

(ii) All material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless the reconsideration decision is found to be arbitrary or capricious.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, part 407 and 7 CFR part 457 effective for the 2004 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2005 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 9. The authority citation for 7 CFR part 400 continues to read as follows:

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

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

■ 10. Revise the heading of subpart T to read as set forth above.

§ 400.650 [Amended]

- 11. In § 400.650, remove “limited coverage” from the second sentence.
- 12. In § 400.651:
 - a. Revise the definitions of “additional coverage” and “approved yield”;
 - b. Remove “limited,” from the definition of “administrative fee”; and
 - c. Remove the definition of “limited coverage”.

The revisions read as follows:

§ 400.651 Definitions.

* * * * *

Additional coverage. A level of coverage greater than catastrophic risk protection.

* * * * *

Approved yield. The actual production history (APH) yield,

calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

* * * * *

§ 400.652 [Amended]

- 13. In § 400.652:
 - a. Remove “limited,” from paragraph (a);
 - b. Remove the words “Limited and” from paragraph (b) and capitalize the first letter in the word “additional”; and
 - c. Remove the words “limited and” from paragraph (d).

§ 400.654 [Amended]

- 14. In § 400.654:
 - a. Remove “limited” from paragraph (a);
 - b. Remove the words “limited or” from paragraph (c)(6); and
 - c. Remove “limited,” from paragraph (d).

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2004 AND SUCCEEDING CROP YEARS

■ 15. The authority citation for 7 CFR part 407 continues to read as follows:

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

- 16. Amend part 407 by revising the part heading as set forth above.
- 17. Amend § 407.9, as follows:
 - a. Revise the introductory text of the section;
 - b. Amend section 1—Definitions—by adding definitions of “agricultural experts,” “area,” “certifying agent,” “conventional farming practice,” “cover crop,” “double-crop,” “first insured crop,” “generally recognized,” “organic agricultural industry,” “organic farming practice,” “replanted crop,” “second crop” and “sustainable farming practice” and revising the definition of “good farming practices;”
 - c. Revise section 3(c);
 - d. Remove section 3(d);
 - e. Revise section 16; and
 - f. Add a new section 21 between the first paragraph of section 20 and the example immediately following that paragraph.

The revised and added sections read as follows:

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2004 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Agricultural experts. Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Area. Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

* * * * *

Certifying agent. A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

Conventional farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other reasons related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of “second crop”).

* * * * *

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

* * * * *

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

* * * * *

Generally recognized. When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic