administered when the sales closing date or final planting date occur between two weekly indexes. The company suggested that FCIC do additional research because it believes that neither the Palmer Drought Severity Index, which is a long term index, nor the Crop Moisture Index, which is a short term index, adequately define drought for all planting situations. The company stated that some combination of the two indexes or other alternatives might be useful.

Response: FCIC has received numerous complaints that although drought was a major problem, the Palmer Drought Severity Index did not reach the required ''severe or extreme'' category because it did not accurately reflect actual drought conditions at the time of planting. FCIC has reviewed the Crop Moisture Index and does not believe that it would be a viable alternative. Therefore, FCIC has deleted the definition of the Palmer Drought Severity Index and its reference in section 17(d).

Instead of the Palmer Drought Severity Index, FCIC has added language in section 17(d) to clarify when drought will be considered as an insurable cause of loss for prevented planting.

Comment: Reinsured companies and an insurance service organization commented on the definition of ''prevented planting.'' A reinsured company stated that the phrase ''general in the surrounding area and that prevents other producers from planting acreage with similar characteristics'' is very vague and is subject to many interpretations. This company was concerned whether oversight organizations would rely on a company's interpretation or question the determinations made by the company.

The insurance service organization questioned the intent of the revised definition. It asked that if insureds are prevented from planting until the final planting date due to an insurable cause and are not required to plant in the late planting period (even if possible) to qualify for a prevented planting payment, whether it matters if there is an insurable cause of loss within the late planting period. The commenter also stated that a crop planted in the late planting period is covered with a late planting guarantee and if no crop is planted in the late planting period, it is covered with a prevented planting guarantee because planting was prevented before the final planting date. The language, ''if you elect to plant the insured crop during the late planting period, failure to plant the insured crop within the late planting period . . .'' is not necessary since an insured would not need a cause of loss in the late planting period.

Another reinsured company suggested that, for crops with a late planting period, insureds be allowed to report prevented planting acreage up to ten days after the final planting date, to encourage producers to plant during that period.

Response: The proposed language ''general in the surrounding area and that prevents other producers from planting acreage with similar characteristics'' is intended to require the comparison of acreage, which is a major factor in determining whether acreage is prevented from being planted, and allow a producer legitimately prevented from planting due to an insurable cause to qualify for prevented planting coverage without requiring that over 50 percent of the producers in the surrounding area also be prevented. Reasonableness will be the standard used by oversight organizations examining the conduct of the reinsured companies.

The intent of the language regarding the late planting period is to allow producers to collect a prevented planting payment if they were prevented from planting by the final planting date. The previous definition made it unclear whether producers were required to be prevented from planting by the end of the late planting period to be eligible for a prevented planting payment. FCIC has amended the definition of prevented planting in section 1 for clarification.

The reduction in the guarantee already provides a sufficient incentive for producers to plant early in the late planting period. Requiring the producer to declare that he has been prevented from planting before the end of the late planting period may subject the producer to sanctions if the producer later plants the crop. All reporting must occur after the late planting period to give producers a chance to plant the crop. Therefore, no change has been made.

Comment: A reinsured company suggested that section 17(a)(3) should be revised to specify that prevented planting coverage is not available if the insured planted any crop (not just the ''insured crop'') during or after the late planting period, except an approved cover crop planted for haying or grazing.

Response: Section 17(a)(3) is intended to clarify that prevented planting provisions do not apply to any acreage when the insured crop is prevented from being planted and that same insured crop is planted during or after the late planting period. FCIC has revised section 17(a)(3) to specify that such acreage is covered under the late planting provisions. Provisions in section 17(f)(5) exclude prevented planting coverage for any acreage on which another crop is planted for harvest. FCIC does not see any reason to repeat this provision.

Comment: A reinsured company and an insurance service organization stated that section 17(d) provides that if a late planting period is applicable, that period will also be considered when determining if drought or failure of the irrigation water supply is an insurable cause of loss for the purposes of prevented planting. They questioned why the late planting period would matter if the date for determining prevented planting under the proposal is the final planting date.

The insurance service organization asked if the phrase ''if a late planting period is applicable'' means if the insured planted or attempted to plant the insured crop during the late planting period, or only if a late planting period is available for the crop in question. If the latter, they recommended that FCIC consider revising the phrase to state, ''* * * or within the late planting period (for crops with a late planting

period)'' and place a comma before the word ''either'' and delete the comma that now follows the word. The insurance service organization also asked if the Palmer Drought Severity Index is still used. If so, will the acreage qualify for prevented planting as long as the index classifies the acreage as ''extreme'' or ''severe'' within the late planting period, even though it did not reach one of those categories by the final planting date?

