

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.

[FR Doc. 96–21116 Filed 8–19–96; 8:45 am]

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

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. The 1996 Act alleviates producers from the requirement to obtain at least catastrophic coverage on crops of economic significance to be eligible for certain other USDA program benefits if the producer waives any eligibility for

emergency crop loss assistance in connection with the crop. Due to this provision, FCIC anticipates that fewer producers will obtain insurance coverage. This will reduce the paperwork burden. We estimate that approximately 30 percent of the insureds with CAT coverage will cancel their crop insurance coverage. As a result the paperwork burden approved under OMB Number 0563-0003 will be reduced by 44,176 hours. 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 a 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 policy and procedures to carry out the catastrophic risk protection insurance requirements of those amendments.

On Friday, January 6, 1995, FCIC published an interim rule in the Federal Register at 60 FR 2000–2005 to add a new catastrophic risk protection (CAT) level of insurance through the Catastrophic Risk Protection Endorsement which amends new and existing crop insurance policies, endorsements, and crop provisions when elected by the insured. 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 40 comments were received from the crop insurance industry, FSA, producer groups, and producers. The category, comments received, and FCIC responses are as follows:

## General Comments

*Comment:* One comment received from the crop insurance industry suggested that the phrase “at the option of the Secretary” should be added after, “Catastrophic risk protection coverage may be offered through approved insurance providers and” in Section 402.1, 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.

## Comments Regarding Definitions

*Comment:* One comment received from a producer group suggested that

the definitions should include a reference to the standards that will be used in determining whether a producer's crop loss was due to drought, flood, or other natural disaster as determined by the Secretary. The comment recommended referencing other FCIC regulations that are applicable in making this determination and similarly referencing coverage exclusions.

*Response:* The insured is responsible for demonstrating that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period. Catastrophic risk protection is only available through an endorsement which becomes part of the crop insurance policy. Each crop policy contains a section regarding the causes of loss for which insurance is provided. Coverage exclusions, such as failure to follow good farming practices, are also specified in these policies. Therefore, a change to the definitional section of this rule is not necessary.

*Comment:* Another comment received from a producer group indicated that sustainable and alternative agricultural practices are frequently and erroneously labeled as not being “good farming practices” simply because they may be different from the traditional approach in the area.

*Response:* The definition of “good farming practices” contained in various crop policies does not exclude the use of sustainable or alternative practices. However, farming practices must control weeds, provide sufficient nutrients, protect against disease and insects, etc., to be considered good farming practices. The definition will not be changed.

*Comment:* Another 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.”

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

*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 provisions in

section 12 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 any eligibility for emergency crop loss assistance in connection with the crop to remain eligible for certain USDA program benefits, even if they produced the crop the previous year. However, if the producer 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 other 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, an administrative interpretation was made to operate on a county basis because of the language in § 508(b)(7)(A) of the Federal Crop Insurance Act. In addition, operating on a county basis is consistent with the long standing practice of insuring acreage on a county basis. Although the provisions of the Act may have changed, the insurance rationale has not. 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 endorsement 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 stated that a spouse's salary from a job in town should not be included in total income when considering all sources of revenue for a limited resource farmer.

*Response:* The purpose of this provision is to excuse producers from paying the administrative fee when it would impose a financial hardship. Since part of the farm's income is usually used to defray the personal expenses of the producer, outside income such as a spouse's salary will affect the determination. All of the

income within the family entity, from all sources of revenue, including the spouses' will be considered as the annual gross income.

*Comment:* A producer group 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.

#### Comments Regarding Insurance Units

*Comment:* A producer observed that coverage was available only by basic units, and stated that unit division on share basis was very misleading.

*Response:* Unit division on a share basis is explained in section 3 (Unit Division) of the Catastrophic Risk Protection Endorsement. This document is provided to all insureds who elect the endorsement. Provisions contained therein are complete with examples and should not be misleading to insureds. No change will be made.

#### Comments Regarding Linkage Requirements

*Comment:* Twenty-three (23) comments were received from producers who disagreed with the mandatory requirement to purchase crop insurance to remain eligible for certain other USDA program benefits. One additional comment received from a FSA employee discussed producers' aversion to the mandatory requirement to purchase crop insurance to be eligible for certain other USDA benefits.

*Response:* (1) The mandatory requirement that producers obtain crop insurance has been amended in the 1996 Act. (2) Now, section 508(b)(7) of the Act requires the producer to obtain at least a CAT plan of insurance or

comparable coverage unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop, to remain eligible for certain other USDA program benefits. The intent of the Act is to encourage the fullest possible participation in the Federal Crop Insurance program since *ad hoc* disaster legislation is repealed. Crop insurance provides greater assurance that producers are protected from the impacts of widespread disaster causing a crop loss. The CAT endorsement will be amended to conform to the statutory change.

*Comment:* Nine comments received from producers stated that it is unfair to have to obtain insurance on other crops such as corn, wheat and soybeans in order to remain eligible for the tobacco price support program.

*Response:* The statutory requirement to obtain insurance for all crops of economic significance, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop, is applicable to all Agriculture Marketing Transition Act benefits, the conservation reserve program, and certain farm credit programs. Producers who do not participate in these programs are not required to obtain insurance on any of their crops. However, with the elimination of *ad hoc* disaster assistance, a producers only available protection is through crop insurance.

#### Comments Regarding Administrative Fees

*Comment:* Twenty-two (22) comments received from producers and 1 comment received from FSA state that: (1) Charging the same administrative fee for both small producers and large producers was unfair; (2) the larger producer will receive greater payments than the small producer due to the differences in the acreages; (3) the number of people involved in an operation does not increase the risk; (4) the size of the operation affects the liability covered; (5) in determining the administrative fees, factors should be used to compensate the differences in the size of the acreage, not the number of crops; (6) the amount of coverage or size of the operation should be a consideration in determining the administrative fee; and (7) fees should be pro-rated based on the size of the operation, a given amount per acre, or something fair for the small farmer in respect to the benefit they could attain from it.

*Response:* Section 508(b)(5) of the Act mandates the amount of administrative

fee. The Act expressly states that the fee will be paid on a per crop and per county basis. FCIC does not have the authority to change this requirement. Further, this fee is not related to the amount of liability or the risk associated with the size of the operation. The fee is intended to defray the costs associated with calculating the actual production history and processing applications, acreage reports, etc., which do not normally vary greatly between small and large farming operations. Producers who do not wish to obtain insurance and pay the administrative fee for any or all of their crops may execute a waiver of any eligibility for emergency crop loss assistance for the crop. Therefore, no change will be made.

*Comment:* Seven comments received from producers claimed the administrative fee is not fair because separate fees are required for (1) each crop; (2) each county; and (3) crops in two or more counties when farms are consolidated in one FSA Farm Serial Number and administered in one FSA office.

*Response:* Section 508(b)(5) of the Act mandates that the fee be paid on a per crop and per county basis. FCIC does not have the authority to change this requirement. Producers who do not wish to obtain insurance and pay the administrative fee for any or all of their crops may execute a waiver of any eligibility for emergency crop loss assistance for the crop. Therefore, no change will be made.

*Comment:* One comment from a producer claimed that as a result of the narrow definition of "limited resource farmer" and "crop of economic significance," small farmers with several crops are required to pay \$200 plus idle acreage to be eligible for certain other USDA program benefits. In return, they receive little more in program benefits than the administrative fees incurred. The producer stated that he would like to pay the administrative fee for each farm rather than one fee per crop or have the fee based on acreage or something fair for the small farmer.

*Response:* FCIC is statutorily mandated to charge an administrative fee on a per crop basis. However, if the amount of liability under the policy is equal to or less than the administrative fee, the crop is not considered a "crop of economic significance" and the producer is not required to obtain insurance for the crop. Further, under the 1996 Act, producers of program crops are no longer required to idle acres. Producers who do not wish to obtain insurance and pay the

administrative fee for any or all of their crops may execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop. Therefore, no change will be made.

*Comment:* Seven (7) comments received from producers stated that it is unreasonable for each person sharing in a crop to pay separate administrative fees.

*Response:* (1) Section 508(b)(7) states that each "person" must obtain crop insurance on any crop of economic significance in which the person has an interest. (2) The Act further states that each producer must pay an administrative fee. However, persons who execute a waiver of their eligibility for emergency crop loss assistance are still eligible for the specified USDA benefits. FCIC has amended section 7 to specify that, for tobacco producers, only one administrative fee will be charged when one policy is issued for multiple shareholders, provided: (1) A tobacco marketing card has been issued by FSA for a specific producer and Farm Serial Number; (2) all of the shareholders agree in writing; (3) this producer and other persons have a share in the crop; and (4) neither this producer nor the other persons hold any interest in another tobacco crop for which they are required to obtain at least CAT coverage. Linkage requirements will be satisfied for each shareholder of the crop. Section 7 has also been amended to allow a landowner to obtain catastrophic risk protection and establish linkage for all other landowners who hold an undivided interest in the insurable acreage provided: (1) The landowners do not have multiple farming interests; (2) all the 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; (3) the total liability for all landowners is \$2,500 or less; and (4) the landowner insuring the crop will make application for insurance, provide name and identification number for each person, pay the one administrative fee for all the producers within the county, fulfill all agreements under the contract, and receive and distribute the indemnity payments. This is a new provision that will alleviate each producer in an undivided interest from being required to pay a separate administrative fee when all of the producers share in the crop and have no other insurable interest in that crop and the total liability is \$2,500 or less.

*Comment:* The crop insurance industry suggested that the administrative fees for CAT coverage

should be addressed separately from those for limited coverage (see section 6).

*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 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 suggested clarifying the language in section 5 (now 6) which explains that an insured may not receive a refund of an administrative fee if the producer has insured enough crops to generate fees in excess of the caps included in the regulations.

*Response:* This provision has been clarified. Administrative fees will not be refunded if, after the purchase of the additional coverage, the producer still has 4 or more crops insured in the county, or 4 or more crops insured in each of three or more counties, at the CAT or limited coverage level.

*Comment:* The crop insurance industry stated that the endorsement 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 section 6(f) of the endorsement accordingly.

#### Comments Regarding Insureds' Duties and Rights

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

*Response:* Each crop policy contains provisions for procedure 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. In addition, each reinsured company has established mediation, arbitration, or similar procedures to address insureds concerns. Therefore, no change will be made.

#### Claim for Indemnity

*Comment:* The crop insurance industry recommended that the CAT endorsement 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:* (1) The Act expressly provides the producer with the choice of which program under which to receive benefits. (2) 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. (3) Producers cannot make informed choices with respect to which program benefits to choose until they know what benefits will be available. Therefore, section 9(b) of the endorsement 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:* Another comment from FSA stated that previous legislation required emergency loan applicants to have obtained crop insurance the previous year. The reform legislation forbids 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. No change will be made.

#### Comments Regarding Eligibility

*Comment:* One comment was received from within FCIC recommending that language be included that would deny benefits from other USDA programs if the producer fails to carry out the producer's 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 other program benefits specified in section 12(e). A new section 12(f) has been added that states this requirement.

*Comment:* A producer group stated that section 9(b), 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 do 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 this comment.

*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 now producers 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 dates.

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

1. § 402.1—Amend this section by adding, “if provided by the Corporation,” after “The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect producers in the event of a catastrophic crop loss due to loss of yield, or prevented planting” to clarify that not all policies offer prevented planting coverage.

2. Section 1—Clarify the definition of “approved yield” to cover crops not included under 7 CFR part 400, subpart G.

3. Section 1—Delete the phrase “in which you have an insurable share” from the definition of “crop of economic significance”. The Act states that a determination of a “crop of economic significance” be based on the producer’s share of all crops grown in the county, not just the insurable crops.

4. Section 1—Add a definition for “expected market price,” “linkage requirement,” and “zero acreage report” for clarification purposes.

5. Section 1—Delete the definition of “price election” because the definition of “expected market price” replaced it.

6. Section 1—Delete the definition of “CFSA” and add the definition of “FSA” to reflect the change in the agency’s name.

7. Section 4—Add a new section 4(e) to clarify that a producer must have suffered at least a 50 percent loss in yield to be eligible for an indemnity under this endorsement.

8. A new section 5(a) has been added specifying that acreage reports be signed and filed before the acreage reporting date. To minimize the burden imposed by the requirement, this provision also allows that an operator may sign the acreage report for all other persons with an insurable interest in the policy. All producers are bound by all statements on the signed acreage report. Since the acreage report is an integral part of the insurance contract and the document upon which the premium is based it must be properly executed.

9. A new section 5(b) has been added to consolidate and clarify information on share, share leases, cash leases, and insurance coverage in multiple owner situations. Consequently, the definition of share and section 3(c) of the interim rule has been deleted.

10. Section 6(c) (now 7(a)) has been amended to allow a producer to obtain catastrophic risk protection coverage on high risk land from an insurance provider other than the insurance provider where the limited or additional coverage was obtained, if the provider of the limited or additional coverage does not sell or service CAT policies. This change was necessary because some companies who provide limited and additional coverage do not provide CAT coverage.

