

executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563-AB11

General Administrative Regulations; Federal Crop Insurance Reform Act of 1994, Regulations for Implementation

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes 7 CFR part 400, subpart T of its General Administrative Regulations. The intended effect of this final rule is to provide noninsured producers, policyholders, and insurance companies the regulations applicable to the catastrophic risk protection program. It will also provide other changes in FCIC insurance programs to comply with statutory mandates of the Federal Crop Insurance Act (Act), as amended by the Federal Crop Insurance Reform Act of 1994 (Reform Act) and the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

EFFECTIVE DATE: August 20, 1996.

FOR FURTHER INFORMATION CONTACT:

Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 2001.

This rule has been determined to be economically significant for the purposes of Executive Order No. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Cost Benefit Analysis

A Cost Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that crop insurance reform generally is expected to result in net positive benefits to producers, taxpayers, and society. The effects on individual producers compared to payments under ad hoc disaster programs depends primarily on the farm program payment yield compared to the farm's actual yield and market prices. In general, however, the reform is expected to result in less volatility of producers' incomes and less risk of no income due to adverse weather events. Rural communities and producers will benefit from the certainty of payments in times of catastrophic yield losses. The Government and taxpayers will benefit from a single disaster protection program and consequent reduced Federal outlays. Although producers who had not previously participated in the Federal crop insurance program will have an added burden to make application and report yields and acreage, the benefits in terms of greater risk protection outweigh the costs.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in these regulations have been previously approved by OMB and assigned OMB control number 0563-0003 through

September 30, 1998. Copies of the information collection may be obtained from Bonnie Hart, USDA, FSA Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, Ag Box 0572, Washington, D.C. 20013-2415, 8:15 a.m.-4:45 p.m., Monday through Friday, except holidays, telephone (202) 690-2857.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. However, it does provide additional flexibility and cost savings for small entities in the following three areas. First, producers are no longer required to obtain at least CAT coverage for economically significant crops. Instead, they may sign a waiver foregoing emergency crop loss assistance. Insureds likely to decline coverage are those who believe that the costs associated with obtaining insurance exceed the benefits. The producers most likely to fall into this category are those who have insurance policies with low liabilities. For these producers, the \$50 fee for CAT would be most likely to outweigh expected indemnities. Second, an allowance has been made to allow all producers with a share in a tobacco crop under one marketing card to insure the crop under one insurance policy. To qualify under this provision, none of the shareholders may have an interest in another tobacco crop in the county. It is estimated that 35,100 policyholders may utilize this allowance, thereby saving the \$50

processing fee for each. Third, with specified restrictions, persons who hold an undivided interest in a crop may be eligible to purchase one insurance policy covering all shares to satisfy linkage requirements. The restrictions associated with this allowance include: all landowners must agree in writing to the arrangement; none of the landowners may hold any other interest in the given crop in the county for which they are required to buy at least CAT coverage; and the total liability under the CAT endorsement for all landowners must be \$2,500 or less. Because no data are available providing an indication of insureds with an undivided interest, it is not possible to estimate the savings associated with not paying the \$50 processing fee in these situations. However, some small entities will benefit from this allowance.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

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.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

The amendments to the Act, made by the Reform Act, were effective on October 13, 1994. This regulation provides the procedures to carry out the requirements of those amendments.

On Friday, January 6, 1995, FCIC published an interim rule in the Federal Register at 60 FR 1996–2000 to add regulations to carry out the general requirements of the Act. Following publication of that interim rule, the public was afforded 60 days to submit written comments, data, and opinions. On Monday, August 7, 1995, by publication at 60 FR 40055, FCIC reopened and extended the comment period to August 18, 1995. A total of 35 comments were received from the crop insurance industry, FSA, and from producer groups. The comments received and FCIC responses are as follows:

Comment: One comment received from the crop insurance industry suggested clarifying the definition of “catastrophic risk protection” by deleting the word “minimal” and replacing it with either the word “minimum” or “lowest” and by deleting the word “be” and replacing it with “offer protection” after “such coverage will.”

Response: FCIC agrees with the comment and has amended the definition of “catastrophic risk protection” by replacing the word “minimal” with the word “minimum” and by replacing the word “be” with “offer protection.”

Comment: Another comment received from the crop insurance industry suggested clarifying the definition of “crop of economic significance” by deleting “by the producer” in the first sentence.

Response: FCIC agrees with the comment and has modified the definition of “crop of economic significance” accordingly.

Comment: The crop insurance industry suggested clarifying the definition of “crop of economic significance” to explain the consequences if a crop planted in 1994, is planted in 1995 although originally there was no intent to plant the crop in 1995; and to clarify who is responsible for determining which crops are of economic significance.

Response: FCIC agrees with the comment and has added new provisions in section 400.653 to clarify requirements regarding crops of economic significance. Producers who do not intend to plant a crop do not have to obtain crop insurance or execute a waiver of their eligibility for

emergency crop loss assistance in connection with the crop to remain eligible for certain other USDA program benefits, even if they produced the crop the previous year. However, if the producer later decides to plant the crop after the sales closing date, the producer cannot obtain insurance on the crop and must execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for certain USDA program benefits. If a waiver is not executed, the producer must return those benefits already received. Provisions were also added indicating that it is the producer’s responsibility to determine crops of economic significance in the county and that the producer may have to provide records to permit the insurance provider to verify whether a crop is a crop of economic significance. FCIC has issued a worksheet that may be used by producers to assist them in determining crops of economic significance. USDA will be ultimately responsible for determining eligibility and paying any amount due a person for any applicable USDA program.

Comment: A producer group suggested that the definition of “crop of economic significance” is contrary to the Act and invites legal action to test it. They stated that the Act looks to a percentage of all crops grown by the producer and the definition in this regulation provides for a county by county test to be done.