Response: As stated above, FCIC has eliminated all references to the Palmer Drought Severity Index and substituted another standard. Section 17(d) is revised to clarify that drought will be considered an insurable cause of loss for non-irrigated acreage if the drought exists through the planting period to the final planting date, or within the late planting period if the producer elects to try to plant the crop.

Comment: An insurance service organization stated that both column headings in section 17(e)(1) refer to the four most recent crop years, and asked if this means ''APH crop years'' or ''policy crop years.'' If the former, this could mean having to verify backward an unlimited number of years due to crop rotation, etc. They also questioned the wording of the last phrase in both columns, ''* * * (have/have not) received a prevented planting insurance guarantee,'' asking if a prevented planting guarantee is considered the same as a prevented planting indemnity for this purpose. If so, they suggested referring to it as an indemnity. The commenter also stated that the headings are so lengthy that it might be at least as clear to change this back from table format to the standard outline format of the rest of the policy.

Response: Reference to the ''four most recent crop years'' means the crop year as defined in the Basic Provisions, not APH crop years. However, the heading also specifies ''any crop''. Therefore, reinsured companies only have to verify the total acreage planted in each of the previous four crop years. Reference to prevented planting insurance guarantee in section 17(e)(1) is not the same as a prevented planting payment. The term prevented planting insurance guarantee is necessary to recognize acreage that received a prevented planting guarantee prior to 1998, when payment began on an acre by acre basis, where an indemnity may not have been paid under previous prevented planting rules. While the column headings may be somewhat lengthy, FCIC believes the chart format is the easiest format to present this information. Therefore, no change has been made.

Comment: A reinsured company, an insurance service organization, and crop insurance agents commented about removing the requirement that a minimum number of prevented planting acres be contiguous from section 17(f)(1). The reinsured company strongly objected to removing the contiguous requirement, stating that the potential negative effects on loss ratios and delivery costs (loss adjustment expenses) are too great. The commenter stated that it does not support the action because they have no knowledge of proposed rate increases and because the Standard Reinsurance Agreement, that governs company risk sharing and administrative expense reimbursement is already in place for 1999. The company stated that this would greatly increase loss adjustment expenses and workload, as potholes and small acreages must be determined and accumulated, resulting in an increased number of payable prevented planting claims and increased indemnities. The company stated that these prospects were not contemplated in the Standard Reinsurance Agreement. The company further stated that, while FCIC may project additional indemnities of $500,000 per year, they are not comfortable that this figure is correct. They also stated that the increased loss adjustment expenses are not identified in the Cost-Benefit Analysis, but they will be greatly increased. The company was concerned that, while the Cost-Benefit Analysis suggests higher premium rates, they have no detail concerning these rates, and they doubt that they will provide enough increased premium or administrative expense subsidy to cover the increased indemnities or loss adjustment expenses.

The reinsured company challenged the statement in the Regulatory Flexibility Act section in the preamble of the proposed rule which states that, ''the amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required.'' The company stated that this is an untrue statement given the loss adjustment process that will be required to determine prevented planting acreage that would not have been required if the ''contiguous'' requirement remained.

The reinsured company also stated that language contained in section 17(f)(1) requiring knowledge of the crops planted by field in the four most recent crop years is not workable. In many cases, the provider will have no way of determining this information.

The crop insurance agents supported FCIC's proposal to remove the contiguous acreage requirement from section 17(f)(1), stating that this change is needed to fairly treat producers who might have a high percentage of their land prevented from being planted but do not have a contiguous block of prevented planting acres that is of sufficient size.

The insurance service organization stated that section 17(f)(1) requires that, in order for unplanted acreage to be considered prevented planting acreage for a different crop than the crop planted in the field, the insured must have produced both crops in the same field in the same crop year within any of the four most recent crop years. They stated that four years is not enough. The commenter also suggested rewording the beginning of the second sentence to, ''Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop unless * * *'' or similar wording. This avoids the problems of saying acreage that was prevented from being planted ''will be presumed to have been planted * * *''

Response: FCIC proposed to remove the ''contiguous'' acreage requirement due to the numerous complaints received since the requirement was implemented. This change was intended to recognize that potholes and other small portions of fields are wet in most years, although planting occasionally may be possible. However, this provision has prevented some producers having a substantial number of acres that could not be planted from qualifying for prevented planting coverage because a single block of prevented planting acreage was not large enough.