11. Section 11(a) (now 12(e)) has been amended by replacing the specifically named price support and production adjustment programs under which producers receive benefits to benefits under the Agricultural Market Transition Act.

#### List of Subjects in 7 CFR Part 402

Claims, Crop insurance, Reporting and recordkeeping requirements.

#### Final Rule

Accordingly, for the reasons set out in the preamble, the interim rule, “Catastrophic Risk Protection Endorsement,” published at 60 FR 2000–2005, is adopted as a final rule, effective for the 1997 and succeeding crop year for all crops with a 1997 crop year contract change date following 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:

7 CFR Part 402 is revised to read as follows:

### PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT; REGULATIONS FOR THE 1997 AND SUBSEQUENT CROP YEARS

#### Sec.

402.1 General statement.

402.2 Applicability.

402.3 OMB control numbers.

402.4 Catastrophic risk protection endorsement.

Authority: 7 U.S.C. 1506(l) and 1506(p).

#### § 402.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect producers in the event of a catastrophic crop loss due to loss of yield or prevented planting, if provided by the Corporation, provided the crop loss or prevented planting is due to an insured cause of loss specified in the crop insurance policy. This Catastrophic Risk

Protection Endorsement is a continuous endorsement that is effective in conjunction with a crop insurance policy for the insured crop. Catastrophic risk protection coverage will be offered through approved insurance providers if there are a sufficient number available to service the area. If there are an insufficient number available, as determined by the Secretary, local offices of the Farm Service Agency will provide catastrophic risk protection coverage.

#### § 402.2 Applicability

This Catastrophic Risk Protection Endorsement is applicable to each crop for which catastrophic risk protection coverage is available and for which the producer elects such coverage.

#### § 402.3 OMB control numbers.

The information collection activity associated with this rule has been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003.

#### § 402.4 Catastrophic Risk Protection Endorsement Provisions.

The Catastrophic Risk Protection Endorsement Provisions for the 1997 and succeeding crop years are as follows:

Department of Agriculture

Federal Crop Insurance Corporation

*Catastrophic Risk Protection Endorsement*

(This is a continuous endorsement)

If a conflict exists between this Endorsement and any of the policies specified in section 2 or the Special Provisions for the insured crop, this endorsement will control.

Terms and Conditions

#### 1. Definitions

*Additional coverage*—Plans of crop insurance providing a level of coverage equal to or greater than sixty-five percent (65%) of your 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.

*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 meets the requirements for a person to qualify for certain other USDA program benefits (see sections 4 and 12).

**County**—The political subdivision of a state listed in the actuarial table and designated on your accepted application, including land in an adjoining county, provided such land is part of a field that extends into the adjoining county and the county boundary is not readily discernable. For peanuts and tobacco, the county will also include any land identified by a FSA farm serial number for the county but physically located in another county.

**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 your 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.

**Insurance is available**—When crop information is contained in the county actuarial documents for a particular crop.

**Limited coverage**—Plans of insurance offering coverage that is equal to or greater than fifty percent (50%) of your 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 your 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 section 12(e), unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

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

**USDA**—The United States Department of Agriculture.

**Zero acreage report**—An acreage report filed by you that certifies you do not have a share in the crop for that crop year.

## 2. Eligibility, Life of Policy, Cancellation, and Termination

(a) You must have one of the following policies in force to elect this Endorsement:

- (1) The General Crop Insurance Policy (7 CFR 401.8) and crop endorsement;
- (2) The Common Crop Insurance Policy (7 CFR 457.8) and crop provisions;
- (3) The Group Risk Plan Policy, if available for catastrophic risk protection; or
- (4) A specific named crop insurance policy.

(b) You must have made application for catastrophic risk protection on or before the sales closing date for the crop in the county.

(c) You must be a "person" as defined in the crop policy to be eligible for catastrophic risk protection coverage.

(d) In addition to the provisions specified in the applicable crop policy, this Endorsement will terminate for the crop year for which:

- (1) You fail to pay the applicable administrative fee, as specified in section 6;
- (2) You elect to purchase limited or additional coverage for the insured crop; or
- (3) The applicable crop policy, to which this endorsement attaches, automatically terminates (i.e., the policy must be renewed each year).

## 3. Unit Division

(a) This section is in lieu of the unit provisions specified in the applicable crop policy.

(b) For catastrophic risk protection coverage, a unit will be all insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

- (1) In which you have one hundred percent (100%) crop share; or
- (2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.)

(c) Further division of the units described in paragraph (b) above is not allowed under this Endorsement.

## 4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) Notwithstanding any provision contained in any other policy document, for the 1995 through 1998 crop years, catastrophic coverage will offer protection

equal to fifty percent (50%) of your approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC.

(b) Notwithstanding any provision contained in any other policy document, for the 1999 and subsequent crop years, catastrophic coverage will offer protection equal to fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

(c) If the crop policy denominates coverage in dollars per acre or other measure, or any other alternative method of coverage, such coverage will be converted to the amount of coverage that would be payable at fifty percent (50%) of your approved yield indemnified at sixty percent (60%) of the expected market price for the 1995 through 1998 crop years and fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price for the 1999 and subsequent crop years.

(d) You may elect catastrophic coverage for any crop insured or reinsured by FCIC on either an individual yield and loss basis or an area yield and loss basis, if both options are offered as set out in the Actuarial Table or the Special Provisions.

(e) To be eligible for an indemnity under this endorsement you must have suffered at least a 50 percent loss in yield.

## 5. Report of Acreage

(a) The report of crop acreage that you file in accordance with the crop policy must be signed on or before the acreage reporting date. For 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, the 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.

(b) For the purpose of determining the amount of indemnity only, your share will not exceed your insurable interest at the earlier of the time of loss or the beginning of harvest. Unless the accepted application clearly indicates that insurance is requested for a partnership or joint venture, insurance will only cover the crop share of the person completing the application. The share will not extend to any other person having an interest in the crop except as may otherwise be specifically allowed in this endorsement. Any acreage or interest reported by or for your spouse, child or any member of your household may be considered your share. A lease containing provisions for both a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) and a crop share will be considered a crop share lease. A lease containing provisions for either a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) or a crop share will be considered a cash lease. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee.

## 6. Annual Premium and Administrative Fees

(a) Notwithstanding any provision contained in any other policy document, you will not be responsible to pay a premium, nor will the policy be terminated because the premium has not been paid. FCIC will pay a premium subsidy equal to the premium established for the coverage provided under this endorsement.

(b) In return for catastrophic risk protection, you must pay an administrative fee as follows:

(1) To the insurance provider at the time of application (the fee will not be refunded if you file a zero acreage report the initial crop year for which the application is accepted);

(2) Annually, on or before the acreage reporting date for the applicable crop for any subsequent crop years that catastrophic risk protection is in effect (The fee will not be required if you file a bonafide zero acreage report on or before the acreage reporting date, however, filing a false zero acreage report could subject you to criminal and administrative sanction); and

(3) Equal to \$50 per crop per county, subject to a maximum of two hundred dollars (\$200) per county and six hundred dollars (\$600) for all counties in which you insure crops. In calculating the maximum amount of administrative fees, the fees paid for both catastrophic risk protection and limited coverage will be combined.

(c) The administrative fee provisions of paragraph (b) of this section do not apply if you meet the definition of a limited resource farmer (see section 1). If you qualify as a limited resource farmer and desire to be exempted from paying the administrative fee you must sign the waiver at the time of application (on or before the sales closing date.)

(d) When a crop policy has provisions to allow you the option to separately insure individual crop types or varieties, you must pay a separate administrative fee in accordance with paragraph (b) of this section for each type or variety you elect to separately insure.

(e) The administrative fee will be refunded if, after applying for catastrophic risk protection and paying the administrative fee, you elect to purchase additional coverage for such crop in the same county on or before the sales closing date. Administrative fees will not be refunded, however if, after the purchase of the additional coverage, you still have 4 or more crops insured in the county, or 4 or more crops insured in each of three or more counties, at the CAT or limited coverage level.

(f) 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. You may be ineligible for certain other USDA program benefits as set out in section 12, and all such benefits already received for the crop year must be refunded. If you fail 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.

## 7. Insured Crop

The crop insured is specified in the applicable crop policy, however:

(a) Notwithstanding any other policy provision requiring the same insurance coverage on all insurable acreage of the crop in the county, if you purchase limited or additional coverage for a crop, you may separately insure acreage under catastrophic coverage that has been designated as "high risk" land by FCIC, provided that you execute a High Risk Land Exclusion Option and obtain a catastrophic risk protection policy with the same approved insurance provider, if available, on or before the applicable sales closing date. If catastrophic coverage is not available from the same insurance provider, you may obtain the catastrophic risk protection policy for the high risk land from another approved insurance provider or FSA, if available. You will be required to pay a separate administrative fee for both the limited or additional coverage policy and the catastrophic coverage policy unless the maximum administrative fee would be exceeded.

