

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 402, 407 and 457

RIN 0563-AC19

#### Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations, Basic Provisions to revise those provisions affected by the changes mandated by the Food, Conservation, and Energy Act of 2008 (Farm Bill 2008).

**DATES:** This rule is effective November 19, 2008. Written comments and opinions on this rule will be accepted until the close of business January 23, 2009 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled "2008 Farm Bill Interim Rule," by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205.

- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131-3055.

- *E-Mail:* DirectorPDD@rma.usda.gov.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676.

**FOR FURTHER INFORMATION CONTACT:** Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

The purpose of this rule is to implement changes to the crop insurance program as mandated by the Farm Bill 2008. The changes within this rule will not have a significant impact on a large number of insured producers as follows: (1) Incorporates a new definition of "organic crop" in the Basic Provisions; however, this revision will have no impact on organic producers or the insurance coverage currently afforded to them; (2) Clarifies that lawsuits by producers for denials of claims under section 508(j)(2) of the Act can only be brought against FCIC or the Secretary in the United States district court when a claim is denied by an approved insurance provider. Prior provisions were not clear with respect to when a producer could directly sue FCIC and this change simply clarifies such and will have little, if any impact, on producers over the current provisions; (3) Allows producers with farm-stored production to elect to extend the settlement of their claim for up to four months after the last date on which claims may be submitted under the policy. This change simply means producers no longer have to get the approved insurance provider's approval to delay settlement of the claim and is only limited to cases where there is farm-stored production, thereby not

impacting a large number of insured producers; and (4) Provides at the election of the Governor of a State designated within the Prairie Pothole National Priority Area, native sod acreage located in a county contained within the Prairie Pothole National Priority Area that is tilled for the production of an annual crop will be ineligible for crop insurance during the first 5 crop years of planting. The Prairie Pothole National Priority Area consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota. This change will not have a significant impact on a large number of insured producers since it only impacts specific acreage of native sod tilled by insured producers in certain counties in only these 5 States and only at the election of the Governors of these States.

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The

provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### 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

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take

specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

On May 22, 2008, the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) was enacted. FCIC must revise those provisions of the Catastrophic Risk Protection Endorsement (CAT Endorsement), Group Risk Plan of Insurance Regulations (GRP), and the Common Crop Insurance Regulations Basic Provisions (Basic Provisions) to implement program changes mandated by the 2008 Farm Bill and clarify existing policy provisions. Provisions in the 2008 Farm Bill that require revisions in the regulations are as follows:

a. Section 12001 of the 2008 Farm Bill contains a definition of "organic crop" that will require this definition to be incorporated in the Basic Provisions.

b. Section 12013 of the 2008 Farm Bill clarifies that lawsuits by producers for denials of claims under section 508(j)(2) of the Act can only be brought against FCIC or the Secretary in the United States district court when a claim is denied by an approved insurance provider on behalf of the Federal Crop Insurance Corporation. Prior provisions were not clear with respect to when a producer could directly sue FCIC. This rule clarifies that it is only if FCIC elects to get involved in the claims process or directs the approved insurance provider to pay the claim for a certain amount or deny the claim that FCIC can be sued by the producer directly. In all other cases, the producer's lawsuit would remain only against the approved insurance provider.

c. Section 12014 of the 2008 Farm Bill allows producers with farm-stored production to elect to extend the settlement of their claim for up to four months after the last date on which claims may be submitted under the policy. Currently, claims must be submitted by 60 days after the end of the insurance period, unless an extension has been requested by the producer and granted by the approved insurance provider. This change means that the producers no longer have to get

the approved insurance provider's approval to delay settlement of the claim. However, this delay is limited to cases where there is farmed-stored production.

d. Section 12020 of the 2008 Farm Bill stated that, at the election of the Governor of a State designated within the Prairie Pothole National Priority Area, native sod acreage located in a county contained within the Prairie Pothole National Priority Area that is tilled for the production of an annual crop will be ineligible for crop insurance during the first 5 crop years of planting. Native sod is defined as land on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing; and that has not been tilled for the production of an annual crop as of the date of enactment of the 2008 Farm Bill. Areas of 5 acres or less are exempt from the terms of the provision. The Prairie Pothole National Priority Area consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at <http://www.rma.usda.gov/>. The 2008 Farm Bill is specific in that, at the election of the Governors of these states, any acreage of native sod that is tilled for production of an annual crop after the date of enactment will be ineligible for insurance for the first 5 crops years of planting. Therefore, the Governors of these states will be contacted by the RMA and encouraged to make this election by February 15, 2009 (30 days before the March 15, 2009, sales closing date for the 2009 crop year) so that insured producers may make timely and appropriate insurance decisions with respect to their farming operation. If the decision to implement the provisions is made after this date, any producer who insured native sod that had been tilled after enactment of the 2008 Farm Bill may be required to repay any indemnities or other payments made on native sod acreage during the period the acreage is ineligible for insurance, and approved insurance providers may be required to remove such acreage from the insurance policy and refund any premium for such acreage. Further, if a Governor makes an election under section 508(o) of the Act to make acreage of native sod planted to an annual crop no longer eligible for crop insurance for the specified period, such election will be announced by FCIC via a Manager's Bulletin and posted on the RMA Web site at <http://www.rma.usda.gov/>.

To implement these provisions, FCIC is revising the CAT Endorsement, GRP

policy and the Basic Provisions, and making such other conforming amendments as are necessary to incorporate such changes.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The changes in this rule are statutorily mandated.

With respect to the provisions of this rule, it would be contrary to the public interest to delay its implementation. If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date prior to the effective date of this publication. This would mean that the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

The amendments in this rule are applicable for the 2009 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2010 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule.

1. The specific changes to the Catastrophic Risk Protection Endorsement (7 CFR part 402) are as follows:

a. Section 1—FCIC is deleting the definitions of “crop of economic significance,” “insurance is available,” and “linkage requirement.” These provisions are only used in relation to the linkage requirements. Section 508(b)(7) of the Act and the new disaster programs included in the 2008 Farm Bill do require the purchase of crop insurance to be eligible for certain USDA benefits. However, the question of eligibility is for the other farm programs to enforce, not crop insurance. Therefore, those other programs should specify the conditions of eligibility, including the requirement to purchase insurance. Including it in the crop insurance policy is not effective because the producer must purchase the policy to know of the linkage requirement and by that time the issue is effectively rendered moot. Removing provisions dealing with “linkage” will also prevent any conflicts between the crop insurance policy provisions and other

USDA program requirements. As a result, FCIC will be removing all provisions relating to linkage from the policy;

b. Section 2—FCIC is removing section 2(a)(1) because the General Crop Insurance Policy (7 CFR 401.8) referenced in these provisions no longer exists;

c. Section 4—FCIC is removing section 4(a) because the provisions were only relevant for the 1995 through 1998 crop years and are no longer applicable.

FCIC is also revising sections 4(b) and (c) (redesignated sections 4(a) and (b)) to remove the reference to different catastrophic risk protection (CAT) coverage levels for the 1995 through 1998 crop years versus the 1999 and succeeding crop years;

d. Section 6—FCIC is revising section 6(e) to remove the reference to section 12. Section 12 is removed by this rule because, as stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more appropriately contained in the rules for such program, not the crop insurance policy; therefore, this reference is no longer needed;

e. Section 7—FCIC is removing current section 7(b) because tobacco marketing cards are no longer being used by the Farm Service Agency.

FCIC is revising redesignated section 7(b) to remove the reference to linkage requirements. As stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more appropriately contained in the rules for such program, not the crop insurance policy;

f. FCIC is removing current section 9(b) because section 35 of the Basic Provisions contains similar provisions. Therefore, this language is redundant;

g. Section 10—FCIC is revising section 10(b) to remove provisions indicating a new application is required after a policy has been voided. When a policy is void, it means no coverage is in place for a certain crop year, but does not automatically mean the policy is canceled or terminated for succeeding crop years. FCIC is also removing provisions referring to the waiver of disaster assistance because the waiver is no longer being used by the Farm Service Agency;

h. Section 11—FCIC is revising section 11(a) to remove the reference to the Late Planting Agreement Option because the option no longer exists; and

i. FCIC is removing section 12 because, as stated above, any requirement that the producer obtain crop insurance to be eligible for another

USDA program benefit is more appropriately contained in the rules for such program, not the crop insurance policy. This will prevent any conflicts between the crop insurance policy provisions and other USDA program requirements.

2. The specific changes to the Group Risk Plan of Insurance Regulations (7 CFR part 407) are as follows:

a. Section 1—FCIC is adding the definition of “native sod” and “Prairie Pothole National Priority Area” consistent with section 12020 of the 2008 Farm Bill. FCIC is also adding the definition of “organic crop” and revising the definition of “organic farming practice” consistent with section 12001 of the 2008 Farm Bill;

b. Section 3—FCIC is adding a new section 3(d) to specify when native sod is ineligible for crop insurance in accordance with section 12020 of the 2008 Farm Bill;

c. Section 16 [Reinsured policy]—FCIC is revising section 16(e) to specify lawsuits must be filed in the United States district court when an approved insurance provider denies a claim on behalf of the Federal Crop Insurance Corporation consistent with section 12013 of the 2008 Farm Bill; and

d. Section 20—FCIC is removing this section and reserving it because it relates to the linkage requirements that the producer obtain crop insurance to be eligible for another USDA program benefit because such provisions are more appropriately contained in the rules for such program, not the crop insurance policy.

3. The specific changes to the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) are as follows:

a. Section 1—FCIC is revising the definition of “catastrophic risk protection” to remove the language pertaining to the requirement for CAT coverage to be eligible for other USDA programs and the waiver of disaster assistance because the waiver is no longer being used by the Farm Service Agency. FCIC is adding the definition of “native sod” and “Prairie Pothole National Priority Area” consistent with section 12020 of the 2008 Farm Bill. FCIC is also adding the definition of “organic crop” and revising the definition of “organic farming practice” consistent with section 12001 of the 2008 Farm Bill;

b. Section 3—FCIC is removing the language referring to linkage and crops of economic significance in section 3(b)(1) because, as stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more

appropriately contained in the rules for such program, not the crop insurance policy;

c. Section 9—FCIC is adding a new section 9(e) to specify when native sod is ineligible for crop insurance consistent with section 12020 of the 2008 Farm Bill;

d. Section 14—FCIC is revising section 14(c) (Your Duties) to specify producers with farm-stored production can elect to extend the settlement of their claim for up to four months after the last date on which claims may be submitted under the policy consistent with section 12014 of the 2008 Farm Bill;

e. Section 20 [Reinsured Policies]—FCIC is revising section 20(e) to specify lawsuits must be filed in the United States district court when an approved insurance provider denies a claim on behalf of the Federal Crop Insurance Corporation consistent with section 12013 of the 2008 Farm Bill; and

f. Section 35—FCIC is removing the reference to an additional coverage plan of insurance in section 35(a). With the removal of section 9(b) of the Catastrophic Risk Protection Endorsement, the language in section 35(a) will apply to both catastrophic risk protection and additional levels of coverage.

List of Subjects in 7 CFR Parts 402, 407 and 457

Crop insurance, Reporting and recordkeeping requirements.

Interim Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 402, 407 and 457 as follows:

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

1. The authority citation for 7 CFR part 402 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 402.4 as follows:

a. Amend section 1 by removing the definitions of “crop of economic significance;” “insurance is available;” and “linkage requirement;”

b. Amend section 2 by removing section 2(a)(1) and redesignating sections 2(a)(2), (3), and (4) as sections 2(a)(1), (2), and (3), respectively;

c. Amend section 4 by removing section 4(a) and redesignating sections 4(b), (c), (d), and (e) as sections 4(a), (b), (c), and (d), respectively;

d. Amend redesignated section 4(a) by removing the phrase “for the 1999 and subsequent crop years.”;

e. Revise redesignated section 4(b); f. Amend section 6(e) by removing the phrase “as set out in section 12, and all such benefits already received for the crop year must be refunded”;

g. Amend section 7 by removing section 7(b) and redesignating section 7(c) as section 7(b);

h. Amend redesignated section 7(b) introductory text by removing the phrase “to satisfy linkage requirements”;

i. Amend section 9 by removing section 9(b) and redesignating section 9(a) as introductory text to section 9 (remove the paragraph designation “(a)”);

j. Revise section 10(b);

k. Amend section 11(a) by removing the phrase “, except the Late Planting Agreement Option”; and

l. Remove section 12.

The revised text reads as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

\* \* \* \* \*

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

\* \* \* \* \*

(b) 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 fifty-five percent (55%) of the expected market price.

\* \* \* \* \*

10. Concealment or Fraud.

\* \* \* \* \*

(b) The voidance will be effective for the crop year during which any such act or omission occurred.

\* \* \* \* \*

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 407 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 407.9 as follows:

a. Amend section 1 by adding definitions of “native sod,” “organic crop,” and “Prairie Pothole National Priority Area” and revising the definition of “organic farming practice;”

b. Amend section 3 by adding a new paragraph (d);

c. Amend section 16(a) introductory text [Reinsured policy] by adding the phrase “or (e)” after the phrase “section 16(d)”;

d. Amend section 16(a)(1) introductory text [Reinsured policy] by

adding the phrase “or (e)” after the phrase “section 16(d)”;

e. Revise section 16(e) [Reinsured policy]; and

f. Remove and reserve section 20.

The revised and added text reads as follows:

§ 407.9 Group risk plan common policy.

\* \* \* \* \*

1. Definitions.

\* \* \* \* \*

Native sod. Acreage on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and that has no record of being tilled (determined in accordance with FSA records) for the production of an annual crop on or before May 22, 2008.

\* \* \* \* \*

Organic crop. An agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Organic farming practice. A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

\* \* \* \* \*

Prairie Pothole National Priority Area. Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at http://www.rma.usda.gov/.

\* \* \* \* \*

3. Insured and Insurable Acreage.

\* \* \* \* \*

(d) If the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than 5 acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled for the production of an annual crop after May 22, 2008, is not insurable for the first 5 crop years of planting following the date the native sod acreage is tilled. If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you may be required to repay the amount received and any premium for such acreage may be refunded to you.

\* \* \* \* \*

[Reinsured policy]

16. Mediation, Arbitration, Appeals, and Administrative and Judicial Review.

\* \* \* \* \*

(e) Except as provided in section 16(d), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

(1) If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal.

(2) Such suit must be brought in the United States district court for the district in which the insured acreage is located.

(3) Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

\* \* \* \* \*  
20. [Reserved]  
\* \* \* \* \*

**PART 457—COMMON CROP INSURANCE REGULATIONS**

■ 1. The authority citation for 7 CFR part 457 is revised to read as follows:

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

■ 2. Amend § 457.8 as follows:

- a. Amend section 1 by adding the definitions of “native sod,” “organic crop,” and “Prairie Pothole National Priority Area” and revising the definitions of “catastrophic risk protection” and “organic farming practice;”
- b. Amend section 3(b)(1) by removing the last sentence;
- c. Amend section 9 by adding a new paragraph (e);
- d. Revise section 14(c) (Your Duties);
- e. Amend section 20(a) introductory text [For Reinsured Policies] by adding the phrase “or (e)” after the phrase “section 20(d)”;
- f. Amend section 20(a)(1) introductory text [For Reinsured Policies] by adding the phrase “or (e)” after the phrase “section 20(d)”;
- g. Revise section 20(e) [For Reinsured Policies]; and
- h. Amend section 35(a) by removing the phrase “under an additional coverage plan of insurance”.

The revised and added text reads as follows:

**§ 457.8 The application and policy.**

1. Definitions.

\* \* \* \* \*

*Catastrophic risk protection.* The minimum level of coverage offered by FCIC.

\* \* \* \* \*

*Native sod.* Acreage on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and that has no record of being tilled (determined in accordance with FSA records) for the production of an annual crop on or before May 22, 2008.

\* \* \* \* \*

*Organic crop.* An agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

*Organic farming practice.* A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

\* \* \* \* \*

*Prairie Pothole National Priority Area.* Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at <http://www.rma.usda.gov/>.

\* \* \* \* \*

9. Insurable Acreage.

\* \* \* \* \*

(e) Notwithstanding the provisions in section 9(a)(1), if the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than 5 acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled for the production of an annual crop after May 22, 2008, is not insurable for the first 5 crop years of planting following the date the native sod acreage is tilled. If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you may be required to repay the amount received and any premium for such acreage may be refunded to you.

\* \* \* \* \*

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your Duties—

\* \* \* \* \*

(c) In addition to complying with the notice requirements, you must submit a claim for indemnity declaring the amount of your loss:

(1) Not later than 60 days after the end of the insurance period unless, prior to the end of the 60 day period, you:

(i) Request an extension in writing and we agree to such request (Extensions will only be granted if the amount of loss cannot be determined within such time period because the information needed to determine the amount of the loss is not available.); or

(ii) Have farm-stored production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity (Extensions will be granted for this purpose up to 180 days after the end of the insurance period.); and

(2) That includes all information we require to settle the claim. Failure to submit a claim or provide the required information will result in no indemnity, prevented planting payment or replant payment (even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit).

\* \* \* \* \*

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

\* \* \* \* \*

(e) Except as provided in section 20(d), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

(1) If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal.

(2) Such suit must be brought in the United States district court for the district in which the insured acreage is located.

(3) Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

\* \* \* \* \*

Signed in Washington, DC on November 18, 2008.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E8–27845 Filed 11–19–08; 4:15 pm]

**BILLING CODE 3410–08–P**