FCIC acknowledges that removing the ''contiguous'' acreage requirement may result in an increased number of claims qualifying for prevented planting payments. However, the reinsured company's complaint that loss adjustment expenses and workload would greatly increase by removal of this provision is not accurate. Prevented planting acreage must be determined to assure the ''contiguous'' requirement is met. Therefore, the loss adjustment expenses and workload are incurred in any case. Further, FCIC has simply restored a part of the prevented planting coverage that was in effect prior to the 1998 crop year. Therefore, FCIC has ample evidence upon which to base the amount of premium increase and estimate any additional losses. Although the recommended change to remove the contiguous requirement is being made after the date the SRA became effective for 1999, this change is done within the time required for making contract

changes and will result in an increase in premium that should offset any additional costs. Therefore, no change has been made.

The previous four crop years is an appropriate amount of time to determine if a producer has a history of planting two crops in a field, and is consistent with the four year time period used to determine the maximum acreage eligible for prevented planting coverage. It is the producer's burden to provide evidence of past planting practices. If the producer cannot meet this burden, the acreage will be considered as intended to be planted to the crop planted in the field. Therefore, no change has been made.

FCIC has revised section 17(f)(1) to specify that ''Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop unless * * *'' and has added references to crop, crop type, and practice for clarification.

Comment: A reinsured company stated that the 20 acre or 20 percent acreage requirement to qualify for a prevented planting payment is too high. The company suggested these parameters be changed to a 5 acre or 5 percent deductible amount and that only acreage in excess of this amount be paid for prevented planting. The commenter stated that this threshold would be consistent with NASS figures for acreage historically left unplanted.

Response: Prevented planting regulations since the 1994 crop year have had the 20 acre or 20 percent requirement. FCIC did not receive adverse comments until the word ''contiguous'' was added beginning with the 1998 crop year. Removing the word contiguous, while still retaining the 20 acre or 20 percent requirement, best achieves the goal of not paying prevented planting claims when only a small number of acres are prevented from being planted. FCIC believes that once the minimum acreage threshold has been met, all prevented planting acreage should be indemnified. Therefore, no change has been made.

Comment: A reinsured company commented regarding the language contained in section 17(f)(5), which states if one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used, recommending that only one crop should be considered for prevented planting purposes and that no prevented planting payment should be made for a second crop.

Response: Crop insurance, including prevented planting coverage, is intended to compensate producers for their actual losses. Therefore, producers who traditionally plant one crop per year can receive a prevented planting payment for failure to plant that crop. However, if producers have the expectation of producing two crops for a single year, compensating them for their actual losses requires the payment of a prevented planting payment if the producer is unable to plant one of the crops. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization commented on section 17(f)(12), stating that this section contains several references to the ''four most recent years.'' The company recommended that this should be revised to ''four most recent crop years'' to be consistent throughout section 17.

The insurance service organization asked whether the phrase ''receive a prevented planting insurance guarantee'' means that as long as such crop type was reported as prevented planting on the acreage report within the four most recent crop years, it does not matter whether any prevented planting payment was made on such acreage. If so, they stated that language conflicts with section 17(e)(1)(i)(A), which states that the maximum prevented planting acreage will not include reported prevented planting acreage planted to a substitute crop other than an approved cover crop.

Response: FCIC has revised section 17(f)(12) to refer to ''four most recent crop years.'' The phrase ''receive a prevented planting insurance guarantee'' was added because there are some years where the producer is prevented from planting a crop, whether indemnified or not. Now the provision states that no prevented planting payment will be made for any crop that the producer has not planted, or has not received a prevented planting guarantee for in at least one of the last four years. This language does not conflict with the provisions contained in section 17(e)(1)(i)(A). Provisions in section 17(e)(1)(i)(A) specify the method to determine the maximum acreage eligible for prevented planting coverage of each crop. Section 17(f)(12) determines the crop acreage eligible for prevented planting.

Comment: A reinsured company stated that FCIC must assure that the language in section 17(g), along with the provisions contained in 17 (e) and (f), sufficiently limits the high-risk land eligible for prevented planting in relation to the total acres (planted or not) for the crop.

Response: The provisions contained in sections 17 (e), (f), and (g) limit the number of high risk acres eligible for prevented planting under a catastrophic risk policy to the maximum number of high-risk acres insured under the catastrophic risk policy in any one of the four most recent crop years. Therefore, no change has been made.

