(and any gain) associated with these policies if a company is unwilling or unable to. One comment stated that FCIC has failed to minimize moral hazard and has proposed a program that it expects will be adversely selected against and will therefore damage the integrity and actuarial soundness of the crop insurance program. Without providing private insured companies with a means to cede the increased risk associated with the proposed provisions entirely or almost entirely to FCIC, the proposed rule would force private companies to bear losses due to programmatic decisions which they had no control over.

Response: FCIC has promulgated premium rates that reflect the 1996 prevented planting provisions; thus, FCIC is not compelled to provided additional options to select among reinsurance funds or assume all the risk associated with the program change. Promulgation of premium rates prior to publication of this final rule was permissible because the actuarial material also contained the premium rate that would be used if this rule were not made final. The additional excess loss adjustment expenses provided for the 1995 crop year were made to offset the expense of loss adjustments when the Company had to re-open completed claims, and to clear a considerable number of notices of loss to determine if payable prevented planting claims existed. It was also expected that additional expense was incurred to re-train agents and loss adjusters on the prevented planting changes and loss procedures. FCIC believes that administrative expense reimbursement and excess loss adjustment expense provided under the Standard Reinsurance Agreement effective for the 1996 reinsurance year are adequate to cover such expenses for the 1996 crop year.

Comment: One comment received from the insurance industry indicated concern over whether enough premium differential is included in the prevented planting rates to adequately cover prevented planting payments on so called 0/92 acres. The comment indicated that providing both guaranteed deficiency payments and prevented planting payments invites policyholders to make an economic decision not to plant, and that these decisions will adversely impact the insurer. The comment indicated reservation over whether enough rate could be charged to counter this adverse selection opportunity.

Response: Guaranteed deficiency payments such as under the so called 0/92 and 50/92 programs are independent of crop insurance payments. Therefore, the risk of insurance against prevented planting should be unaffected. However, farm management decisions can be and should be made based on economics. The 0/92 and 50/92 benefits already have a significant influence on producer reaction. There now is a moral hazard that a producer may be influenced to collect a prevented planting payment in addition to the 0/92 or 50/92 payment; however, the extent of the moral hazard is unknown. That moral hazard is greatly influenced by the assessment of the 0/92 and 50/92 program in any given year. For example, if the guaranteed deficiency payments are decreased or expected to decrease, then the 0/92 and 50/92 program payments are also minimized and the moral hazard for additional prevented planting payments are likely to disappear. The reverse is also true if the guaranteed deficiency payments are expected to increase. Therefore, the moral hazard can only be approximated by adding an additional rate to counter the expected adverse selection potential of the dual payments. County rates were increased based on the probability that some additional losses will accrue given the influence of the so called 0/92 or 50/92 program.

Comment: One comment received from the legal counsel of a reinsured company indicated an inconsistency with the coverage provided and the Federal Crop Insurance Reform Act of 1994 (the ''Reform Act''). The Reform Act indicates that for CAT coverage a prevented planting benefit will be paid only if a producer is unable to plant another crop. Current crop provisions and the proposed provisions provide a prevented planting benefit if a producer is prevented from planting the insured crop and elects not to plant a substitute crop.

Response: FCIC agrees that this issue must be analyzed and modifications made if found necessary. However, the comment is not germane to this rule because it applies to regulations already in place.

Comment: One comment received from the legal counsel of a reinsured company states that the proposed provisions are in conflict with section 506(o) of the Federal Crop Insurance Act (the ''Act'') which directs FCIC ''to take such actions as are necessary to improve the actuarial soundness of the Federal multiperil crop insurance coverage.'' Reasons cited include: (1) Increased moral hazard, particularly if market prices (and/or yields) are expected to be low and net returns for a substitute crop or 0–50/92 benefits are expected to be high; (2) elimination of provisions that required prevented planting acreage to be prorated to all units that could have been planted to the insured crop; and (3) the addition of provisions that provide prevented planting benefits for producers who follow a double-cropping practice without sufficient premium to offset the risk.

Response: In addition to maintaining an actuarially sound insurance program, FCIC is mandated to maintain fair and effective coverage for agricultural producers. FCIC must also make the administration of its programs efficient and practical. Virtually all insurance providers have indicated that previous provisions requiring proration of eligible acreage were complex, unmanageable, and not fair to producers in many cases. Producers have been eligible to collect deficiency payments on planted acres and certain prevented planting acreage. There is no justification for denying those benefits when producers are eligible for crop insurance benefits provided premium rates reflect the increased risk of loss. FCIC has developed premium rates for prevented planting based on sound rating principles, including those prevented planting situations that may develop in double-cropping areas. If data is available indicating that rates are insufficient to offset the risk, FCIC requests submission of such data so that it can be reviewed and any necessary changes can be made.

Comment: One comment received from a commodity group and one comment received from the crop insurance industry stated that they have concerns about projected premium increases. They request that producers have the option of excluding prevented planting coverage in its entirety. Producers need to be able to assess the rate increase before purchasing crop insurance coverage to see if prevented planting coverage is economically feasible for them. They stated that the projected average cost increase is 6–8 percent and in some high rate areas may be as much as 20 percent. Producers cannot afford another premium increase.

Response: Prevented planting coverage was made an integral part of the policy following the 1993 crop year to lessen the need for ad hoc disaster assistance for growers who were prevented from planting. If allowed to opt out of the coverage, FCIC believes that large numbers of growers would exclude the coverage. This assessment is based on the experience of 1993. This would result in a great deal of pressure either to institute insurance coverage after a loss has occurred or a great deal