Response: FCIC agrees that § 508(b)(7) and (8) of the Act does not specifically indicate that crops of economic significance are determined on a county basis. However, since FCIC’s insurance program has always been county based trying to operate one portion of the program across county lines would be extremely difficult. No changes will be made to conform to this suggestion.

Comment: The Farm Service Agency requested that the term “limited resource farmer” be changed to “limited income farmer.” Farm Credit Programs, which are part of FSA, have used the term “limited resource farmer” for many years and it has a very different definition than the definition of “limited resource farmer” used for crop insurance purposes.

Response: Section 508(b)(5) of the Act expressly authorizes FCIC to waive the administrative fee for “limited resource farmers.” Since “resources” include more than the producer’s “income” such as farm size, the definition will not be changed.

Comment: The crop insurance industry and a producer group questioned what the phrase “a need to maximize farm income” meant in the

definition of "limited resource farmer" and recommended an explanation be added to the regulations or the phrase deleted.

Response: FCIC has reconsidered this provision and amended the definition of "limited resource farmer" by deleting the phrase "a need to maximize farm income".

Comment: A producer group recommended defining or omitting the phrase "small or family farm" in the definition of "limited resource farmer." They also questioned how a person is categorized as a limited resource farmer and whether or not such person is required to obtain at least catastrophic risk protection (CAT) coverage, if available. The comment also asked if the limited resource status could be used as a defense if a producer is denied benefits for failure to meet linkage requirements.

Response: FCIC agrees that the terms "small" and "family farm" are not necessary in the definition and has amended the definition accordingly. All producers, including limited resource farmers, are required to obtain at least CAT coverage, if available, to be eligible for certain other USDA program benefits, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop. The limited resource farmer status only authorizes FCIC to waive payment of the administrative fees and may not be used as a defense for failure to obtain CAT coverage. Producers may request "limited resource farmer status" at the time the application for insurance is made.

Comment: A producer group also suggested that the word "producer" be defined and used rather than the word "person" because it would be less confusing since "person" is specifically defined with regard to payment limitation rules. If this change is not made, the comment suggested adding provisions to indicate that the definition in these provisions does not reference the term "person" for payment limitation purposes.

Response: A definition of "person" contained in any other statute or regulation is not applicable to the Federal crop insurance program unless expressly provided. Therefore, the definition of a person with respect to payment limitation purposes is not relevant. The term "person" is defined for this program and has been used in the crop insurance program for longer than payment limitation has existed. The term "person" cannot be replaced with "producer" because not all "persons" are producers within the context of the program and to alternate

between the two terms would be confusing. No change to the provisions will be made.

Comment: The crop insurance industry suggested that the phrase "at the option of the Secretary" should be added after "through approved insurance providers and" in § 400.652(b) to be consistent with the Act. This change is needed to enable the FSA to cease delivering CAT coverage in counties in which such coverage becomes unnecessary.

Response: The Federal Agriculture Improvement and Reform Act of 1996 provides for CAT coverage to be offered by approved insurance providers if there are a sufficient number available within an area. If approved insurance providers are not sufficiently available, local offices of the USDA will provide CAT coverage. FCIC agrees that the Secretary must now make an affirmative determination that CAT can be delivered through local FSA offices. The provision has been changed accordingly.

Comment: One comment was received from within FCIC recommending that language be included that would deny benefits from other USDA programs if the producers fail to carry out their responsibilities in accordance with policy provisions. It was suggested that language be added to indicate that such failure would be considered a scheme or device to circumvent the insurance requirement. The comment indicates that some people are interpreting current provisions to mean that once a producer applies for crop insurance on a crop of economic significance, by signing an application for insurance, that he or she has met the requirement for eligibility for certain other USDA program benefits, even though he or she has not met the requirements for crop insurance coverage to be in effect.

Response: FCIC agrees that failure to comply with all policy provisions may result in ineligibility for certain program benefits specified in § 400.657. A new § 400.652(e) has been added that states this requirement.

Comment: Two comments were received from the crop insurance industry raising issues involving alternative crops.

(1) One comment suggested that the provisions regarding alternative crops in § 400.653 (now § 400.654) be clarified with respect to crops of economic significance, USDA linkage requirements, and late filed applications.

(2) One comment states that this late application procedure could provide producers with a false sense of security because of the reliance on FCIC to make

discretionary determinations following sales closing. It states that the procedure limits the producer to CAT coverage even if he or she had previously determined that a higher level was necessary for the crop intended to be planted. The procedure extends the sales closing date which is not permitted by the statute. The procedure also requires the insured to make application prior to the acreage reporting date, which requires the insured to make a special trip to the agent or FSA office.

Response: Section 400.654 has been amended to clarify the conditions under which a producer may insure a substitute crop. Section 400.651 has also been amended to add a definition of "substitute crop". FCIC has not extended sales closing dates, it has simply permitted another crop to be substituted for the intended crop, provided that circumstances warrant such action. This provision was intended to protect farm income by allowing the producer to plant and insure another crop when there was an inability to plant the intended crop or when a crop was planted and failed and replanting of such crop was not practical. Since the producer must still obtain coverage by the sales closing date for the initially intended crop, producers should not have a false sense of security. The substitution of crops simply permits producers to maintain their ability to manage their risks when circumstances beyond their control require a change in the planned farming operation. Since producers who have not executed a waiver of any eligibility for emergency crop loss assistance in connection with the crop must obtain insurance coverage on all crops of economic significance to remain eligible for other farm program benefits, producers had to be given the opportunity to insure such crops planted as a substitute crop. However, although producers may originally have selected higher levels of coverage, they will be limited to CAT coverage on substitute crops to comply with the linkage requirements and limit exposure for losses that occur after the sales closing date. The producer's decision to insure the substitute crop is voluntary and, although it may require another visit to the insurance provider, the producer will be ensured of protection against crop disasters.