Comment: Reinsured companies and an insurance service organization commented on the provisions in section 17(h). They stated that the provisions are too complex and difficult to administer. The reinsured companies stated that the provision requires knowledge of the crop planted on the acreage previously and that this conflicts with the other prevented planting provisions which are just based on a number of acres eligible and are not tied to a specific crop on specific acreage.

The companies and the insurance service organization point out the administrative burden associated with making such determinations and the problems that arise when there was no crop planted the previous year or if the eligible acres for the crop that was planted to that acreage have already been exhausted because the crop was planted on other acreage. An insurance service organization also asked the consequences if the previous crop planted on the acreage was not an insurable crop, is a perennial, was not insured, or the acreage was just coming out of CRP. It also asked whether the crop that the producer was prevented from planting has to be insurable and whether the crop will be eligible for prevented planting the following year.

As a solution, one company suggested providing coverage on a non-crop specific basis. Another company suggested that the provision be deleted and all eligible prevented planting acreage be determined in accordance with section 17(e). A company also stated that it would be simplest to state the crop acres on which the extra prevented planting acres should be applied. It suggested that, as an alternative, to determine the eligible prevented planting acres remaining for all crops and to prorate the extra prevented planting acres to these crops in proportion to the number of acres remaining. This would be consistent with the rest of the prevented planting provisions by using the eligible acres established over the four previous crop years and taking into account the remaining eligible acres for prevented planting from the insurable crops on the policy.

Response: FCIC acknowledges the problems associated with the requirement that the eligible prevented planting acreage will be based on the crop planted the previous year on the

acreage. Instead, FCIC has revised the provision to base the guarantee, etc., on the crops insured for the current year for which the producer has remaining eligible prevented planting acreage. The company need only look at the application or acreage report to see the crops listed. Most producers who have insured a crop in the farming operation do not cancel their policy when they elect not to plant the crop during the crop year. As a result, the crop remains insured and the eligible base acreage for the crop may be used to determine the guarantee for those acres where the producer intended to plant a crop without an adequate base. FCIC has also added a provision that if there are several crops with eligible base acres that may be used to establish the guarantee, etc., the crops that would have provided the prevented planting coverage most like the intended crop will be used first. This is intended to ensure that the producer receives fair compensation.

Comment: A reinsured company recommended that FCIC develop a means, such as a flowchart to effectively ''map'' the major options available in the implementation of the prevented planting provisions. This information could be presented at a spring update training session prior to the 1999 spring crop year to assure uniform understanding by all.

Response: FCIC agrees that a flow chart may be helpful to map the prevented planting provisions and will work with insurance providers or their service organization to develop such a chart.

Comment: A reinsured company stated it applauds the provision in section 24(e) that provides that amounts owed to the company may be collected through administrative set off from payments the policyholder receives from U.S. Government agencies and is anticipating procedures for its implementation.

An insurance service organization asked whether the producer will be removed from the Ineligible Tracking System once the amount owed is offset by another government payment.

Response: Unfortunately, FCIC only has the authority to use administrative offset from payments received from other agencies, against any portion of the debt that has been paid by FCIC. There is no authority to offset that portion paid by the company. Section 24(e) just puts the producer on notice that debts may be subject to such offset. The producers name will only be removed from the Ineligible Tracking System once all amounts due have been paid.

Additionally, FCIC received the following comments regarding provisions that FCIC did not propose to change. These changes cannot be made without first proposing the recommended changes and allowing the public to comment. FCIC will consider these recommendations when additional changes to the regulations are proposed.

Comment: A reinsured company recommended the ''Agreement to Insure'' section of the policy be amended to clarify the priority order for crop specific endorsements or options such as malting barley. The company stated that during recent discussions on malting barley it was mentioned that the Malting Barley Endorsement takes precedence over the Special Provisions and the order of priority is currently not clear.

Comment: A reinsured company, a national commodity group, and an insurance service organization expressed concern regarding the ability of a producer to collect multiple indemnities for the same acreage after the first, and possibly additional crops have failed. The reinsured company recommended adding provisions to limit payment of indemnities to one per acre per crop year, with the exception of legitimate fall and spring crops. A national commodity group stated that the second crop should be considered a ''ghost crop'' if the farm does not have a history of double-cropping.

An insurance service organization has presented a policy prototype that includes continued coverage as the producer tries to get a crop established.

Comment: A reinsured company recommended adding wording to section 7(b) to authorize deducting unpaid premium from replant claims.

Comment: A reinsured company recommended adding language in section 20 to require arbitration proceedings to begin within 12 months.

