

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 400, 407 and 457

[Docket No. FCIC-11-0009]

RIN 0563-AC26

#### General Administrative Regulations; Mutual Consent Cancellation; Food Security Act of 1985, Implementation; Denial of Benefits; and Ineligibility for Programs Under the Federal Crop Insurance Act

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations to revise regulations addressing Ineligibility for Programs under the Federal Crop Insurance Act. The intended effect of this action is to eliminate redundancies, improve clarity, remove or update obsolete references, and add references to other provisions regarding ineligibility for Federal crop insurance.

**DATES:** *Effective date:* This rule is effective February 12, 2014.

*Applicability date:* The changes will apply for the 2015 and succeeding crop years for all crops with a contract change date after February 12, 2014.

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

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of

Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0563-0085, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

##### 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.

##### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

##### 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. However, FCIC does waive certain administrative fees for limited resource farmers to help ensure that small entities are given the same opportunities as large entities to obtain crop insurance. This regulation provides the rules regarding ineligibility for crop insurance under the Act based on actions or inactions of the producer, such as violations of the Controlled Substance Act, debarment from Federal government programs, and failure to pay premiums and administrative fees when due. As such, all producers are treated equally under this regulation. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an unduly burdening 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.

### 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

This rule finalizes changes to 7 CFR part 400 by revising subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act that were published by FCIC on December 5, 2011, as a notice of proposed rulemaking in the **Federal Register** at 76 FR 75799—75805. The public was afforded 61 days to submit comments after the regulation was published in the **Federal Register**.

A total of 25 comments were received from 4 commenters. The commenters were insurance providers and an insurance service organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

#### General Comment

*Comment:* A commenter questioned whether the provisions in the proposed rule would apply only to convictions that occur after the effective date of the final rule.

*Response:* Yes. The laws and regulations in effect at the time of a conviction will apply.

#### Section 400.677 Definitions

*Comment:* A commenter stated the definition of "conviction" is vague, will lead to delays in determinations, and is unclear what the effective date of the conviction will be for purposes of determining ineligibility.

*Response:* FCIC does not agree the definition of "conviction" is vague or will result in delays in determinations. The definition only defines the term; it does not include provisions regarding the effective date or consequences of a conviction. The effective date and duration of ineligibility due to a conviction is provided in section 400.683. No changes were made as a result of this comment.

*Comment:* A commenter questioned the phrase "functional equivalent of a judgment" within the definition of "conviction," and states the definition of the term "conviction" should be limited to "criminal judgments."

*Response:* FCIC agrees the reference to other resolutions that are the functional equivalent of a judgment is not necessary because the definition already includes the phrase "a judgment or any

other determination of guilt." The commenter did not define "criminal judgment" or state how it would differ from the proposed definition of "conviction" which includes "a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction." Accordingly, the reference to other resolutions that are the functional equivalent of a judgment were removed in the final rule; however, no change was made to limit the definition to "criminal judgments."

*Comment:* A commenter questioned what role the Excluded Parties List System (EPLS) plays in the Ineligible Tracking System (ITS) for the insurance provider.

*Response:* The EPLS and ITS are separate sources of data, each with a separate function and purpose. ITS is a list of persons who have been determined to be ineligible for crop insurance because of various reasons related to the crop insurance program. This list is created and maintained by FCIC. The EPLS is a list of persons who have met the criteria for inclusion and whose names were submitted by all government agencies to the General Services Administration (GSA). GSA creates and maintains the EPLS. Therefore, to the extent that FCIC reports to GSA ineligible persons who meet the criteria for inclusion in the EPLS, there is some overlap of the two lists. However, there are persons on the EPLS who may not appear on the ITS because of violations related to other government programs. Similarly, there are persons included on the ITS who do not appear on the EPLS because they do not meet the criteria from inclusion. There is no role for the insurance provider regarding submitting data to the EPLS. However, insurance providers are precluded from insuring or doing business with anyone on the ITS or the EPLS. Therefore, the insurance provider is required to check both the ITS and EPLS to ensure that it is not insuring or doing business with an ineligible person.

*Comment:* A commenter questioned whether the definition of the EPLS will change how the insurance provider transmits or receives information.

*Response:* The rule does not provide instructions regarding how insurance providers transmit or receive any applicable information regarding the EPLS. Since the EPLS is maintained by GSA, GSA will provide information to the public on how it can be accessed. This rule is just intended to provide notice to the insurance providers that they do need to access to EPLS to ensure

that it is not insuring or doing business with an ineligible person.

*Comment:* A commenter questioned the timeframe for the "meaningful opportunity to contest" and whether the definition of "meaningful opportunity to contest" is a change from the notification process provided in the 2011 Ineligible Tracking System Handbook that allows 30 days from the date of Notice of Debt for the insured to challenge the debt.

*Response:* Nothing in this rule is intended to change the established time frames for filing for mediation, arbitration or judicial review contained in existing regulations, policy provisions, and procedures. To the extent that any time frame will be changed, such change will occur in the applicable regulation, policy provision, or procedure. Therefore, no changes have been made as a result of this comment.

*Comment:* A commenter questioned whether the term "Livestock Price Reinsurance Agreement" should be defined and whether the provisions of the rule apply to policies covered under the Livestock Price Reinsurance Agreement.

*Response:* The provisions contained within 7 CFR, part 400, subpart U apply to all policies insured under the Federal Crop Insurance Act, including those reinsured under the Livestock Price Reinsurance Agreement. FCIC agrees the term "Livestock Price Reinsurance Agreement" should be defined in the final rule. The definition was added and the term was referenced where applicable in the final rule.

#### Section 400.679 Criteria for Ineligibility

*Comment:* A few commenters stated the provisions in section 400.679(d) should apply only to individuals and not to all "persons" as defined in the rule.

*Response:* FCIC agrees and has made the changes in section 400.679 and other applicable sections in the final rule.

*Comment:* A commenter stated the references to the regulations at 7 CFR part 3017 are incorrect because those regulations are obsolete and have been replaced with 2 CFR part 180 and 2 CFR part 417.

*Response:* FCIC agrees 7 CFR part 3017 is obsolete. All references to 7 CFR part 3017 have been corrected in the final rule to reference 2 CFR part 180 and 2 CFR part 417. Further, these are no longer the only provisions related to debarment since permanent debarment has been added by the 2008 Farm Bill. Therefore, FCIC has clarified the

provisions in section 400.679 to make the distinction between suspensions and debarments under 2 CFR part 180 and 2 CFR part 417 and debarments under 7 U.S.C. 2209j.

*Comment:* A few commenters stated sections 400.679(c) and (f) are vague, ambiguous, and impose an unnecessary administrative burden on insurance providers and insured producers. They state subsection (f) is ambiguous because it is unclear whether the phrase “ineligible person,” refers to persons made ineligible under 2 CFR part 417, previously 7 CFR part 3017, or all persons ineligible under section 400.679 of the proposed rule. They also state the phrase “knowingly doing business” will impose an unnecessary administrative burden on the insurance providers if it is applied to ineligible persons outside of 2 CFR part 180 and 2 CFR part 417.

*Response:* The phrase “ineligible person” in section 400.679(f) of the proposed rule referred to persons found ineligible under 2 CFR part 180 and 2 CFR part 417, previously 7 CFR part 3017, and 7 U.S.C. 2209j, as a result of the 2008 Farm Bill. The language in the final rule has been amended to refer to persons debarred or suspended under 2 CFR part 180, 2 CFR part 417, and 7 U.S.C. 2209j to provide more clarity. With respect to the burdens, both 2 CFR parts 180 and 417 makes it clear that knowingly doing business with an ineligible person can subject a person to debarment. This applies to all persons, including insurance providers so FCIC cannot change the requirement or exempt insurance providers. As part of normal business operations, insurance providers must be in compliance with USDA regulations, policies and procedures regarding debarment, suspension and eligibility. FCIC has revised the provisions to clarify that it only applies to knowingly doing business with debarred persons as required by the debarment regulations and statutes.

*Comment:* A commenter stated section 400.679(e) should be eliminated or limit its application to those persons who have been listed in the EPLS.

*Response:* FCIC understands that there may be problems of identifying persons who have committed crimes for knowingly defrauding the United States. Further, as drafted, the proposed rule presumed that permanent debarment was automatic after such a conviction but there is still a process that must be followed for the Secretary to debar a person and once that process is completed, the debarred person will be reported to the EPLS. In addition, to make clear that this applies to persons listed on the EPLS, FCIC has referenced

debarments under 2 CFR part 180, 2 CFR part 417, and 7 U.S.C. 2209j.

#### *Section 400.680 Controlled Substance*

*Comment:* A commenter questioned the logic of barring someone convicted of a controlled substance violation from obtaining Federal crop insurance. The commenter stated there is no statutory authority for barring someone convicted of possession of or trafficking in a controlled substance, and the references to such in the rule should be deleted. The commenter stated that Chapter 13 of Title 21 is not applicable to the Federal crop insurance program because eligibility for Federal crop insurance is contingent upon various “payments” and the term “Federal benefit” does not include any benefit for which payments are required for eligibility.

*Response:* FCIC disagrees that there is no statutory authority for barring someone convicted of possession of or trafficking in a controlled substance. The statutory provisions of Chapter 13 of Title 21 regarding convictions for the possession of or trafficking in a controlled substance are applicable to Federal crop insurance because eligibility for Federal crop insurance is not contingent upon any payment. Therefore, no changes have been made as a result of this comment.

