

# Rules and Regulations

Federal Register

Vol. 62, No. 150

Tuesday, August 5, 1997

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

RIN 0563-AB01

#### General Administrative Regulations; Ineligibility for Programs Under the Federal Crop Insurance Act

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) to prescribe the procedures for determining eligibility for program participation in any program administered under the Federal Crop Insurance Act, as amended, and administering and maintaining an ineligible tracking system. In addition, this rule sets out the criteria for reinstatement of program eligibility.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bill Smith, Supervisory Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7743.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 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 the

expected benefits of this action outweigh the cost to society. By allowing the efficient tracking of ineligible individuals, the Federal government will be able to collect about \$6 million annually in debts owed by crop insurance policyholders. No additional burden on policyholders will result through implementation of the tracking system. Information previously provided by policyholders and required to obtain benefits under the Federal crop insurance program will be used to establish and administer the tracking system. The tracking system will cause an additional burden for crop insurance companies for reporting and retrieving information to and from the tracking system, creating new data processing requirements. This burden is estimated to be \$250,000 for the first year and \$50,000 annually thereafter. Federal costs for developing and maintaining the data processing systems and administrative processes for the tracking system are estimated to be \$20,000 for the first year and \$10,000 annually for future years.

##### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements under OMB number 0563-0047, through November 30, 1999. No public comments were received.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates 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 mandate (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 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures 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. The amount of work required of insurance companies should not increase because the information used to determine eligibility is already maintained at their office. The amount of work required of insurance companies may actually be reduced because verification with FCIC of a producer's compliance with the controlled substance regulations, currently done manually, will be automated. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

##### Federal Assistance Program

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

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 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 12988

The final rule has been reviewed in accordance with Executive Order 12988. 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 part 11 must be exhausted before 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.

##### Background

On Thursday, October 31, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 56151-56155

to issue General Administrative Regulations (7 CFR part 400, subpart U) effective for the 1998 crop year (1999 for Texas and Arizona/California Production Citrus) and succeeding crop years. Following publication of that proposed rule, the public was afforded 60 days to submit written comments, data, and opinions. A total of 62 comments were received from the crop insurance industry, Farm Service Agency, and FCIC. The comments received, and FCIC responses, are as follows:

*Comment:* Two comments received from the crop insurance industry questioned where provisions are to be found for the administration of the Ineligible Tracking System.

*Response:* Provisions for the administration of the Ineligible Tracking System will be contained in FCIC procedures and will be issued when the Ineligible Tracking System is activated.

*Comment:* One comment received from the crop insurance industry asked if the Ineligible Tracking System would be part of the existing Policyholder Tracking System or a separate tracking system.

*Response:* The Ineligible Tracking System's purpose requires it to be separate from the Policyholder Tracking System. The Policyholder Tracking System is basically used for informational inquiries to FCIC's data systems containing insurance experience and related information for individual insureds. The Ineligible Tracking System's primary purpose is the validation of a person's eligibility to receive insurance program benefits based on records submitted by insurance providers and to accept or reject the person for insurance purposes based on that eligibility determination.

*Comment:* One comment received from the crop insurance industry suggested the reference to "makes a significant contribution" contained in the definition of actively engaged in farming, was too broad and subjective, difficult to prove, and would work to disadvantage of insurance provider and program.

*Response:* FCIC agrees and will change the definition from "a significant contribution" to "a contribution," to avoid subjective determinations associated with "significant."

*Comment:* One comment received from the crop insurance industry questioned if the definition of authorized person should include past as well as current individuals associated with FCIC or an insurance provider, since a former relationship would no longer require access to the Ineligible Tracking System.

*Response:* An individual could be involved in judicial or administrative proceedings after they have left the employment of FCIC or the insurance provider and require access to protected information. For this reason, the definition must provide access for both current and past contractors, employees, or other types of individual or business associations. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry questioned if under the definition of controlled substances, drug related convictions not related to "planting and harvesting" prohibited drug producing plants would be a cause for ineligibility.

*Response:* The violation of controlled substance provisions under this subpart is limited to the planting, harvesting, and storing of prohibited drug producing plants. Violations related to the sale or distribution of an illegal drug, for example, would not be covered under this definition unless the person was also convicted of growing the plants from which the drug was processed.

*Comment:* Two comments received from FCIC stated that the spelling of the species names for marijuana and opium poppies is incorrect.

*Response:* FCIC agrees and will correct the spelling.

*Comment:* Two comments received from the crop insurance industry concerning the definition of debt questioned if an "appropriate agency official" would only apply to FCIC and if so the rule should specify position/title. Would the determination be made without regard to the appeal process, the judicial system, NAD, or the Board of Contract Appeals process.

*Response:* The appropriate agency official will be an employee of the Risk Management Agency. However, FCIC believes that designating the responsible official in this subpart unnecessarily restricts administrative decisions of the agency. FCIC will clarify the definition of debt by stating any determination of debt by an agency official will be based on evidence provided by the insurance provider. Any determination will be subject to review, reconsideration, appeal, judicial process, or other actions in accordance with applicable regulations governing such matters.

*Comment:* Three comments received from the Farm Service Agency and crop insurance industry recommended that administrative fees under the catastrophic risk protection (CAT) program be specifically excluded under the definition of debt and that the reference to "ACT" be changed to "Act".

*Response:* FCIC agrees and will amend the definition accordingly.

*Comment:* One comment received from the crop insurance industry questioned if the insured is responsible for repayment of an overpaid indemnity and does the reason for an overpayment affect the insured's responsibility to make repayment.

*Response:* An overpayment is included under the definition of debt. If a determination of debt is made, the insured is responsible for repayment, whether the overpayment arose from an indemnity or replant payment and irrespective of the cause of the overpayment.

*Comment:* One comment received requested FCIC describe the time frame in which it must determine that a debt is delinquent.

*Response:* The crop insurance policy and 7 CFR part 400, subpart K provides the procedure and time frames for determining when a debt is delinquent.

*Comment:* One comment received from the crop insurance industry suggested that if scheduled installment payment agreement is entered into after termination date, insurance coverage is automatically reinstated even though the policy had been terminated because, "The debt is not considered delinquent." (For example, the debt is not paid for 1996 crop year and the policy is terminated for the 1997 crop year; a payment agreement is set up after the termination date; insurance coverage is reinstated for the 1997 crop year).

*Response:* Once the policy has been terminated for failure to pay a debt, the policy remains terminated for the entire crop year, regardless of whether the producer subsequently pays the debt or enters into an installment payment plan. Reinstatement of eligibility simply means that the producer may apply for, and receive, insurance for the next crop year. It does not mean reinstatement of the policy. The corporation cannot be placed in the position of having to reinstate a policy after a loss has occurred.

*Comment:* One comment received from the crop insurance industry stated that the definition of delinquent debt did not adequately address bankruptcy and establish that a premium unpaid on the termination date is a prefilings debt under the Chapter 12 umbrella and is not a delinquent debt. Unless clarified, there would be uncertainty about the eligibility status for insurance coverage for persons under these circumstances and after discharge of applicable debts under bankruptcy proceedings.

*Response:* The definition of delinquent debt states that such debt

does not include debts discharged in bankruptcy and other debts which are legally barred from collection. If a premium unpaid on the termination date is considered a debt meeting either condition, it cannot be considered in making a determination of ineligibility. It is also clear, that any debt discharged in bankruptcy proceedings is not a delinquent debt and will not limit a person's eligibility under this subpart. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended the definition of insurance provider be changed by replacing "private insurance company approved by FCIC" with "reinsured company approved by FCIC."

*Response:* FCIC has amended the definition to specify "A reinsured company."

*Comment:* One comment received from the crop insurance industry questioned if, under the definitions of scheduled installment payment agreement and settlement, FCIC would enter into an agreement or settlement with a person with a crop insurance policy with a reinsured company.

*Response:* FCIC will only enter installment payment agreements with persons with policies directly insured by FCIC. Where the insurance provider is a reinsured company, the agreements will be between the reinsured company and its insureds.

*Comment:* One comment received from the crop insurance industry recommended the definition of substantial beneficial interest be changed by replacing "Any person having" with "An interest of at least ten percent." As currently written, the interest is defined as person instead of an amount of interest.

*Response:* FCIC agrees and will clarify the definition.

*Comment:* One comment received from the crop insurance industry recommended specific language be added to § 400.678 that would make the Ineligible Tracking System apply to any program developed privately and reinsured by FCIC.

*Response:* FCIC agrees and will revise § 400.678 to add paragraph (c) which will clearly state that privately developed products reinsured by FCIC are subject to this subpart.

*Comment:* One comment received from the crop insurance industry recommended eliminating the second sentence that is contained in paragraphs (a), (b), and (c) of § 400.679 or consolidating it with the opening sentence of the section. Also, the respondent suggested that the sentence, "Delinquent debts are limited to those

that arise from crop insurance programs administered by FCIC under the Act" contained in paragraph (a) be moved and combined with the definition of delinquent debt.

*Response:* FCIC does not believe the suggested changes in § 400.679 (a), (b), and (c) improve the structure or clarity of the subpart. Therefore, no changes will be made. FCIC agrees that the requirement that delinquent debts arise under the Act be included in the definition of "delinquent debt" and has amended the provision accordingly.

*Comment:* One comment received from the crop insurance industry suggested that "A person \* \* \*" contained in the opening sentence of the section be changed to "Any person \* \* \*"; references to "\* \* \* all programs \* \* \*" be changed to "\* \* \* any program \* \* \*"; and the plural case for "their" in the next to the last sentence of paragraph (c) be corrected.

*Response:* FCIC agrees and will amend the section accordingly.

*Comment:* One comment received from the crop insurance industry questioned if a person indebted to FCIC or an approved insurance provider disputes the debt and can "demonstrate that the amount of debt is in dispute, the person's application will be accepted or their insurance will remain in effect but no indemnity will be made until the dispute is resolved." Will there be similar language in the proposed rule if the debt delinquency is disputed by the producer or insured.

*Response:* The provision stated above is contained in 7 CFR part 400, subpart R. FCIC has amended § 400.679 paragraph (a) to reference subpart R to ensure consistency between the subparts.

*Comment:* One comment received from the Farm Service Agency stated that 7 CFR part 796 referenced in § 400.679(b) has been replaced by 7 CFR part 718.

*Response:* FCIC agrees and will amend the section accordingly.

*Comment:* One comment received from the crop insurance industry suggested that § 400.680 entitled "Determinations of ineligibility" should be changed to Notification of ineligibility.

*Response:* FCIC will change the section's title to "Determination and notification of ineligibility."

*Comment:* One comment received from the crop insurance industry questioned if this subpart would apply to all delinquent debts and violations or only those which occur after the effective date of this subpart.

*Response:* This subpart applies to all delinquent debts and violations that

occur after the effective date of this subpart. If this subpart is made effective in the middle of a crop year for a crop, those persons with delinquent debts or violations will be ineligible effective for the next crop year. For persons affected by a delinquent debt or violation that arose prior to the effective date of this subpart, the insurance provider must follow all procedures outlined in this subpart before such persons may be placed on the ineligible list.

*Comment:* Three comments received from the crop insurance industry asked that the term "evidence" be defined and the title or office to which ineligibility evidence is submitted be listed in § 400.680.

*Response:* FCIC will develop and issue procedures which describe the evidence requirements and provides other information and instructions necessary to administer this subpart.

*Comment:* One comment received from the crop insurance industry asked does the failure to make installment payments in accordance with a scheduled installment payment agreement have the potential of causing the individual to become ineligible.

*Response:* The failure to pay installments under an approved payment agreement will result in a determination of ineligibility for the person in accordance with the terms of the agreement. The insurance provider must notify FCIC of the person's payment default in order for this determination to be made.

*Comment:* Two comments received from the crop insurance industry suggested that this section does not make it clear that FCIC is solely responsible for placing the policyholders name on the Ineligible Tracking System because of a delinquent debt and that the reinsured company should be protected from state law in such determinations.

*Response:* FCIC is not solely responsible. It is the insurance provider's responsibility to ensure that the policyholder meets the criteria for placement on the Ineligible Tracking System and provide sufficient information to support its determination. FCIC's responsibility is to verify the information submitted supports that the criteria have been met and issue a Notice of Ineligibility. FCIC is only responsible for the determinations involving persons insured through local Farm Service Agency offices.

*Comment:* One comment received from the Farm Service Agency questioned whether the Notice of Ineligibility will specify the crop year

(or reinsurance year) for which the person is determined ineligible.

*Response:* The notice will specify the crop year ineligibility will become effective and the terms, if applicable.

*Comment:* Two comments received from FCIC and the crop insurance industry concerned whether an insurance provider will receive a copy of the Notice of Ineligibility, inquired if the debtor appealed the ineligibility determination would the company be notified, and recommended that copies of all notices be provided to the insurance provider.

*Response:* When the insurance provider submits evidence of ineligibility and upon verification of the evidence, FCIC will send the Notice of Ineligibility to the policyholder and the insurance provider. Section 400.680 will be amended to include the insurance provider for notification purposes. With respect to notices of appeal, producers will only be able to challenge the placement on the ineligibility list under this subpart. If the reason for placement on the list is debt to a reinsured company, the company will be notified of the appeal hearing and may be given the opportunity to participate if permitted by 7 CFR part 11.

*Comment:* One comment received from the crop insurance industry questioned how a determination of ineligibility would be affected if the person does not receive a Notice of Ineligibility and whether any responsibility for such failure would be borne by the insurance provider.

*Response:* FCIC will implement a notification process employing reasonable steps to assure notification of affected persons, including documentation of those efforts. However, receipt of the notice by the person cannot be guaranteed and is not required in order to enforce a determination of ineligibility. Insurance providers are not responsible or accountable for successfully notifying persons under this subpart unless they did not provide accurate name and address information to FCIC which was available to them.

*Comment:* One comment received from the crop insurance industry suggested that § 400.680 incorrectly states that reconsideration of a determination of ineligibility will be made to the reinsured company. It also suggests that the 30-day period to request a reconsideration or file an appeal was inconsistent with time allowed under the regulation for disputed determinations.

*Response:* FCIC agrees that any appeal of a determination of ineligibility

should not be made to the reinsured company. Only appeals related to whether the person is correctly identified as ineligible will be accepted. Any challenge to the existence or amount of the debt must be appealed under the terms of the policy or 7 CFR part 400, subpart K.

*Comment:* One comment received from the crop insurance industry recommended the term "provider of insurance" used to identify the party to which reconsiderations are submitted be changed to "insurance provider."

*Response:* FCIC will correct this section to state that appeals will be submitted to the National Appeals Division.

*Comment:* One comment received from the crop insurance industry stated that conflicts exist between the reconsideration and appeals provisions under this subpart and applicable provisions contained in 7 CFR part 400, subpart J and part 780. Also determinations made by reinsured companies are erroneously subject to reconsideration and appeal provisions of this subpart.

*Response:* This subpart specifies that all appeals are governed by 7 CFR part 11. Therefore, the requirements of subpart J and part 780 are not applicable. Therefore, no conflict exists.

*Comment:* One comment received from the crop insurance industry suggested that the National Appeals Division (NAD) notify the reinsured company of appeal proceedings so that it could participate and asked what the effect to the company will be if the debt is overturned.

*Response:* Only the listing on the ineligible list is appealable to NAD under this subpart, not the underlying debt. However, the company will be given notice of the appeal and may be given an opportunity to participate if permitted by 7 CFR part 11.

*Comment:* One comment received from the Farm Service Agency asked how individuals insured under provisions contained in the CAT endorsement for tobacco and undivided interest landowners would be affected under this subpart if the named insured for such policies did not pay the premium.

*Response:* There is no premium for CAT. If the administrative fee is not paid by the acreage reporting date, the policy terminates for the crop year for which the fee is not paid. Eligibility for the following year is not affected.

*Comment:* Two comments received from the crop insurance industry stated that removing the ineligible person from a policy and reducing the policyholder share as provided in § 400.681(a) (3) and

(4) will result in entities creating false share arrangements. A recommendation to determine the corporation or other business entity ineligible based on the ineligibility of one of the individual members was made.

*Response:* Removing an ineligible person from the policy will not create false share arrangements. The share of the ineligible person is simply not insurable and all other shares remain the same. Therefore, no changes will be made.

*Comment:* One comment received from the crop insurance industry asked when must the declared overpayment referenced in § 400.681(a)(5) be paid.

*Response:* The crop insurance policy states that an overpayment is considered a delinquent debt if not paid within 30 days of the date a notice is issued to the insured. Once the debt is determined delinquent, all provisions of the policy related to its repayment apply.

*Comment:* Two comments received from the crop insurance industry suggested that § 400.681(a)(6) provides that a portion of the premium should be retained to cover administrative costs rather than refund the entire premium.

*Response:* FCIC agrees that retention of a portion of the producer paid premium by the insurance provider to cover administrative costs is consistent with 7 CFR 400.47 and will amend the provision accordingly.

*Comment:* One comment received from the crop insurance industry expressed concern under § 400.681(b)(1) that the spouse had to have a separate farming operation prior to marriage to maintain it separately for purposes of ineligibility was contrary to existing FCIC procedure and would be impractical to verify.

*Response:* FCIC agrees that it is not necessary that the spouse have had a separate farming operation prior to marriage since there are many instances where the spouses legitimately maintain separate farming operations. Insurance providers will still be required to verify that the farming operations are legitimately separate. The provision is also created to clarify that transfer of a farming operation from one spouse to another is not considered a separate farming operation.

*Comment:* One comment received from the crop insurance industry recommended section 400.681(c), which describes a minor, be added to § 400.677 Definitions.

*Response:* FCIC agrees and will amend the provision accordingly. Further, FCIC will revise the definition to allow persons who are under 18 years of age but have been emancipated by the courts, not to be considered a minor.

*Comment:* One comment received from the crop insurance industry recommended that § 400.681 (d) and (e) be combined and the word "devise" in paragraph (e)(2) be changed to "device."

*Response:* FCIC agrees and will amend the section accordingly.

*Comment:* One comment received from the crop insurance industry questioned the distinction between "adopting a material scheme or device" and "fraud or misrepresentation" contained in § 400.681(e)(2) and (3), and does the insurance provider decide the period of time for disqualification.

*Response:* FCIC has removed the references to scheme and device from this subpart since the penalty for such device is ineligibility to receive benefits only for the crop year in which the abuse occurred. It does not affect future eligibility. These provisions will now be treated under disqualifications under section 506(n) of the Act which encompasses fraud, misrepresentation, and scheme and device. FCIC will determine the length of disqualifications through the administrative process.

*Comment:* One comment received from the crop insurance industry objected to the different periods of ineligibility between a CAT policyholder and a policyholder with limited or additional coverage provided under section 400.681 (e) (3).

*Response:* The periods of ineligibility are specified in Act and 7 CFR part 400, subpart R. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry stated the "scheduled installment payment agreements" between private insurance provider and policyholder as referenced in the definition of "delinquent debt" are presently not reported to FCIC and asked whether payment agreements need to be reported to FCIC.

*Response:* If a person is listed in the Ineligible Tracking System due to a delinquent debt, notification will be required if the person enters into a payment agreement in order for the person's name to be removed from the system and eligibility for insurance coverage reinstated. If the person fails to perform under the agreement, the reinsured company will have to notify FCIC in order for ineligibility to be reinstated. No notification to FCIC is required if the payment agreement is approved by the company by the termination date.

*Comment:* One comment received from the crop insurance industry pointed out under § 400.682 that the second sentence of paragraph (a) refers to "reinstated" while the second sentence of paragraph (c) refers to

"restored" and that the first sentence of each paragraph could be shortened. Also, the use of the words "may have" in the opening sentence of this section and paragraph (c) versus "will be" in paragraphs (a) and (b) as related to reinstating eligibility was questioned.

*Response:* FCIC will change "restored" to "reinstated" and "will be" to "may be." The latter change will eliminate any possible conflict in reinstating eligibility for the person if more than one criteria for ineligibility applies.

*Comment:* One comment received from the crop insurance industry stated the timing of reinstatement of insurance coverage is a critical issue and suggested procedures be developed to allow a person to obtain immediate coverage even after the applicable sales closing date.

*Response:* Section 400.682 (d) states that if eligibility is reinstated after the applicable sales closing date for the crop year, insurance coverage can not be obtained until the following crop year. The purpose of this provision is to encourage insureds to pay their debt and prevent the payment of a debt only when the insured suspects a loss is likely. Policies will only be reinstated effective at the beginning of the crop year if the producer prevails on appeal. Therefore, no change will be made.

*Comment:* Two comments received from the crop insurance industry stated that § 400.682 (d) and (e) could be combined, perhaps in reverse order.

*Response:* FCIC agrees and will combine paragraph (e) with paragraph (d).

*Comment:* One comment received from the crop insurance industry concerned whether all substantial beneficial interest information currently collected by insurance providers will have to be transmitted to FCIC in establishing the Ineligible Tracking System.

*Response:* The insurance providers will submit all substantial beneficial interest information to FCIC to establish a tracking system capable of properly identifying persons who are ineligible to participate in the crop insurance program.

*Comment:* One comment received from the crop insurance industry questioned if FCIC is going to track the dates of conviction for controlled substance provision and fraud and misrepresentation violations and for purposes of determining future eligibility.

*Response:* The date of conviction and future date of eligibility will be entered into the Ineligible Tracking System and when the period of ineligibility has

expired, the person's name will be removed from the system's active ineligibility records.

*Comment:* One comment received from the Farm Service Agency stated that, "In case of controlled substance violations, FSA would notify FCIC of our determination and FCIC would notify FSA of determinations by reinsured companies, if applicable."

*Response:* FCIC agrees and will develop procedures to facilitate the interagency notification of controlled substance violators.

*Comment:* Two comments received from the crop insurance industry recommended that references to "private companies" contained in § 400.683(a) (2) and (3) be replaced with "insurance provider."

*Response:* Since the Farm Service Agency is encompassed by "Federal agencies," FCIC will amend paragraphs (a) (2) and (3) to use the term "reinsured company."

*Comment:* One comment received from the crop insurance industry questioned whether the information contained in the Ineligible Tracking System would be available to others outside of the crop insurance program.

*Response:* Section 400.683 (a) (2) states that information contained in the system may be furnished to users, both for purposes of administering programs under the Act and for other purposes determined appropriate or required by law or regulation. The release, use, and protection of such information will be in accordance with these and other appropriate laws and regulations.

*Comment:* One comment received from the crop insurance industry concerned what is considered "supporting documentation" that will be maintained by FCIC for affected persons under § 400.683 (a) (3).

*Response:* Paragraph (a) (3) provides that supporting documentation regarding a determination of ineligibility may be maintained by FCIC, FSA, reinsured companies, or others. Such information will be described in procedures developed by FCIC and issued to insurance providers and will indicate the parties responsible for maintaining such documentation.

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

1. Changed the effective year for this subpart to 1998 crop year (1999 for Texas and Arizona and California Production Citrus).

2. Section 400.677. Add a definition of "CAT" and "minor" for clarification. Amend definition of "insurance provider" to refer to a "reinsured company" instead of a "private

insurance company reinsured by FCIC" to avoid the redundancy with the definition of "reinsured company."

3. Revise § 400.681 to add a new subsection (a) to clarify when the period of ineligibility commences and combine it with subsection (d) to clarify the term of ineligibility. Redesignate the other subsections accordingly.

#### List of Subjects in 7 CFR Part 400

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

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation adds a new subpart U to 7 CFR part 400, to read as follows:

#### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

##### Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

Sec.	
400.675	Purpose.
400.676	OMB control numbers.
400.677	Definitions.
400.678	Applicability.
400.679	Criteria for ineligibility.
400.680	Determination and notification of ineligibility.
400.681	Effect of ineligibility.
400.682	Criteria for reinstatement of eligibility.
400.683	Administration and maintenance.

**Authority:** 7 U.S.C. 1506(1), 1506(p).

#### § 400.675 Purpose.

This rule prescribes conditions under which a person may be determined to be ineligible to participate in any program administered by FCIC under the Federal Crop Insurance Act, as amended. This rule also establishes the criteria for reinstatement of eligibility.

#### § 400.676 OMB control numbers.

The collecting of information requirements in this subpart has been approved by the Office of Management and Budget and assigned OMB control number 0563-0047.

#### § 400.677 Definitions.

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

**Actively engaged in farming.** Means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

**Applicant.** A person who has submitted an application for crop insurance coverage under the Act.

**Authorized person.** Any current or past officer, employee, elected official, general agent, agent, contractor, or loss

adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to the Ineligible Tracking System to administer the Act.

**CAT.** The catastrophic risk protection plan of insurance.

**Controlled substance.** Any prohibited drug-producing plants including, but not limited to, cacti of the genus (*lophophora*), coca bushes (*erythroxylum coca*), marijuana (*cannabis sativa*), opium poppies (*papaver somniferum*), and other drug-producing plants, the planting and harvesting of which is prohibited by Federal or state law.

**Debt.** An amount of money which has been determined by an appropriate agency official to be owed, by any person, to FCIC or an insurance provider under any program administered under the Act based on evidence submitted by the insurance provider. The debt may have arisen from an overpayment, premium non-payment, interest, penalties, or other causes but does not include non-payment of CAT coverage administrative fees.

**Debtor.** A person who owes a debt and that debt is delinquent.

**Delinquent debt.** Any debt owed to FCIC or the insurance provider, that arises under any program administered under the authority of the Act, that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement or notification of indebtedness, or any overdue debt owed to FCIC or the insurance provider which is the subject of a scheduled installment payment agreement which the debtor has failed to satisfy under the terms of such agreement. Such debt may include any accrued interest, penalty, and administrative charges for which demand for repayment has been made, or unpaid premium including any accrued interest, penalty and administrative charges (7 CFR 400.116). A delinquent debt does not include debts discharged in bankruptcy and other debts which are legally barred from collection.

**EIN.** An Employer Identification Number as required under section 6109 of the Internal Revenue Code of 1986.

**FCIC.** The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

**FSA.** The Farm Service Agency or a successor agency.

**Ineligible person.** A person who is denied participation in any program administered by FCIC under the Act.

**Insurance provider.** A reinsured company or FSA providing crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

**Minor.** Any person under 18 years of age. Court proceedings conferring majority on an individual under 18 years of age will result in such persons no longer being considered as a minor.

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

**Policyholder.** An applicant whose properly completed application for insurance under the crop insurance program has been accepted by FCIC or an insurance provider.

**Reinsurance agreement.** An agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

**Reinsured company.** A private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with FCIC, whose crop insurance policies are approved and reinsured by FCIC.

**Scheduled installment payment agreement.** An agreement between a person and FCIC or the insurance provider to satisfy financial obligations of the person under conditions which modify the terms of the original debt.

**Settlement.** An agreement between a person and FCIC or the insurance provider to resolve a dispute arising from a debt or other administrative determination.

**SSN.** An individual's Social Security Number as required under section 6109 of the Internal Revenue Code of 1986.

**Standard Reinsurance Agreement (SRA).** The primary reinsurance agreement between the reinsured company and FCIC.

**Substantial beneficial interest.** An interest held by any person of at least 10 percent or more in the applicant or policyholder.

**System of records.** Records established and maintained by FCIC and FSA containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to Federal crop programs as required by FCIC, from which information is retrieved by a personal identifier including the SSN, EIN, name, or other unique identifier of a person.

#### § 400.678 Applicability.

This subpart applies to any program administered by FCIC under the Act, including:

(a) The catastrophic risk protection plan of insurance;

(b) The limited and additional coverage plans of insurance as authorized under sections 508(c) and 508(m) of the Act; and

(c) Private insurance products authorized under section 508(h) of the Act and reinsured by FCIC.

**§ 400.679 Criteria for ineligibility.**

Any person may be determined to be ineligible to participate in any program administered by FCIC under the authority of the Act, if the person meets one or more of the following criteria:

(a) Has a delinquent debt on a crop insurance policy, issued or reinsured by FCIC, or any delinquent debt due FCIC under the Act. Any person with a delinquent debt owed to FCIC or to the insurance provider shall be ineligible to participate in any program administered under the authority of the Act. Such determinations will be in accordance with 7 CFR 400.459. The existence and delinquency of the debt must be verifiable.

(b) Has violated the controlled substance (7 CFR part 718) provisions of the Food Security Act of 1985, as amended. Any person who violates the controlled substance provisions of the Food Security Act of 1985, as amended, shall be ineligible to participate in any program administered under the Act.

(c) Has been disqualified under section 506(n) of the Act and 7 CFR part 400, subpart R. Any person who is disqualified in any administrative proceeding shall be ineligible to participate in any program administered under the Act. Ineligibility determinations resulting from administrative proceedings will not be stayed pending review. However, reversal of the determination will date back to the time of determination.

**§ 400.680 Determination and notification of ineligibility.**

(a) The insurance provider must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt. After the insurance provider has evaluated the person's response, if any, and determined that the debt is owed and delinquent, the insurance provider should submit the documentation establishing the existence and amount of the debt to FCIC, including any response by the person.

(b) If an insurance provider or any other authorized person has evidence that a person meets any other criteria set

forth in § 400.679, they must submit the evidence to FCIC.

(c) After FCIC verifies that the person has met one or more of the criteria stated in § 400.679, FCIC will issue a Notice of Ineligibility and mail such notice to the person's last known address and to the insurance provider.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the persons right to an appeal of the ineligibility determination.

(e) Within 30 days of receiving the Notice of Ineligibility, any person receiving such a notice may appeal the determination of ineligibility to the National Appeals Division in accordance with 7 CFR part 11.

(f) If the person appeals the determination of ineligibility to the National Appeals Division, the insurance provider will be notified and provided with an opportunity to participate in the proceeding if permitted by 7 CFR part 11.

**§ 400.681 Effect of ineligibility.**

(a) The period of ineligibility will be effective:

(1) For ineligibility as a result of a delinquent debt, the date the debt has been determined to be delinquent until the debt has been paid in full, discharged in bankruptcy, or the person has executed a scheduled installment payment agreement;

(2) For ineligibility as a result of a violation of the controlled substance provisions of the Food Security Act of 1985, at the beginning of the crop year in which the producer was convicted and the four subsequent consecutive crop years; and

(3) For ineligibility as a result of a disqualification under section 506(n) of the Act, the date that the Administrative Law Judge signs the order disqualifying the person until the period specified in the order of disqualification has expired.

