

no authority to change such references. A final rule was published in the **Federal Register** on March 22, 2002, to amend the appeal regulations found in 7 CFR part 400, subpart J, to include the administrative reviews for determinations of good farming practices. Therefore, all of the regulations referenced within the proposed rule do exist and do not reference "reserved" sections. FCIC is also publishing a technical correction, concurrently with this final rule, to amend the appeal procedure regulations found in 7 CFR part 400, subpart J, to clarify determinations of good farming practices made by either the Agency or private insurance companies are subject to administrative review and to make other changes required in response to comments to the proposed rule. One such change is to put all the good farming practice reconsideration requirements in one section. FCIC has clarified section 20 to specify those provisions that are applicable to decisions made by the insurance provider and those made by FCIC. FCIC has added provisions to clarify that decisions with respect to good farming practices do not include determinations of the amount of assigned production for failure to use good farming practices.

Comment: A commenter asked why organic is a different unit when it is just a different practice in section 34(c).

Response: Farming methods used in organic operations are subject to specific criteria, separate from conventional practices. For example, organic producers are prohibited from using certain substances for the control of weeds, disease or insects and fertilizers that conventional producers may use. Additionally, organic production must be kept separate from conventional production to avoid losing its organic status. Since producers maintain records of planted acreage and harvested production for crops grown under an organic practice separate from crops grown conventionally, FCIC believes separate optional units are appropriate for organic acreage.

Comment: One commenter stated the language in section 36 does not conform to the language of ARPA. Another commenter stated that this language will supersede major portions of the Crop Insurance Handbook and current Actual Production History procedures.

Response: ARPA only specifies that FCIC allow such election and what the election consists of. These provisions in the rule are consistent with ARPA. However, ARPA does not specify the manner or timing for such election. Therefore, the manner and timing needed to be included in the policy.

Minor revisions will be required to the existing yield adjustment procedures (yield substitution) contained in the Crop Insurance Handbook to conform with the new language in the Basic Provisions.

Comment: Several commenters stated the reference in section 36(a) to "* * * actual yields in your production history that, due to insured causes of loss, are less than 60 percent of the applicable transitional yield* * *" indicates this applies to ANY insured cause of loss, while section 13 of the 2003 Crop Insurance Handbook specifies "* * * caused by drought, flood, or other natural disasters." The commenters stated that while the end result may be the same, they believe the difference in wording may lead to different interpretations, therefore, they suggest this be clarified.

Response: FCIC agrees that the provisions should be the same and will amend the Crop Insurance Handbook to be consistent.

Comment: Several commenters commented on the ending phrase in section 36(a) which states, "* * * you may elect to exclude one or more of any such yields". Several of the commenters believe the language leads to confusion. They feel the word "excludes" suggests these low actual yields are simply dropped from the Actual Production History (APH) calculation rather than having substitute yields used in their place. The commenters stated this is subsequently explained in subsection (c), but they feel it might be preferable to eliminate any confusion in the first paragraph. They recommended combining subsections (a) and (c).

One of the commenters recommended that FCIC amend the language to read: "you may elect to exclude any of such actual or appraised yields."

Response: FCIC agrees that section 36(a) should also refer to the replacement of yields and has modified the provision accordingly. FCIC has added a definition of "actual yields" that includes both actual and appraised yields. Therefore, no change is made.

Comment: A few commenters stated that while reference to "one or more" of these low actual yields may be technically correct, they believe it could be misunderstood. They believe that once yield adjustment is elected, all qualifying low actual yields are eligible for substitution, but actual implementation is on a database basis (at production reporting time, depending on which of the various possible yield adjustment methods result in the best approved Actual Production History yield), not on an individual yield basis. The commenter

stated for example, one database for a crop/county policy may implement substitute yields while other databases use "cups" or yield floors, however within that first database, substitute yields would replace ALL qualifying low actual yields, not just some.

Response: Section 105 of ARPA authorizes the exclusion and substitution of any actual yield that was less than 60 percent of the applicable transitional yield. The insured will now have the option of excluding and replacing any individual qualifying actual yield within a database instead of replacing all such yields within a database. The provision has been revised for clarity.

Comment: Several commenters stated the language in section 36(b) sounds as though once the yield substitution is elected it can never be canceled, which is contrary to procedures contained in section 13A(4) and 13B of the 2003 Crop Insurance Handbook. They recommended adding "* * * unless canceled by the applicable cancellation date."

Response: Since yield substitution election can be made on an individual actual yield basis, FCIC agrees that the insured should be able to cancel each election in the database. If an election is cancelled, the actual yield will be used in the database. For example, if the insured elected to substitute yields in its database for the 1998 and 2000 crop year, for any subsequent crop year, the insured can elect to cancel the substitution for either or both years. The proposed language was so modified and requires the election to be cancelled by the applicable cancellation date.

Comment: A few commenters suggested the language in section 36(c) that states, "* * * a yield equal to 60 percent of the T-yield that is applicable in the county * * *" could be understood as always meaning the published county "T" Yield from the actuarial documents. They suggested replacing the language with the following: "* * * a yield equal to 60 percent of the applicable T-yield. * * *" The commenters believe this revision would be consistent with current procedural references to the "applicable "T" Yield" since other Actual Production History procedures may result in other types of "T" Yields, sometimes on a database basis, such as the simple average "T" Yield for added land, weighted average "T" Yields for perennials, etc. They also suggested referring to "T" Yields rather than T-yields to be consistent with the format used throughout the Crop Insurance Handbook.