*Comment:* A commenter stated that convictions for possession of or trafficking a controlled substance do not result in automatic denial of Federal benefits, or denial of such benefits for a set amount of time, according to Title 21. The determination regarding the denial of Federal benefits and for how long is at the court’s discretion; therefore, section 400.680 is incorrect.

*Response:* FCIC agrees the language in the proposed rule was inaccurate regarding automatic denial of benefits under the Act for conviction of the possession of or trafficking in controlled substances. The final rule has been amended to be consistent with the provisions of Title 21 regarding such convictions.

#### *Section 400.682 Determination and Notification*

*Comment:* A commenter questioned whether National Appeals Division (NAD) appealable disputes are changing.

*Response:* Neither the proposed rule or final rule change appealable disputes under the NAD regulations.

#### *Section 400.683 Period of Ineligibility*

*Comment:* A commenter stated the term “crop year” for determining when ineligibility begins for a person convicted of a controlled substance

violation is vague and needs to be further defined or expanded.

*Response:* The proposed rule did not define the term “crop year.” The term “crop year” is defined in the policy for applicable commodities, and the public was not provided the opportunity to comment on those definitions under the proposed rule. In addition, the applicability of the term “crop year” regarding persons convicted under Federal or State law of planting, cultivation, growing, producing, harvesting or storing a controlled substance is statutory.

*Comment:* A commenter stated they understood that they, as an insurance provider, would deny coverage to an applicant who is not a United States citizen, United States non-citizen national, or a qualified alien, but were not aware of any obligation or requirement to report such individuals as part of the ITS process.

*Response:* Sections 400.682 and 400.684 of the proposed rule did provide that insurance providers must notify FCIC of applicants who are not a United States citizen, United States non-citizen national, or a qualified alien and that such individuals would be placed on the ITS. FCIC agrees that insurance providers are not required to report individuals who are not a United States citizen, United States non-citizen national, or a qualified alien to FCIC. FCIC also agrees that such individuals are not placed on ITS if the sole reason they are ineligible is because they are not a United States citizen, United States non-citizen national, or a qualified alien. The final rule has been amended to remove the reporting requirement of such individuals and the reference that such individuals would be placed on the ITS.

#### *Section 400.684 Effect of Ineligibility*

*Comment:* A couple of commenters stated the proposed rule had two subsections labeled “b” under section 400.684.

*Response:* FCIC agrees and has made the applicable changes in the final rule.

*Comment:* A commenter stated they agree with the consolidation of the provisions in 7 CFR, part 400, subpart F, into 7 CFR, part 400, subpart U, to eliminate redundancies. However, the commenter also stated the provisions in 7 CFR, part 400, subpart F, that allowed insurance providers to continue to receive reinsurance if the insurance provider follows all the regulations and procedures were not retained and consolidated in the proposed rule. The commenter stated the elimination of those provisions could result in an insurance provider being penalized

even though it had followed all of the applicable regulations and procedures.

*Response:* FCIC agrees the provisions of 7 CFR, part 400, subpart F, regarding the continuation of reinsurance in cases involving controlled substance violations where the insurance provider followed all FCIC procedures and regulations should have been retained and consolidated in the proposed rule. The applicable provisions have been added to the final rule.

*Comment:* A commenter stated that subsections 400.684(b)(3) and (4), for general and limited liability partnerships and joint ventures, respectively, are the same and could be combined.

*Response:* FCIC agrees the provisions for general partnerships, limited liability partnerships and joint ventures are repetitive and although legally there may be distinctions between these entities, they are being treated the same for the purposes of this final rule. Therefore, FCIC has combined the provisions and renumbers the subsequent provisions accordingly.

*Comment:* A few commenters stated section 400.684(b)(5)(redesignated as 400.684(b)(4)) is ambiguous, denies appeal rights and liability protections to insured producers and insurance providers, could adversely affect a person's eligibility for program benefits even when that person is not a party to a contract, and that FCIC should revise or eliminate the subsection because it creates a burden that outweighs the potential benefits.

*Response:* FCIC does not agree the subsection is ambiguous, denies any appeal rights or liability protections or could affect a person who is not a party to the applicable policy. The provision applies to different types of entities and specifies that it applies to the persons who are in control of the actions of such entities or are responsible for the action or inaction that resulted in the ineligibility. Since entities have no ability to take action except through the persons conducting the business of the entity, it is appropriate to hold such individuals responsible for their actions or inactions. Further, appeal rights will be afforded such individuals the same as they would for any other person determined to be ineligible. While certain state laws protect individuals within certain entities, the crop insurance program is funded with taxpayer dollars and FCIC has the responsibility to ensure those dollars are properly spent. The provisions are necessary to ensure the integrity of the Federal crop insurance program and prevent producers from circumventing their ineligibility by hiding behind the

façade of an entity. Therefore, no changes have been made as a result of this comment.