Comment: The crop insurance industry strongly protested the requirement that all acreage reports be signed. They stated that a signed acreage report was not a requirement of the Act and must be removed in the final rule. They also stated that such a requirement

should not be imposed on CAT coverage.

Response: Acreage reports are required by the contract and are binding on the producer. If acreage reports are not signed, an insurance provider may not be able to legally challenge the contents. However, § 400.653(d) (now § 400.654(e)) has been amended for CAT coverage only, to permit the operator to sign the acreage report for all other persons with an insurable interest in the crop. These producers will be bound by all statements on that signed acreage report. Any person may sign the application, acreage report, or any other document relative to crop insurance coverage, provided he or she has a properly executed power of attorney or other legal document recognized by the state authorizing such person to sign. Section 400.654(d) has been amended accordingly.

Comment: The crop insurance industry also suggested that a producer be allowed to specify his or her intended acreage at the time of the prior year's production reporting or at the time of application.

Response: Producers may submit "intended" acreage reports as suggested by the comment, however, they will be required to confirm acreage reporting information in accordance with the policy on or before the final acreage reporting date. Premium owed and the production guarantee are determined based on actual acreage, not "intended" acreage. No change will be made to this provision.

Comment: Both the crop insurance industry and a producer group suggested clarifying the language in § 400.654(b) (now § 400.655(b)) to state how, and to what extent, FCIC intends to reduce an indemnity to reflect out-of-pocket expenses that were not incurred by the producer as a result of not planting, caring for, or harvesting the crop. They asked: If a prevented planting payment that is already less than the guarantee under the policy for a planted crop, will it be further reduced? They also asked: If an insured has a total crop loss, would the guarantee be reduced compared to someone who incurred harvesting costs?

Response: With respect to the prevented planting program, FCIC elected to reduce the guarantee, instead of reducing the indemnity, to reflect out-of-pocket expenses not incurred by the producer. Therefore, prevented planting guarantees or indemnities will not be further reduced and § 400.655(b) will be amended accordingly. Producers with a total crop loss that occurred before harvest may have the indemnity reduced to reflect the costs associated

with harvest that were not incurred if such reduction is provided for in the applicable crop policy. Section 400.655(b) has been amended to state that reductions in indemnities will be in an amount determined in accordance with the crop provisions or the Special Provisions for the specific crop.

Comment: One comment from a producer group suggested that there is insufficient guidance as to the procedure that will be followed in the event of a loss or for appeal rights.

Response: Each individual crop policy contains procedures to be followed in the event of a crop loss. These policies are published in chapter IV of title 7 of the CFR. The applicable appeal procedures are published at 7 CFR parts 11 and 780 for determinations made by FCIC. Therefore, no change will be made.

Comment: The crop insurance industry recommended that § 400.654(c)(1) (now § 400.655(d)(2)) contain a provision indicating that when the insured with CAT coverage files a claim for indemnity under the policy, that filing indicates the insured has made the election to receive a CAT indemnity rather than a benefit under any other USDA program that compensates for the same crop loss. It stated that the regulations need to specify how the producer is to make this election, when he or she must make it, and who is responsible for enforcing it.

Response: The Act expressly provides the producer with the choice of programs under which to receive benefits. Since information about other program benefits may not be available until long after the crop loss has occurred, producers cannot be presumed to have made a choice because they have not delayed receipt of benefits to which they are entitled. Producers cannot make informed choices with respect to which program benefits to choose until they know what benefits will be available. Therefore, § 400.655(d)(2) has been amended to permit producers to receive a CAT indemnity and, if other program benefits are later made available, to reimburse the entire amount of the CAT indemnity to be eligible for a benefit under the other program. USDA will be responsible for determining if a crop insurance payment has been made prior to making payment under any other applicable USDA program.

Comment: A producer group stated that § 400.654(c)(1) (now § 400.655(d)(2)), which provides that a person can receive either CAT benefits or other USDA benefits for the same loss, but not both, should be clarified to state that a producer will not have to

forego other USDA payments that are not specifically related to the crop loss, e.g., regular deficiency payments.

Response: Deficiency payments did not compensate a producer for a crop loss, they provided compensation for changes in the market price. Therefore, deficiency payments could be made regardless of whether or not the producer collected an indemnity. No changes have been made in the provisions in response to the comment.

Comment: One comment from FSA stated that previous legislation required emergency loan applicants to have obtained crop insurance the previous year. The reform legislation prohibits the applicant from collecting the CAT indemnity, or noninsured crop disaster assistance program (NAP) payment, for the same loss that qualifies for the emergency loan. This requires the producers to pay for coverage on which they are never allowed to collect because if they collect the CAT or NAP payment, they will immediately become ineligible for an emergency loan. The commentor suggested a more reasonable approach would be to limit the total benefits from all sources for a loss to the total amount of loss, rather than limiting the benefit to a single source. Otherwise the producer will often collect the payment and then apply for a regular farm operating or farm ownership loan, rather than an emergency loan. Denying the producer the opportunity to collect the CAT or NAP payment will put a further strain on the Farm Credit Programs already limited loan funds.

Response: The provision in previous legislation that required emergency loan applicants to have obtained crop insurance the previous year was removed in the Reform Act. The statute is clear that, for CAT coverage policies, if another program provides compensation for the same crop loss, the producer must elect only one program under which to receive benefits. Therefore, the producer cannot receive benefits from all sources up to the total amount of the loss. Further, since the Act expressly provides the producer with the choice of which program to receive benefits, FCIC cannot administratively abrogate that right. However, any producer who receives a CAT indemnity payment is not automatically prohibited from receiving assistance for the same loss under other USDA programs. Such producers will be given the opportunity to reimburse the entire amount of the indemnity and receive assistance under the other USDA program. Farm ownership and operating loans which are not conditioned on a production loss, may be obtained from the USDA in addition

to crop insurance indemnities. This provision will not be changed in response to the comment.

Comment: A producer group suggested that it is unnecessarily confusing when one section requires that a person must obtain at least catastrophic risk protection coverage, if available, for each crop on all insurable acreage in the county; another section allows limited or additional coverage on portions of the crop in the county; and yet another section refers to linkage requirements if a crop is a crop of economic significance. These requirements could be clarified, distinguished, or perhaps even combined to make them easier to comprehend.

Response: FCIC has combined these requirements into § 400.655 for clarity.

Comment: The crop insurance industry suggested that the provisions need to be clarified to indicate that CAT coverage for high risk land must be obtained from the same insurance provider from which limited or additional coverage is obtained, if that provider sells and services CAT coverage.

Response: FCIC agrees with the comment and has amended § 400.655(c)(2) to clarify this requirement.

Comment: The crop insurance industry suggested that the hail and fire exclusion should be available for limited coverage as well as additional coverage.

Response: Section 508(c)(7) of the Act specifies that the hail and fire exclusion is available only for additional coverage. This provision cannot be changed.

Comment: The crop insurance industry suggested that the administrative fees for CAT coverage should be addressed separately from those for limited coverage (see § 400.655(a)) (now § 400.656(a)).

Response: The provisions of the Act mandate aggregation of the fees for CAT and limited coverage in order to ensure that the producer does not pay any administrative fee in excess of the amount required on a per county or per producer basis. Further, the use of the administrative fee to offset the costs of delivery of the program is the same for both CAT and limited coverage. This aggregation of fees is more clearly communicated by the proposed language than it would be if the provisions were separated, therefore, no revisions will be made.

Comment: The crop insurance industry suggests that the terms "additional" and "limited" be clarified.

Response: FCIC believes that the terms are clearly defined with respect to

the applicable coverage level. No changes have been made in the definitions of these terms.

Comment: Two comments received from the crop insurance industry were against the provision requiring the administrative fee for limited coverage being due at acreage reporting time.

(1) One comment stated that the administrative fee should be payable with the premium for limited coverage as well as for additional coverage. This comment also stated that it would be more consistent if CAT policies had a \$50 fee, and the limited and additional coverage levels had a \$10 fee in addition to the premium.

(2) One comment stated that they strongly protest the requirement that the administrative fee for limited coverage must be paid at acreage reporting time for carry-over policies.

Response: FCIC agrees that the administrative fee for limited coverage should be paid during the normal premium billing cycle and has modified § 400.656(a)(3) accordingly. However, sections 508(b)(5) and 508(c)(10) of the Act specifies that the administrative fee for both CAT and limited coverage will be \$50 per crop per county. No changes in these amounts can be made.

Comment: The crop insurance industry suggested that § 400.655(a) (now § 400.656(a)) fails to include provisions requiring an insured to refund any benefits received prior to the policy being terminated for nonpayment of fees.

Response: FCIC agrees with the comment and has amended § 400.656(a)(5) and (6) accordingly.

Comment: One comment received from the crop insurance industry asked if the regulation as proposed would permit a company to collect the \$50 fee for a crop year at the same time it collects the production information from the prior crop year for purposes of computing the current crop year Actual Production History. They also stated that the regulations should be flexible enough so that if a particular producer has CAT, limited and additional coverage, all fees and premium could be collected at the usual premium billing time.

Response: Section 508(b)(5)(A) of the Act requires that administrative fees for CAT coverage be paid at the time of application. Since the Act requires that administrative fees be paid up front, FCIC only has the discretion to permit the payment of administrative fees on or before the acreage reporting date for carry-over policies the date the producer indicates the intention to continue coverage for the crop year.

Administrative fees for limited and

additional coverage may be collected during the normal billing cycle. Any fee may be paid prior to the due date, however, the insurance provider cannot require such payment. No change will be made.

Comment: The crop insurance industry suggested that § 400.655(b) (now § 400.656(b)) be clarified to state, "Payment of an administrative fee will not be required if the insured files a zero acreage report."

Response: FCIC agrees with the comment and has added a new § 400.656(b)(3) accordingly. However, producers who falsely file a zero acreage report may be subject to administrative and criminal sanction.

Comment: The crop insurance industry also suggested that § 400.656(c) (now § 400.657(c)) be clarified to provide that eligibility for Conservation Reserve Program benefits is limited to new or amended contracts and not contracts already in existence.

Response: FCIC agrees with the comment and has modified § 400.657(c) accordingly.

Comment: FSA suggested that the requirement for a producer to have at least CAT coverage only applies to "new" Farm Credit loans not "new and amended" loans. The Act specifically listed the applicable benefits in three loan-making authorities and the authority to service (reschedule, reamortize, subordinate, write-down or otherwise amend) loans is given in other sections of the Consolidated Farm and Rural Development Act. There is a discrepancy over the effective date of the CAT requirement. The requirement was effective upon enactment, however, applicants could not be required to purchase CAT coverage before it was available. The commentor continued to say that the effective implementation date for their loan programs is January 23, 1995.

Response: Section 508(b)(7)(A) of the Act was effective on October 13, 1994, and mandated that the producer obtain at least CAT coverage on crops of economic significance to be eligible for certain farm credit benefits. Therefore, producers who obtained farm credit programs, loans, or amended existing loans after October 13, 1994, are statutorily required to comply with this provision. Amendments to existing loans were included because such amendments can have a significant effect on the terms and duration of such loans. Further, Congress realized that some producers obtained loans in 1995, prior to enactment of the Act. To permit producers to comply with the requirements of section 508(b)(7)(A),

sales closing dates for CAT coverage were extended to April 13, 1995.

Comment: One comment received from FSA disagreed with provisions that require the producer to obtain CAT coverage for the crop year in which a farm credit loan is sought. The producer is not always able to anticipate credit needs by the CAT sales closing date so it would be more workable to allow the producer to obtain coverage for the following year if the sales closing date had passed and it was not possible to obtain coverage for the current year.

Response: The requirement for CAT coverage in the crop year for which a benefit is sought is a statutory requirement, although the producer may execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop and remain eligible for certain USDA program benefits. Therefore, no changes have been made. It is the responsibility of the producer and the lender to anticipate credit needs in the worst case scenario so crop insurance can be obtained prior to the applicable sales closing date.

Comment: The crop insurance industry questioned why only insureds who had participated in a conserving use program established for the 1994 crop year were eligible to receive the special prevented planting benefits.

Response: Section 116 of the Reform Act specifically requires that producers have participated in a conserving use program established for the 1994 crop year for wheat, feed grains, upland cotton, or rice to be eligible for the prevented planting payments.

In addition to the changes described above, FCIC has made the following changes:

1. § 400.651 has been amended to add definitions for "Act," "administrative fee," "expected market price," "FSA," "insurable interest," "intended crop," "linkage requirement," "Reform Act," "substitute crop," and "zero acreage report" for clarification purposes.

2. § 400.651 has been amended by clarifying the definition of "approved yield."

3. § 400.654(c) has been amended to allow CAT coverage for a crop planted as a substitute for the intended crop when the intended crop is prevented from being planted or is planted and fails.

4. § 400.654(d)(1) (now § 400.655(e)(1)) has been amended by deleting the phrase "as determined by the approved insurance provider." An insurance company is responsible for administering its contract with an insured producer. The FSA will be responsible for determining and paying the additional amount due the insured

for any applicable USDA program benefit, after first considering the amount of any crop insurance payment.

5. § 400.655 has been amended to add a new paragraph § 400.655(d)(4) to allow a tobacco producer to obtain catastrophic risk protection for 100 percent of the tobacco crop that is identified by a tobacco marketing card issued by FSA for a specific producer and Farm Serial Number, when the producer and other persons share in the crop and none of the persons hold any interest in another tobacco crop for which they are required to obtain at least CAT coverage. This change will alleviate the burden on each shareholder to pay separate administrative fees in situations when numerous small shareholders have a share in the crop.

6. § 400.655 has been amended to add a new paragraph § 400.655(d)(5) to allow a landowner to obtain catastrophic risk protection and establish linkage for all other landowners who hold an undivided interest in the land, provided the landowners do not have multiple farming interests and the total liability for all landowners is \$2,500 or less.

7. § 400.655(b)(2) (now § 400.656(b)(4)) has been amended to include the provision that the administrative fee for additional coverage is not subject to any limits.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Claims, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, for the reasons set out in the preamble, the interim rule adding a new subpart T to 7 CFR part 400, published at 60 FR 1996–2000, is adopted as a final rule effective for the 1997 and succeeding crop years for all crops with a 1997 crop year contract change date after the effective date of this rule and for the 1998 and succeeding crop years for all crops with a 1997 crop year contract change date prior to the effective date of this rule, with changes as follows:

Subpart T of part 400 is revised to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1997 and Subsequent Crop Years

Sec.

- 400.650 Purpose.
- 400.651 Definitions.
- 400.652 Insurance availability.

- 400.653 Determining crops of economic significance.
 - 400.654 Application and acreage report.
 - 400.655 Coverage provided.
 - 400.656 Administrative fees and waivers.
 - 400.657 Eligibility for other program benefits.
 - 400.658 Coverage for acreage that is prevented from being planted.
 - 400.659 Transitional yields for forage or feed crops, 1995–1997 crop years.
- Authority: 7 U.S.C. 1506(l), and 1506(p)

§ 400.650 Purpose.

The Reform Act requires FCIC to implement a crop insurance program that offers several levels of insurance coverage for producers. These levels of protection include catastrophic risk protection, limited coverage, and additional coverage insurance. This subpart provides notice of the availability of these crop insurance options and establishes provisions and requirements for implementation of the insurance provisions of the Reform Act.

§ 400.651 Definitions.

Act—The Federal Crop Insurance Act, as amended (7 U.S.C. §§ 1501 *et seq.*).

Additional coverage—Plans of crop insurance providing a level of coverage equal to or greater than sixty-five percent (65%) of the approved yield indemnified at one hundred percent (100%) of the expected market price, or comparable coverage as established by FCIC.

Administrative fee—The \$50 fee the producer must pay on a per crop and county basis with a maximum of \$200 per producer per county and \$600 per producer for catastrophic and limited coverage on an annual basis. Also, the \$10 fee the producer must pay annually on a per crop and county basis for additional coverage.

Approved insurance provider—A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance coverage to producers participating in the Federal crop insurance program.

Approved yield—The amount of production per acre computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee in accordance with the crop provisions or the Special Provisions.

Catastrophic risk protection—The minimum level of coverage offered by FCIC which is required before a person may qualify for certain other USDA program benefits unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop. For the 1995

through 1998 crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC. For the 1999 and subsequent crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

Catastrophic Risk Protection Endorsement—The part of the crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Crop of economic significance—A crop that has either contributed in the previous crop year, or is expected to contribute in the current crop year, ten percent (10%) or more of the total expected value of the producer's share of all crops grown in the county. However, a crop will not be considered a crop of economic significance if the expected liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required for the crop.

Expected market price—(price election) The price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

FCIC—The Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Insurable interest—The value of the producer's interest in the crop that is at risk from an insurable cause of loss during the insurance period. The maximum indemnity payable to the producer may not exceed the indemnity due on the producer's insurable interest at the time of loss.

Intended crop—A crop stated on the application as submitted on or before the sales closing date for the crop which the producer intended to plant in the crop year for which application is made.

Limited coverage—Plans of insurance offering coverage that is equal to or greater than fifty percent (50%) of the approved yield indemnified at one hundred percent (100%) of the expected

market price, or a comparable coverage, but less than sixty-five percent (65%) of the approved yield indemnified at one hundred percent (100%) of the expected market price, or a comparable coverage.

Limited resource farmer—A producer or operator of a farm, with an annual gross income of \$20,000 or less derived from all sources of revenue, including income from spouse's or other members of the household, for each of the prior two years. Notwithstanding the previous sentence, a producer on a farm or farms of less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed \$20,000, will be considered a limited resource farmer.

Linkage requirement—The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with § 400.657, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

Person—An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a state or a political subdivision or agency of a state.

Reform Act—The Federal Crop Insurance Reform Act of 1994, Public Law 103-354.

Secretary—The Secretary of the United States Department of Agriculture.

Substitute crop—An alternative crop whose sales closing date has passed and that is planted on acreage that is prevented from being planted to an intended crop or where an intended crop is planted and fails.

Zero acreage report—An acreage report filed by the producer that certifies that the producer does not have a share in the crop for that crop year.

§ 400.652 Insurance availability.

(a) If sufficient actuarial data are available, FCIC will offer catastrophic risk protection, limited, and additional coverage plans of insurance to indemnify persons for FCIC insured or reinsured crop loss due to loss of yield or prevented planting, if the crop loss or prevented planting is due to an insured cause of loss specified in the applicable crop insurance policy.

(b) Catastrophic risk protection coverage may be offered through approved insurance providers and through local offices of the Farm Service Agency specified by the Secretary.

Limited and additional coverage will only be offered through approved insurance providers unless there is not a sufficient number of approved insurance providers that offer such insurance within a service area.

(c) A person must obtain at least catastrophic risk protection for the crop on all insurable acreage in the county in which the person has a share on or before the sales closing date designated by FCIC for the crop in the county in order to satisfy the linkage requirements unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(d) For limited and additional coverage, in areas where insurance is not available for a particular agricultural commodity that is insurable elsewhere, FCIC may enter into a written agreement with a person to insure the commodity, provided that the person has actuarially sound data relating to the production of the commodity that is acceptable to FCIC and that such written agreement is specifically allowed by the crop insurance regulations applicable to the crop.

(e) Failure to comply with all provisions of the policy constitutes a breach of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If a producer breaches the insurance contract, the execution of a waiver of eligibility for emergency crop loss assistance will not be effective for the crop year in which the breach occurred.

§ 400.653 Determining crops of economic significance.

To be eligible for certain other program benefits under § 400.657 the following conditions will apply with respect to crops of economic significance if the producer does not execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(a) If a producer planted a crop of economic significance in the preceding crop year, and does not intend to plant the same crop in the present crop year, the producer does not have to obtain insurance coverage or execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop in the present crop year to comply with the linkage requirements.

However, if the producer later decides to plant that crop, the producer will be unable to obtain insurance after the sales closing date and must execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for benefits as

specified in § 400.657. Failure to execute such a waiver will require the producer to refund any benefits already received under a program specified in § 400.657.

(b) The producer is initially responsible to determine the crops of economic significance in the county. The insurance provider may assist the producer in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop times the producer's share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer (in the county); and

(3) Divide the value of the specific crop by the result of paragraph (b)(2).

(c) The producer may use the type of price, such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that the producer uses the same type of price for all crops in the county.

(d) The producer may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

§ 400.654 Application and acreage report.

(a) To participate in catastrophic risk protection, limited, or additional coverage plans of insurance, a producer must submit an application for insurance on or before the applicable sales closing date.

(b) In order to remain eligible for certain farm programs, as specified in § 400.657, a producer must obtain at least catastrophic risk protection on all crops of economic significance, if catastrophic risk protection is available in the county, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(c) Notwithstanding the requirements of § 400.654(a) that applications for insurance be submitted on or before the applicable sales closing date, FCIC may permit a producer to insure crops other than those specified on the application under the following conditions:

(1) The producer must be unable to plant the intended crop or it is not practical to replant a failed crop before the final planting date. FCIC will take into consideration marketing windows when determining whether it was not practical to replant.

(2) Conditions must exist to warrant allowing a producer to insure crops other than the intended crop.

(3) The producer must submit an application for the substitute crop on or before the acreage reporting date for the substitute crop and pay any applicable administrative fee. A producer may not substitute a crop that the producer planted in the preceding crop year unless that crop was listed on a timely filed application for the current crop year.

(4) If the producer plants a substitute crop that is a crop of economic significance, the producer must obtain CAT coverage, if available, to comply with the linkage requirements specified in § 400.657. The producer may not substitute a crop under this provision if the producer has signed or intends to sign a waiver for emergency crop loss assistance for the crop year.

(5) The substitute crop must be planted on or before the final planting date or within the late planting period, if applicable, for the substitute crop.

(6) Under no circumstances may a producer submit an application for limited or additional coverage after the sales closing date for the substitute crop.

(d) For all coverages, including catastrophic risk protection, limited, and additional coverages, the producer must file a signed acreage report on or before the acreage reporting date. Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or other legally sufficient document authorizing such person to sign.

(e) Under catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf an operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

§ 400.655 Coverage provided.

(a) The specific causes of loss for which insurance coverage is offered are designated in the crop insurance policy for each crop.

(b) An indemnity paid to a producer may be reduced, in an amount determined in accordance with crop provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by the producer as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage that is prevented from being planted

will be based on a reduced guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

(c) The producer must obtain the same level of coverage (catastrophic, limited, or additional) for all acreage of the crop in the county unless one of the following applies:

(1) The applicable crop insurance policy allows the producer the option to separately insure individual crop types or varieties. In this case each individual type or variety insured by the producer will be subject to separate administrative fees. For example, if two grape varieties in California are insured under a CAT policy and two varieties are insured under a limited coverage policy, a separate administrative fee will be charged for each of the four varieties. Although insurance may be elected by type or variety in these instances, failure to insure a type or variety that is of economic significance may result in the denial of other farm program benefits, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) The producer with limited or additional coverage for the crop in the county has acreage that has been designated as "high risk" by FCIC. Such producers will be able to obtain a High Risk Land Exclusion Option for the high risk acreage under the limited or additional coverage policies and insure the high risk acreage under a separate CAT policy provided that the CAT coverage is obtained from the same insurance provider from which the limited or additional coverage was obtained. The producer may only obtain CAT from another insurance provider if the original insurance provider does not deliver CAT policies.

(d) Catastrophic risk protection.

(1) Any person who has a bona fide insurable interest in a crop is eligible for catastrophic risk protection subject to any limitations contained in the crop insurance contract.

(2) A person who is eligible to receive an indemnity under catastrophic risk protection and is also eligible to receive compensation for the same crop loss under any other USDA programs, must elect the program from which to receive benefits. A payment or program benefit under only one of the programs is allowed. If other USDA program benefits are not available until after the producer filed a claim for indemnity, the producer may refund the total amount of the indemnity and receive the other program benefit. Farm ownership and operating loans may be obtained from USDA in addition to crop insurance indemnities.

(3) Catastrophic risk protection may, on a commodity-by-commodity basis, be elected on an individual yield and loss basis, or, where offered, may be elected on an area yield and loss basis.

(4) A tobacco producer may insure one hundred percent (100%) of the tobacco crop that is identified by a tobacco marketing card issued by FSA for a specific producer and Farm Serial Number under one CAT policy, provided the producer and other persons each have a share in the crop, all the shareholders agree in writing to such arrangement, and none of the shareholders hold any other interest in another tobacco crop for which they are required to obtain at least catastrophic coverage. If the tobacco crop is insured under one policy:

(i) The linkage requirements will be satisfied for each shareholder of the crop; and

(ii) The producer insuring the crop will:

(A) Make application for insurance and provide the name and social security number or employer identification number of each person with a share in the tobacco crop;

(B) File the acreage report showing a one-hundred percent (100%) share in the crop (all insurable acreage covered by such marketing card will be considered as one unit);

(C) Be responsible to pay one administrative fee for all the producers within the county;

(D) Fulfill all requirements under the crop insurance contract; and

(E) Receive any indemnity payment under his or her social security number or employer identification number and distribute the indemnity payments to the other person sharing in the crop.

(5) A landowner will be allowed to obtain catastrophic coverage to satisfy linkage requirements for all other landowners who hold an undivided interest in the insurable acreage, provided:

(i) All landowners agree in writing to such arrangement and have their social security number or employer identification number listed on the application, without regard to the actual amount of their interest in the insured acreage;

(ii) All landowners must have an undivided interest in the insurable acreage;

(iii) None of the landowners may hold any share in other acreage for which they are required to obtain at least catastrophic coverage;

(iv) The total cumulative liability under the Catastrophic Risk Protection Endorsement for all landowners must be \$2,500 or less;

(v) The landowner insuring the crop will:

(A) Make application for insurance and provide the name and social security number or employer identification number of each person with an undivided interest in the insurable acreage;

(B) Be responsible to pay one administrative fee for all the producers within the county;

(C) Fulfill all requirements under the insurance contract; and

(D) Receive any indemnity payment under the landowner's social security number or employer identification number and distribute the indemnity payments to the other persons sharing in the crop.

(E) Limited and additional coverage.

(1) A producer who is eligible to receive an indemnity under a limited or an additional coverage plan of insurance and who also is eligible to receive benefits for the same loss under any other USDA program may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law. However, the total amount received from all such sources may not exceed the amount of the actual loss sustained by the insured. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based upon the producer's production records and the highest price election or amount of insurance available for the applicable crop. FSA will determine and pay the additional amount due the producer for any applicable USDA program, after first considering the amount of any crop insurance indemnity. Farm ownership and operating loans may be obtained from the USDA in addition to crop insurance indemnities.

(2) Limited or additional coverage may, on a commodity-by-commodity basis, be elected on an individual yield and loss basis, or, where offered, on an area yield and loss basis.

(3) Hail and fire coverage may be excluded from the covered causes of loss for a crop policy only if additional coverage is elected.

\$ 400.656 Administrative fees and waivers.

(a) Catastrophic risk protection and limited coverage. (1) The producer must pay an administrative fee each year of fifty dollars (\$50.00) per crop per county, not to exceed two hundred dollars (\$200.00) per county, and six hundred dollars (\$600.00) for all counties in which the producer has elected to obtain catastrophic or limited coverage.

(2) The producer must pay this administrative fee for catastrophic coverage at the time of application for the first year, and by the acreage reporting date for all subsequent years that crop insurance coverage is in effect.

(3) The administrative fee for limited coverage must be paid no later than the time that premium is due.

(4) Except for the initial application year of a crop, payment of an administrative fee will not be required for a crop if the insured files a bona fide zero acreage report for the crop on or before the acreage reporting date. Any producer who falsely files a zero acreage report may be subject to administrative and criminal sanctions.

(5) For Catastrophic coverage, if the administrative fee is not paid when due, the crop insurance contract will terminate effective at the beginning of the crop year for which the administrative fee was not paid. Persons failing to pay the administrative fee, and all persons with an insurable interest in the crop under the same contract, may not be eligible for certain other USDA program benefits as set out in § 400.657 and all such benefits already received for the crop year must be refunded. If a producer fails to pay the administrative fee when due, the execution of a waiver of any eligibility for emergency crop loss assistance in connection with the crop will not be effective for any crop year in which payment was not made.

(6) For limited coverage, persons failing to pay the administrative fee by the due date, and all persons with an insurable interest in the crop under the same contract, will not be eligible for certain other USDA program benefits as set out in § 400.657 and all such benefits already received for the crop year must be refunded. Since insurance coverage was in effect throughout the insurance period, the producer will be required to pay both the administrative fee and the premium for that crop year in accordance with provisions regarding any amounts due us contained in the applicable crop policy. If a producer fails to pay the administrative fee when due, the execution of a waiver of any eligibility for emergency crop loss assistance in connection with the crop will not be effective for any crop year for which payment was not made.

(7) The administrative fee may not be waived unless the insured qualifies as a limited resource farmer.

(8) The administrative fee will be refunded if the insured has previously obtained catastrophic risk protection or limited coverage for the crop year, paid the administrative fee, and subsequently purchased additional coverage for that same crop in the same county on or

before the sales closing date.

Administrative fees will not be refunded if, after the purchase of the additional coverage, the producer still has four or more crops insured in the county, or four or more crops insured in each of three or more counties, at the catastrophic or limited coverage level.

(9) The administrative fee will not be refunded for the year of application even if the insured does not plant the crop for that year.

(10) For limited coverage, the administrative fee is in addition to the amount of premium owed by the person.

(b) Additional coverage. (1) If additional coverage is elected, the insured must pay, in addition to the premium, an administrative fee of ten dollars (\$10) per crop, per county, for the year of application and each subsequent year in which crop insurance coverage remains in effect. The administrative fee must be paid no later than the time that premium is due.

(2) Persons failing to pay the administrative fee by the due date, and all persons with an insurable interest in the crop under the same contract, will not be eligible for certain other USDA program benefits as set out in § 400.657, and all such benefits already received for the crop year must be refunded. Since insurance coverage was in effect throughout the insurance period, the producer will be required to pay both the administrative fee and the premium for that crop year in accordance with provisions regarding any amounts due us contained in the applicable crop policy. If a producer fails to pay the administrative fee when due, the execution of a waiver of any eligibility for emergency crop loss assistance in connection with the crop will not be effective for any crop year for which payment was not made.

(3) Payment of an administrative fee will not be required if the insured files a bona fide zero acreage report on or before the acreage reporting date for the crop. Any producer who falsely files a zero acreage report may be subject to criminal and administrative sanctions.

(4) The administrative fee for additional coverage is not refundable, is not subject to any limits, and may not be waived.

(c) When obtaining catastrophic risk protection, limited, or additional coverage, a producer must provide information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an approved insurance provider, including the date such insurance was obtained and the amount paid in administrative fees. If the producer paid

more than the maximum allowable amount in administrative fees, the producer will receive a refund of the excess fees paid from the local FSA office or from the approved insurance provider that last collected such fees.

§ 400.657 Eligibility for other program benefits.

The producer must obtain at least catastrophic coverage for each crop of economic significance in the county in which the producer has an insurable share, if insurance is available in the county for the crop, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop, to be eligible for:

(a) Benefits under the Agricultural Market Transition Act;

(b) Loans or any other USDA provided farm credit, including: guaranteed and direct farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(c) Benefits under the Conservation Reserve Program derived from any new or amended application or contract executed after October 13, 1994.

§ 400.658 Coverage for acreage that is prevented from being planted.

For the 1995 and succeeding crop years, the insurance period for prevented planting for those crop insurance policies containing prevented planting coverage shall be extended so that prevented planting coverage begins:

(a) On the sales closing date for the insured crop in the county for the crop year the application for insurance is accepted; or

(b) For any crop year following the crop year the application for insurance is accepted, or for any crop year the insurance policy is transferred to a different insurance provider, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. *For example:* If the producer makes application and purchases a corn crop insurance policy for the 1995 crop year (which is not terminated or canceled during or after the 1995 crop year), prevented planting coverage for the 1996 crop year began on the 1995 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

§ 400.659 Transitional yields for forage or feed crops, 1995–1997 crop years.

(a) For the 1995 through the 1997 crop years, producers who produce feed or forage will be eligible for an adjustment in the assigned yield described in 7 CFR 400.55(b)(1) if:

(1) The feed or forage is primarily for use by the producer as livestock, dairy, or poultry operations; and

(2) At least fifty percent (50%) of the producer's net farm income is derived from the livestock, dairy, or poultry operations.

(b) Producers that qualify under paragraph (a) of this section will receive an assigned yield, if required, under 7 CFR 400.55(b)(1) equal to eighty percent (80%) of the T- or D-Yield.

Signed in Washington, DC, on August 13, 1996.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

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BILLING CODE 3410-FA-P

7 CFR Part 402

RIN 0563–AB09

Catastrophic Risk Protection Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes part 402 chapter IV of title 7 of the Code of Federal Regulations (CFR). The intended effect of this rule is to provide for a catastrophic risk protection plan of insurance. This coverage is the lowest level required to be purchased by a producer to be eligible for certain other agricultural farm program benefits. The producer may execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop rather than obtain insurance coverage to be eligible for certain other agricultural farm program benefits. This action is needed to comply with statutory mandates of the Federal Crop Insurance Act (Act), as amended by the Federal Crop Insurance Reform Act of 1994 (Reform Act) and the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

EFFECTIVE DATE: August 20, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435