

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment received from the crop insurance industry stated that it is currently impossible to monitor the requirement that all acreage prevented from being planted be reported, especially when it is small acreage and production from planted acreage will likely exceed the combined guarantee. If this reporting requirement is retained, guidelines must be established to be able to enforce and possibly penalize, if not reported completely. Now may be the time to initiate reporting of intended acreage to be planted the following year at the same time that production is reported for the current crop year.

Response: FCIC agrees that this potential exists and will continue to monitor this problem and to work on a solution. However, no change will be made at this time.

Comment: One comment received from FSA suggested deleting the following sentence because it is repetitious, "If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received."

Response: FCIC disagrees that the provision is repetitious. For CAT policies only, this provision specifically disallows more than one prevented planting benefit per acre for a crop year regardless of a past history of double cropping. It also prohibits a prevented planting production guarantee on acreage if another crop is planted for the insured crop year. Both of these benefits may be provided in certain situations under limited and additional coverage. Therefore, no change is made.

Comment: One comment received from an attorney on behalf of the crop insurance industry indicated that allowing both a so called 0/92 or 50/92 payment and a crop insurance prevented planting benefit is contrary to law. The comment states that the interim rule allowing both payments (published at 60 FR 35832 (July 12, 1995)) was a move back to ad hoc disaster payments.

Response: The so called 0/92 and 50/92 payments are not payments for prevented planting. Producers do not have to have been prevented from planting to collect 0/92 or 50/92

payments. Payments under these programs are intended to compensate producers for price deficiencies (i.e. the difference between the target price and the market price. Since payments under the 0/92 and 50/92 programs are available for producers with crop failure, it would be inconsistent to deny the same benefit to producers who are prevented from planting.

Comment: One comment received from the crop insurance industry suggested that additional definitions and clarifications need to be made that spell out the qualifications for double-cropped acreage such as what proof is needed and how many years of records are needed. Otherwise, they recommend excluding double cropped acreage.

Response: The prevented planting provisions specify that the producer must provide adequate records of acreage and production that show the acreage has been double-cropped for each of the last four years. Therefore, no change is necessary.

Comment: Two comments received from the crop insurance industry regarding allowing prevented planting payments on double-crop situations stated that: (1) It will generate additional prevented planting claims on acreage that would otherwise not be double-cropped. If these provisions are retained, "adequate records of acreage and production in each of the last four years" must be clearly defined to assure that the specific acreage has a definite history of double-cropping; and (2) two prevented planting payments in double cropping situations may add unwanted incentives to encourage the farming of fragile and marginal lands in more arid regions.

Response: FCIC does not believe that additional claims will be made for acreage that would not normally be double-cropped. The crop provisions clearly indicate that records of both acreage and production for the previous four crop years must be provided to qualify for benefits for more than one crop in a crop year. This provision should discourage claims on acreage that has not been double-cropped in the past. FCIC does not believe this benefit will encourage tillage of fragile and marginal lands in more arid regions. Growers will not double-crop this land for four consecutive years to qualify for prevented planting benefits in the fifth year.

So that these policy changes can take effect beginning with 1996 spring-planted crops, good cause is shown to make this rule effective immediately upon filing with the Federal Register and without the 30-day period required by the Administrative Procedure's Act

to avoid the pressures on FCIC to make changes after the contract change date as a result of a large number of producers being prevented from planting such as occurred during the 1995 crop year which resulted in confusion among producers, insurance companies, and FSA with respect to the program changes and increased losses.

Prevented planting changes to these policies were made by interim rule for the 1995 crop year. Experience with those modifications require certain changes which have been made by this rule. However, the present policy effective for crop year 1995 fall-planted crops and scheduled to be effective for 1996 spring-planted crops do not adequately protect the producer who suffers a prevented planting loss. The contract change date for 1996 spring-planted crops is November 30, 1995, and this rule must be effective for those crops. Therefore, good cause is shown to make this rule effective in less than 30 days after publication.

List of Subjects

7 CFR Part 401

Crop insurance, Hybrid sorghum seed, Reporting and recordkeeping requirements, Rice.

7 CFR Part 443

Crop insurance, Hybrid seed, Reporting and recordkeeping requirements.

7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements, Small grains, Cotton, ELS cotton, Sunflower seed and coarse grains.

Final Rule

In this document, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Policy (7 CFR 443.7(d)); and the Common Crop Insurance Regulations (7 CFR part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple Cotton (§ 457.105), Sunflower Seed (§ 457.108), and Coarse Grains (§ 457.113) Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates on or after November 30, 1995.

Accordingly, 7 CFR parts 401, 443, and 457 are amended as follows: