

implies a new form is required, and this process would also require the completion of a new or revised acreage report, which does not seem to be addressed; (2) Several commenters asked who would record the election and what procedures would be used; (3) A commenter stated the provisions should be revised so it is clear to the producer how the election is to be communicated and documented; (4) A commenter stated a new form or guideline for the second crop will be needed. They believe it is unclear if a box to check or a new form will need to be used by the adjuster when appraising and releasing the first crop. The commenter added this will be a training issue for all involved; (5) Some commenters stated the provisions will be difficult to administer; (6) Some commenters asked why the sentence is in parentheses. They stated the election is required at time of appraisal, which will require agent involvement in the loss process, which is prohibited by the SRA and this language needs to be coordinated with SRA requirements; (7) A commenter stated the provisions need to be clarified as to when a company releases the acreage, who is responsible or able to accept the insured's request to insure the second crop acreage, the agent or the company; (8) Some commenters stated FCIC should consider whether this would be more appropriate under section 8—Insured Crop; and (9) A commenter believes a cleaner approach would have been to simply include language stipulating insurance for a second crop planted after the failure of an initial crop lost due to non-emergence of seed would not become effective until the second crop emerges. They believe such language would prevent payment of a second indemnity for drought in the same crop year on the same acreage, but still allow a producer who is lucky enough to establish a second crop to pay for and receive coverage for the remainder of the insurance period. The commenter further recommended RMA rescind a 2002 change in the Agency's Loss Adjustment Manual (LAM) that requires a 15-day waiting period after the end of the late planting period before a crop can be appraised for non-emergence. They stated RMA's oft-stated reasoning behind this rule was it prevents a producer from waiting until the last day of the late planting period and then being able to get an adjustment one day later. They suggest if RMA is truly worried about producers waiting to plant until the end of the late planting period (and taking a significant reduction of coverage without any

reduction in the associated premium) to get a quick non-emergence appraisal that they instead create rules to apply directly to those very few individuals. The commenter believes for instance, RMA could require a report of the planting date for each insured unit planted during the late planting period and not allow an appraisal until the end of the late planting period or at least 7–10 days from the actual date of planting if planting occurred with less than seven days remaining in the late planting period. They stated this would allow producers who planted by the final planting date to get an appraisal at the end of the late planting period (after their crop has been in the ground at least 15 days) and establish a minimum 7–10 day emergence window for crops planted toward the end of the late planting period. The commenter has in the past been very critical of the addition of the additional 15-day waiting period due to the fact there is no evidence they have been able to discover supporting the need for this rule to address a real problem. Instead, they believe the rule was developed only to be used as a stop gap method for preventing a producer from gaining the release of non-emerged acreage and planting a second crop of grain sorghum before the final planting date. The commenter believes with the development and implementation of the proposed first crop and second crop rule, RMA should remove the additional 15-day waiting period to allow for the timely planting of an uninsured second crop. They suggested if RMA determines a sufficient number of producers are taking advantage of the late planting period, RMA should look into a revised rule similar to the one suggested above to deal specifically with acreage planted during the late planting period.

*Response:* Due to other revisions, the applicable provision is now section 9(a)(7). For GRP policies, the producer will make the election not to insure the second crop acreage on the acreage report if it insured under GRP. For policies other than GRP, the provision has been revised to require that producers provide written notice of the election at the time the first insured crop acreage is released. The format of such written notice is up to the insurance provider. FCIC does not require any specific forms. Under the notice provisions of the policy, it would be the producer's responsibility to provide written notice to the agent. As revised, FCIC no longer believes that the provision will be difficult to administer. Just because a notice is provided to an agent regarding an election at loss time,

this does not mean that the agent is to be involved in the loss adjustment. The prohibitions in the SRA continue to apply in these situations. The agent's role is merely ministerial. The parenthesis have been removed. FCIC disagrees this provision would be more appropriate in section 8 since this is an insurable acreage issue that only applies to acreage where a second crop has been planted and is not dependent on the crop planted. FCIC cannot consider the "non-emergence of seed" approach recommended to resolve multiple benefit issues addressed by ARPA because section 108 of ARPA specifies that it is applicable whenever the crop is planted for harvest and there is no requirement that the crop actually emerge. Since the Basic Provisions do not address the time a crop may or may not be released, the recommendation to remove LAM procedures cannot be made in this rule. However, all LAM procedures will be made consistent with the provisions of this rule. FCIC has also restructured section 9(a)(7) for clarity.

*Comment:* Some commenters recommended that section 9(a)(9)(i)(A) be deleted, and that alternately, if (A) is not deleted, they recommended it be revised to require all 3 crops to be harvested, not just the 3rd crop. They also suggested that if (A) is not deleted, the "or" be changed to "and." A commenter asked if this is trying to address a previous operator on the land, and if not, what it is addressing. They believe the entirety of sections 9(a)(8) and (9) are very difficult to administer, and asked whose problem it ultimately is to properly administer. The commenter stated the agent is saddled with tremendous errors and omission exposure, and that typically agents enter what the insured reports. They added this language would require the agent to ask questions on a hypothetical basis of every insured in an attempt to determine if a situation might possibly exist, which would be an impossible situation, and one they believe will only be administered on a "gotcha" basis by RMA.

*Response:* Due to other revisions, the applicable provision is now section 9(a)(8). FCIC does not agree the provision can be deleted. Section 108 of ARPA allows both sections 9(a)(8)(i)(A) and (B) to be conditions upon which the third crop planted on the acreage in the same crop year can be insured. FCIC cannot restrict the ability of the producer to qualify for insurance beyond that specified in ARPA. FCIC agrees the producer should have evidence that three crops have been harvested and has revised the provision accordingly. The suggestion to change