Comment: A national commodity group stated that producers who plant corn in areas that historically have been subject to aflatoxin should not be allowed to insure that corn when they have the option of planting grain sorghum, which is resistant to aflatoxin.

In addition to the changes described above and minor editorial and format changes, FCIC has made the following changes:

1. The definition of ''crop year'' in section 1 is revised to specify that it is the period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested. This change clarifies that any year in which the crop is prevented from being planted will not affect the crop year designation.

2. Section 6(f) is revised to clarify that when a producer fails to report a unit and the insurer denies liability for the unreported units, the insured's share of any production from the unreported unit will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit; however, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

3. Section 28 is revised to clarify that when a transfer of right to an indemnity is in effect, that both the transferor and the transferee are jointly and severally liable for the payment of both the premium and administrative fees.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule provides prevented planting coverage for crops under the Basic Provisions, as applicable. This rule must be effective prior to the November 30, 1998, contract change dates of the crops for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for as many crops as possible for the 1999 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance.

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 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 457.2 [Amended]

2. Section 457.2(e) is amended to remove the words ''paragraph 21'' and insert the words ''paragraph 24'' in their place.

§ 457.8 [Amended]

3. Section § 457.8 is amended as follows:

A. Section 1 of the Basic Provisions is amended by adding definitions for ''enterprise unit'' and ''whole farm unit,'' removing the definition of ''palmer drought severity index,'' and by revising the definitions of ''crop year'' and ''prevented planting'' to read as follows:

1. Definitions.

* * * * *

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. An enterprise unit must consist of:

(1) Two or more basic units of the same insured crop that are located in two or more separate sections, section equivalents, or FSA farm serial numbers; or

(2) Two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers.

* * * * *

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

* * * * *

Whole farm unit. All insurable acreage of the insured crops in the county in which you have a share on the date coverage begins for each crop for the crop year.

* * * * *

B. Section 2(e) introductory text, of the Basic Provisions is revised to read as follows:

2. Life of Policy, Cancellation, and Termination.

* * * * *

(e) If any amount due, including administrative fees or premium, is not paid or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

* * * * *

C. Sections 6(a)(1) and (2), 6(e) and 6(f) of the Basic Provisions are revised to read as follows:

6. Report of Acreage.

(a) * * *

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

* * * * *

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 6(g).

* * * * *

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

D. Sections 9(a)(1)(i)(D) and 9(a)(1)(iii) of the Basic Provisions are revised to read as follows:

9. Insurable Acreage.

(a) * * *

(1) * * *

(i) * * *

(D) Because a perennial tree, vine, or bush crop was grown on the acreage;

* * * * *

(iii) The Crop Provisions or a written agreement specifically allow insurance for such acreage;

* * * * *

E. Section 15 of the Basic Provisions is amended to add a new subsection (e) to read as follows:

(e) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be used to determine any indemnity due, unless otherwise specified in the policy.

F. Section 16(b)(2) of the Basic Provisions is amended to add the word ''and'' immediately following the semicolon.

G. Section 16(b)(3) of the Basic Provisions is removed and section 16(b)(4) is redesignated as section 16(b)(3).

H. Section 16(c) of the Basic Provisions is revised to read as follows:

16. Late Planting.

* * * * *

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

I. Section 16(d) of the Basic Provisions is added to read as follows:

16. Late Planting.

* * * * *

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of ''planted acreage'' (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the production guarantee will be calculated in accordance with section 16(b)(1).

J. Revise section 17(a) of the Basic Provisions to delete the word ''and'' at the end of section 17(a)(1)(ii), add ''; and'' at the end of section 17(a)(2), and add a new section 17(a)(3) to read as follows:

17. Prevented Planting.

(a) * * *

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

* * * * *

K. Revise sections 17(d) introductory text and 17(d)(1) of the Basic Provisions to read as follows:

17. Prevented Planting.

* * * * *

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

* * * * *

L. The middle column heading in the table in section 17(e)(1) of the Basic Provisions is revised to read as follows:

''Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee''.

* * * * *

M. The last column heading in the table in section 17(e)(1) of the Basic Provisions is revised to read as follows:

''Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee''.

* * * * *

N. Sections 17(f)(1), (f)(11), and (f)(12) of the Basic Provisions are revised to read as follows:

17. Prevented Planting.

* * * * *

(f) * * *

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years;

* * * * *

(11) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice production guarantee will be limited to the number of acres allowed for that practice under sections 17(e) and (f); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 17(e) and (f).

* * * * *

O. Section 17(f)(5) of the Basic Provisions is revised to add the following text to the end of the paragraph between the word ''acreage'' and the semicolon: ''(If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used)''

* * * * *

P. Section 17(g) of the Basic Provisions is redesignated as 17(i) and new sections 17(g) and (h) are added to read as follows:

17. Prevented Planting.

* * * * *

(g) If you purchased a limited or additional coverage policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as ''high-risk'' land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 17(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), your prevented planting production guarantee or amount of insurance, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (17(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

Q. Amend newly designated section 17(i)(2) of the Basic Provisions by changing the section reference therein from ''17(g)(1)'' to ''17(i)(1).''

R. Amend newly designated section 17(i)(3) of the Basic Provisions by changing the section reference therein from ''17(g)(2)'' to ''17(i)(2).''

S. Revise section 24(e) to read as follows:

* * * * *

For reinsured policies

24. Amounts Due Us.

* * * * *

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

* * * * *

T. Section 28 of the Basic Provisions is revised to read as follows:

28. Transfer of Coverage and Right to Indemnity.

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

U. Section 34 of the Basic Provisions is amended by redesignating sections 34(a) through 34(d) as sections 34(b) through 34(e) respectively, and adding a new section 34(a) to read as follows:

* * * * *

34. Unit Division.

(a) You may elect an enterprise unit or a whole farm unit if the Special Provisions allow such unit structure, subject to the following:

(1) You must make such election on or before the earliest sales closing date for the insured crops and report such unit structure to us in writing. Your unit selection will remain in effect from year to year unless you notify us in writing by the earliest sales closing date for the crop year for which you wish to change this election. These units may not be further divided except as specified herein;

(2) For enterprise units:

(i) You must report the acreage for each optional or basic unit on your acreage report that comprises the enterprise unit;

(ii) These basic units or optional units that comprise the enterprise unit must each have insurable acreage of the same crop in the crop year insured;

(iii) You must comply with all reporting requirements for the enterprise unit (You must maintain any required production records on a basic or optional unit basis if you wish to change your unit structure for any subsequent crop year);

(iv) The qualifying basic units or optional units may not be combined into an enterprise unit on any basis other than as described herein;

(v) If you do not comply with the reporting provisions for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(c)(1); and

(vi) If you do not qualify for an enterprise unit when the acreage is reported, we will assign the basic unit structure.

(3) For a whole farm unit:

(i) You must report on your acreage report the acreage for each optional or basic unit for each crop produced in the county that comprises the whole farm unit; and

(ii) Although you may insure all of your crops under a whole farm unit, you will be required to pay separate applicable administrative fees for each crop included in the whole farm unit.

* * * * *

Signed in Washington, D.C., on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–32156 Filed 11–30–98; 2:18 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB62

Common Crop Insurance Regulations; Cotton and ELS Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Cotton Crop Insurance Provisions and the Extra Long Staple (ELS) Cotton Crop Insurance Provisions for the 1999 and succeeding crop years to provide a prevented planting coverage level of 50 percent of the insured's production guarantee for timely planted acreage. The intended effect of this action is to create a policy that better meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 9435 Holmes Street, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this final rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons from the address listed above. In summary, for prevented planting coverage, Government outlays for producer premium subsidies are estimated at about $9.9 million; administrative subsidies are estimated at about $3.5 million; and underwriting costs are estimated at about $1.2 million. If only the portion of the prevented planting costs attributable to increasing the payment rate from 45 to 50 percent are included, the total increase in Government outlays is expected to be about $0.2 million. The analysis indicates that rate increases for prevented planting coverage vary from region to region, depending on locally expected indemnities, from 0.3 percent to 0.9 percent. On average, at the 50 percent payment rate, about 0.76 percentage point will be added to cotton and ELS cotton premium rates to account for the basic prevented planting coverage. Preliminary analysis suggests that the increase in the payment rate will add about 0.1 percent to total premiums to cover expected losses.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform 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 the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

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. 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, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a proposed rule in the **Federal Register** at FR 52198–52200 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.104 and 7 CFR 457.105 effective for the 1999 and succeeding crop years.

Following filing of the proposed rule at the **Federal Register**, the public was afforded 15 days to submit written comments, data, and opinions. A total of 10 written comments were received from an insurance service organization, two cotton producer associations, and three reinsured companies. The comments received and FCIC's responses are as follows:

Comment: Two producer associations concurred with the proposal to provide a replant payment for cotton and ELS