

prevented planting payment from the current 50 percent to 60 percent.

*Response:* The prevented planting payment of 50 percent adequately compensates the producer for the loss of production, taking into consideration cost, not incurred. FCIC has discovered that increasing the standard prevented planting payment reduces the incentive for producers to plant the intended crop by the end of the late planting period when it is possible and increases the cost to the program. Therefore, FCIC will not change the standard prevented planting payment.

*Comment:* One comment received from counsel for a reinsured company on behalf of the crop insurance industry stated that the Reform Act contains a provision that allows a reduction in the benefit amount paid to a producer to reflect out-of-pocket expenses not incurred by a producer as a result of not planting, growing, or harvesting the crop for which a prevented claim is made. The comment indicates that this proposed rule is silent regarding this requirement for limited and additional coverage, but that FCIC is required by the Reform Act to include this provision for CAT coverage.

*Response:* Prior to enactment of the Reform Act, prevented planting production guarantees for all coverages and crops were at least 50 percent lower than the guarantee for a timely planted crop to avoid compensating producers in excess of their actual losses and provide actuarially sound coverage. This has not changed.

*Comment:* One comment received from the crop insurance industry stated that the inclusion of drought as an insurable peril and lack of any firm definitions or procedural guidelines subjects the Company and FCIC to abuse and fraud.

*Response:* FCIC does not believe that inclusion of drought as an insurable peril substantially subjects the company and FCIC to abuse and fraud. The burden is on the producer to prove that drought prevented a producer from planting. Further, the Soil Conservation and Extension Services have advised producers on occasion not to plant because it was so dry that planting the ground could result in severe wind erosion. The rule also requires a majority of producers to be affected by the cause of loss.

*Comment:* One comment received from the crop insurance industry recommended that in an effort to increase the incentive to plant the original crop as opposed to simply collecting insurance and farm program benefits, it might be advisable to consider reducing the late planting

period from 25 to 20 days, with the reductions in guarantees over the 20 days totalling 25 percent, to leave the person with a guarantee equal to 75 percent of their original level—(i.e. 1 percent per day for the first 10 days and 1.5 percent per day for the second 10 days).

*Response:* Under the current formula, the production guarantee is reduced only 1 percent for each of the first ten days and 2 percent for days 11–25. FCIC believes this formula provides adequate incentive for producers to plant crops early in the late planting period to keep their insurance production guarantee at the highest level possible. Changing the length of the late planting period and the percents of reduction could result in over insurance and increased crop insurance indemnities. Therefore, no change will be made.

*Comment:* One comment received from FSA recommended that acreage that is planted to the insured crop after the late planting period be designated as late planted with a 50 percent reduction in guarantee. They stated that it is very confusing to have this acreage designated as prevented planting.

*Response:* If acreage is prevented from being planted through the late planting period due to an insurable cause of loss, and is planted to the insured crop after the late planting period, the acreage will receive a 50 percent reduction in guarantee and must be reported as prevented planting acreage. This information is needed by FCIC for analytical purposes in reviewing crop insurance premium rates. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended that the cover crop planted on prevented planting acres could only be hayed or grazed by the producer's own livestock. The producer could not sell hay or charge others to let livestock graze.

*Response:* FCIC disagrees because it increases costs, is administratively difficult to enforce, and is contrary to legislative directives to simplify procedures. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry indicated that the "background" section of the proposal indicates that prevented planting acreage may be planted to a conserving use cover crop that may be hayed and grazed without limitation, but that the actual policy language indicates only that a cover crop not for harvest may be planted. The comment suggests modifying the policy language to indicate that haying and grazing is permissible if this is the intent.

*Response:* Paragraph 12(a)(3)(i) of the Hybrid Sorghum Seed Endorsement states that prevented planting coverage is available "if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed \* \* \*". This provision is also contained in a similar location in the proposed regulations for other crop policies. Therefore, no change is required. However, the "background" section will be amended to reflect that a conserving use cover crop may be hayed or grazed without affecting prevented planting benefits.

*Comment:* One comment received from FSA stated that under the provision allowing for a production guarantee of 50 percent (40 percent for hybrid seed (corn) and 35 percent for cotton, ELS cotton and rice) of the timely planted guarantee, prevented planting compensation should not be allowed when the cover crop is hayed or grazed because the producer is receiving a benefit from that crop.

*Response:* FCIC agrees that some value is gained when a cover crop is hayed or grazed. However, this benefit is of limited value in comparison with the income that would be gained if the intended crop could have been planted. In addition, the feed value obtained varies widely and may be negligible in some situations. It is FCIC's opinion that the administrative costs associated with keeping track of the disposition of feed production outweigh any benefit that could be derived.

*Comment:* Eleven comments received from FSA and the crop insurance industry recommended eliminating the provision which provides a prevented planting guarantee equal to 25 percent of the production guarantee for timely planted acres (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 for harvest. The following reasons were given: (1) This protection was not intended or mandated by the Reform Act; (2) the previous disaster programs never provided this type of protection; (3) there is no budget to cover the subsidy or administrative expense for this protection; (4) the indemnity would be paid even if the substitute crop provided more economic value than the intended crop that was prevented from planting; (5) the moral risk is high; (6) there has been little demand for this kind of protection from producers, insurance companies or agents and if, or when, the demand occurs a "pilot program" should be developed and