(b) Once the person has been determined to be ineligible:

(1) All policies in which the ineligible person is the sole insured will be void for the period specified in § 400.681(a);

(2) If the ineligible person is a general partnership, all partners will be individually ineligible and any policy in which a partner has a 100 percent interest will be void for the period specified in § 400.681(a). The partnership and all partners will be removed from any policy in which they have a substantial beneficial interest, and the policyholder share under the

policies will be reduced commensurate with the ineligible person's share;

(3) If the applicant or policyholder is a corporation, partnership, or other business entity, and an ineligible person has a substantial beneficial interest in the applicant or policyholder, the application may be accepted or existing policies remain in effect, although the ineligible person will be removed from the policies and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(4) If the applicant or policyholder is a corporation, partnership, or other business entity that was created to conceal the interest of a person in the farming operation or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or policyholder, the corporation, partnership or other business entity will be disregarded, the individual shareholders or partners will be personally responsible, and any shareholder or partner that is ineligible will be removed from the policy and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(5) Any indemnities or payments made on a voided policy, or on the portion of the policy reduced because of ineligibility, will be declared overpayments and must be repaid; and

(6) If the policy is voided, all producer paid premiums may be refunded, or if an ineligible person is removed from a policy, the portion of the producer paid premium commensurate with the ineligible person's share may be refunded, less a reasonable amount for expense and handling in accordance with 7 CFR 400.47.

(c) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse (Transfers of interest in a farming operation from one spouse to another will not be considered as a separate farming operation.);

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the

minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and record keeping for the minor's farming operation.

**§ 400.682 Criteria for reinstatement of eligibility.**

A person who has been determined ineligible may have eligibility reinstated as follows:

(a) A delinquent debt owed on a crop insurance policy insured or reinsured by FCIC or any delinquent debt due FCIC. Eligibility may be reinstated after the debt is paid in full or discharged in bankruptcy, or the person has executed a scheduled installment payment agreement accepted by FCIC or the insurance provider. Eligibility may be reinstated as of the date the debt is paid, the date the agreement is accepted, or the date the debt is discharged in bankruptcy.

(b) Violations of the controlled substance provisions of the Food Security Act of 1985, as amended. Eligibility may be reinstated after the period of ineligibility stated in § 400.681 has expired.

(c) Disqualification under section 506(n) of the Act. Eligibility may be reinstated when the period of disqualification determined in the administrative proceedings has expired and payment of all penalties and overpayments have been completed.

(d) Timing of reinstatement of eligibility. After eligibility has been reinstated, the person must complete a new application for crop insurance coverage on or before the applicable sales closing date. If the date of reinstatement of eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year. If the National Appeals Division determines that the person should not have been placed on the Ineligible Tracking System, reinstatement will be effective at the beginning of the crop year for which the producer was listed on the Ineligible Tracking System and the person will be entitled to all applicable benefits under the policy.

**§ 400.683 Administration and maintenance.**

(a) Ineligible producer data will be maintained in a system of records in accordance with the Privacy Act, 5 U.S.C. 552a.

(1) The Ineligible Tracking System is a record of all persons who have been determined to be ineligible for participation in any program pursuant to this subpart. This system contains identifying information of the ineligible person including, but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period for ineligibility.

(2) Information in the Ineligible Tracking System may be used by Federal agencies, FCIC employees, contractors, and reinsured companies and their personnel who require such information in the performance of their duties in connection with any program administered under the Act. The information may be furnished to other users including, but not limited to, FCIC contracted agencies; credit reporting agencies and collection agencies; in response to judicial orders in the course of litigation; and other users as may be appropriate or required by law or regulation. The individual information will be made available in the form of various reports and notices produced from the Ineligible Tracking System, based on valid requests.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement of eligibility will be maintained by FCIC and FSA, or its contractors, reinsured companies, and Federal and State agencies. This documentation will be maintained consistent with the electronic information contained within the Ineligible Tracking System.

(b) Information may be entered into the Ineligible Tracking System by FCIC or FSA personnel.

(c) All persons applying for or renewing crop insurance contracts issued or reinsured by FCIC will be subject to validation of their eligibility status against the Ineligible Tracking System. Applications or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

Signed in Washington, D.C., July 30, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97-20503 Filed 8-4-97; 8:45 am]

BILLING CODE 3410-08-U

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 77**

[Docket No. 96-093-2]

**Tuberculosis in Cattle and Bison; State Designation**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Wisconsin from an accredited-free (suspended) State to an accredited-free State. We have determined that Wisconsin meets the criteria for designation as an accredited-free State.

**EFFECTIVE DATE:** The interim rule was effective on May 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mitchell A. Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale, MD 20737-1231, (301) 734-7727; or e-mail: messey@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule effective and published in the **Federal Register** on May 7, 1997 (62 FR 24801-24802, Docket No. 96-093-1), we amended the tuberculosis regulations in 9 CFR part 77 by removing Wisconsin from the list of accredited-free (suspended) States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before July 7, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

**List of Subjects in 9 CFR Part 77**

Animal diseases, Bison, Cattle, Reporting and recordkeeping