(b) 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 persons 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:

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

(2) The producer insuring the crop will:

(i) 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;

(ii) 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);

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

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

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

(c) 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:

(1) All the landowners must 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;

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

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

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

(5) The landowner insuring the crop will:

(i) 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;

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

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

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

## 8. Replanting Payment

Notwithstanding any provision contained in any other crop insurance document, no replant payment will be paid whether or not replanting of the crop is required under the policy.

## 9. Claim for Indemnity

(a) If two or more insured crop types, varieties, or classes are insured within the same unit, and multiple price elections are applicable, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each type, variety, class, etc., that have separate price elections and then totaled to determine the total liability or dollar amount of production to be counted for the unit.

(b) If you are eligible to receive an indemnity under this endorsement and benefits compensating you for the same loss under any other USDA program, you must elect the program from which you wish to receive benefits. Only one payment or program benefit is allowed. However, if other USDA program benefits are not available until after you filed a claim for indemnity, you may refund the total amount of the indemnity and receive the other program benefit. Farm ownership and operating loans, may be obtained from the USDA in addition to crop insurance indemnities.

## 10. Concealment or Fraud

Notwithstanding any provision contained in any other crop insurance document, your CAT policy may be voided by us on all crops without waiving any of our rights, including the right to collect any amounts due:

(a) If at any time you conceal or misrepresent any material fact or commit fraud relating to this or any other contract issued under the authority of the Federal Crop Insurance Act with any insurance provider; and

(b) The voidance will be effective as of the beginning of the crop year during which such act or omission occurred. After the policy has been voided, you must make a new application to obtain catastrophic risk protection coverage for any subsequent crop year. If your policy is voided under this

section, any waiver of eligibility for emergency crop loss assistance in connection with the crop will not be effective for the crop for the year in which the avoidance occurred.

#### 11. Exclusion of Coverage

(a) Options or endorsements that extend the coverage available under any crop policy offered by FCIC will not be available under this endorsement, except the Late Planting Agreement Option. Written agreements are not available for any crop insured under this endorsement.

(b) Notwithstanding any provision contained in any other crop policy, hail and fire coverage and high-risk land may not be excluded under catastrophic risk protection.

#### 12. Eligibility for Other USDA Program Benefits

(a) Even if it was a crop of economic significance for the previous crop year, if you do not intend to plant the crop in the current crop year, you do not have to obtain crop insurance or execute a waiver of your eligibility for any emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in subsection (e). However, if, after the sales closing date, you plant that crop, you will be unable to obtain insurance for that crop and you must execute a waiver of your eligibility for emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in section 12(e). Failure to execute such a waiver will require you to refund any benefits already received under a program specified in section 12(e).

(b) You are initially responsible to determine the crops of economic significance in the county. The insurance provider may assist you 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 your 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 section 12(b)(2).

(c) You 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 you use the same type of price for all crops in the county.

(d) You 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.

(e) You must obtain at least catastrophic coverage for each crop of economic significance in the county in which you have an insurable share, if insurance is available in the county for the crop, unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for:

(1) Benefits under the Agricultural Market Transition Act;

(2) 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

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

(f) 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 you breach the insurance contract, the execution of a waiver of any eligibility for emergency crop loss assistance will not be effective for the crop year in which the breach occurs.

Signed in Washington, D.C., on August 13, 1996.

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

[FR Doc. 96-21117 Filed 8-19-96; 8:45 am]

BILLING CODE 3410-FA-P

### Agricultural Marketing Service

#### 7 CFR Part 922

[Docket No. FV96-922-1FIR]

#### Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule suspending for the 1996 season only, the minimum grade requirements (Washington No. 1), for fresh shipments of apricots grown in Washington. This change was recommended by the Washington Apricot Marketing Committee (committee), which works with the Department in administering the marketing order covering apricots grown in designated counties in Washington. This rule enables handlers to ship more fruit in fresh market channels, taking into consideration the damage caused to Washington apricots by freezing temperatures during the growing season. This change is expected to increase returns to producers and to make more fresh apricots available to consumers.

**EFFECTIVE DATE:** September 19, 1996.

#### FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724;

or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5331. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 132 and Marketing Order No. 922 (7 CFR Part 922), both as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of