

Public Law 103-354 must be exhausted before judicial action may be brought.

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

#### Background

Current regulations do not allow an insured producer to obtain a prevented planting guarantee for one crop and plant a substitute crop intended for harvest in the same crop year on the same land. By this rule a producer who purchases limited or additional coverage beginning with the 1996 crop year for spring crops with contract change dates on or after the effective date of this rule, will be eligible to: (1) Receive a prevented planting guarantee equal to 25 percent of the guarantee for timely planted acreage (20 percent for hybrid seed (corn) and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop after the 10th day after the final planting date for the intended crop (10th day after the latest final planting date for each specific crop insured under the Small Grains Crop Provisions) and, as applicable, a 0/92 or 50/92 program benefit; (2) exclude eligibility for prevented planting coverage when a substitute crop is planted in return for a reduction in the premium; and (3) receive prevented planting coverage on double cropped acreage (except for ELS cotton) if the producer can provide proof that planting of a second crop (double crop) following the harvest of an initial crop in the same crop year is a farming practice normally followed by that producer.

By this rule, the prevented planting provisions will also: (1) Allow all insured producers to receive a 0/92 or 50/92 program benefit, as applicable, and a crop insurance prevented planting guarantee equal to 50 percent of the guarantee for timely planted acreage (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is not planted to a substitute crop; (2) eliminate the provisions that require acreage eligible for a prevented planting guarantee to be prorated to all units that could have been planted in the crop year; (3) change the date that notice of loss is required from 3 days after the final planting date, or the date the producer discovers that planting will not be possible within the late planting period, to the acreage reporting date; and (4)

allow prevented planted acreage planted with a conserving use cover crop to be hayed and grazed without affecting prevented planting benefits.

On Wednesday, November 8, 1995, FCIC published a proposed rule in the Federal Register at 60 FR 56257 to revise prevented planting coverage under various policies. Following publication of that proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. A total of 14 comments were received: 3 from Regional Service Offices; 5 from reinsured companies; 4 from crop insurance trade associations; 1 from a grower association; and 1 from a congressional office. The comments received and FCIC responses are as follows:

*Comment:* One comment received from the crop insurance industry indicated that the proposed changes for 1996 are less than timely, as 1996 training and marketing activities have already begun for the crops affected by the proposed rule. The comment recommends that FCIC move to process the final rule as soon as practical to minimize confusion in the 1996 crop year.

*Response:* FCIC agrees that the 1996 prevented planting regulations need to be published and implemented as quickly as possible.

*Comment:* Two comments received from the crop insurance industry recommended that whatever the final prevented planting provisions are, they should stand for the crop year without further change.

*Response:* FCIC agrees with the comment and is committed to limit changes unless deemed essential.

*Comment:* One comment received from the FSA stated that canola crop provisions need to be included and amended to conform to the 1996 prevented planting changes since the canola policy has prevented planting provisions.

*Response:* FCIC disagrees because canola is a pilot policy that has not been published in the Federal Register. No change will be made.

*Comment:* One comment received from the crop insurance industry noted that the term "Consolidated Farm Service Agency" is used in the provisions and that the term used should now be "Farm Service Agency."

*Response:* FCIC agrees and has made the necessary changes.

*Comment:* One comment received from the legal counsel of a reinsured company stated that FCIC's proposed rulemaking is in violation of the Administrative Procedure Act.

*Response:* The Office of General Counsel approved FCIC's proposed regulation for legal sufficiency. The short comment period was necessary due to pressure to provide an adequate program to producers by the applicable contract change dates. FCIC believes that adequate time was given for the public to comment, based on the number and length of comments received.

*Comment:* One comment received from the crop insurance industry indicated that administrative costs and errors and omission exposure will increase at the point of sale to the extent the provisions must be explained adequately.

*Response:* FCIC agrees that the provisions must be clearly communicated to avoid the exposures indicated in the comment. FCIC is making every effort to provide the new provisions as early as possible to allow adequate time for training, etc.

*Comment:* Four comments received from the crop insurance industry indicated the need to allow modification of the already approved 1996 Standard Reinsurance Agreement to recognize the increased administrative and underwriting costs associated with the increased benefits and potential adverse selection associated with this rule. This modification, in the form of an optional amendment, would allow the reinsured company the option of assigning policies with prevented planting losses to FCIC or to pre-designate that such policies will fall to a different fund and/or have a different retention percentage than that designated in the reinsured company's plan of operation. In addition, one of the comments proposes that provisions regarding excess loss adjustment expense that are being considered for the 1995 crop year be adopted for the 1996 Standard Reinsurance Agreement. One comment indicates that the proposal may be characterized as implementing into the subject policies the prevented planting benefits that were administratively adopted during the 1995 crop year, and that the changes made in 1995 appear to have significantly increased administrative and underwriting costs. One comment stated that reinsured companies must be provided with a means under the Standard Reinsurance Agreement to either cede the entire premium and losses associated with prevented planting to FCIC or to cede the premium and losses to a risk fund other than that in which the rest of a policy is placed. Until the adequacy of the rating can be tested, FCIC must bear all or substantially all of the risk of loss