#### *Section 400.686 Administration and Maintenance*

*Comment:* A commenter stated that subsection 400.686(d) should be rewritten to read "AIPs must check to ensure that the persons with whom they are doing business are eligible to participate in the programs authorized under the Act. The ITS does not include all persons ineligible to receive government benefits, such as persons debarred, disqualified or suspended from receiving government benefits as a result of being listed in EPLS."

*Response:* FCIC disagrees with the commenters suggested changes. The provision applies to all participants in the program, and that includes not only insurance providers but it also includes partners, cooperators, and contractors, to ensure that the persons with whom they are doing business are eligible to participate in the programs authorized under the Act. The provision has been clarified to specify that insurance providers, partners, cooperators, and contractors must check ITS and other sources, such as the EPLS, to identify ineligible persons. Further, there appears to be some confusion regarding the EPLS. The EPLS is a source of information about certain persons who are ineligible for certain benefits or transactions. The government agency that reported the person to EPLS actually determined the person's ineligibility.

In addition to the changes described above, FCIC has made minor editorial changes, revisions to specific sections of 7 CFR, part 400, subpart U, and revisions to 7 CFR, parts 407 and 457 as follows:

#### Part 400, Subpart U

1. Revised the definition of "debt" and "delinquent debt" for consistency with § 400.682 and § 400.684 regarding debtors that file bankruptcy. The definitions in the proposed rule were in conflict with the existing provisions regarding the eligibility of a person in bankruptcy in section 400.683(b)(1). The final rule clarifies that only discharge of the debt in bankruptcy will restore eligibility.

2. Revised § 400.682(a) because of the inconsistency in the proposed rule regarding bankruptcy. The intent of the proposed rule was to specify that filing for bankruptcy did not make a person eligible for crop insurance. To be eligible the debt must be discharged in bankruptcy. However, nothing in this rule was intended to abrogate any

existing bankruptcy laws regarding the collection of a debt while the producer is in bankruptcy. Therefore, FCIC has clarified that a debtor who has filed for bankruptcy may be notified of the amount of debt owed and their ineligibility for insurance; however, no request for payment of the debt can be made, unless approved in writing by the Office of General Counsel. The clarified language will ensure that insurance providers do not request payment of a debt when they are aware the debtor has filed bankruptcy.

3. Revised § 400.683 to distinguish between suspensions and debarments under 2 CFR part 180 and 2 CFR part 417 and debarments under 7 U.S.C. 2209j because the effective date for each is different and that was not clear in the proposed rule.

4. Revised § 400.684(a)(1) to clarify that filing bankruptcy does not make an ineligible person eligible for crop insurance or preclude the ineligible person from being placed on the ITS. There was an inconsistency in the proposed rule and the intent was to not allow debtors to be eligible for insurance until their debt was discharged in bankruptcy and FCIC had revised the provisions to be consistent. This does not change the law regarding the collection of debts from persons in bankruptcy so FCIC has clarified that while insurance providers are precluded from requesting payment of the debt once a person files bankruptcy, such filing does not make the person eligible to obtain crop insurance.

5. Revised § 400.684(b)(3) to include limited partnerships and limited liability companies. The proposed rule impacted partners and members of limited partnerships and limited liability companies differently than members of limited liability partnerships, which was not the intent of FCIC. In addition, the proposed rule created program vulnerability because it would allow certain partners and members to evade ineligibility determinations. The revision will address the program vulnerability and ensure equal treatment of partners and members of limited partnerships, limited liability partnerships, and limited liability companies. Also revised § 400.684(b)(3) to include references to joint ventures because although they may be legally different, they are treated the same as of limited partnerships, limited liability partnerships, and limited liability companies for the purposes of this rule. As a result, § 400.684(b)(4) has been deleted and § 400.684(b)(5) has been redesignated as § 400.684(b)(4).

6. Revised § 400.684(b)(5) (redesignated § 400.684(b)(4)) to remove limited partnerships and limited liability companies. The proposed rule impacted partners and members of limited partnerships and limited liability companies differently than members of limited liability partnerships, which was not the intent of FCIC. In addition, the proposed rule created program vulnerability because it would allow certain partners and members to evade ineligibility determinations. The revision will address the program vulnerability and ensure equal treatment of partners and members of limited partnerships, limited liability partnerships, and limited liability companies.

#### Part 407, Area Risk Insurance Policy Basic Provisions

1. Revise sections 2(k) and (p) to be consistent with the provisions in 7 CFR, part 400, subpart U. After it had published the proposed rule for 7 CFR, part 400, subpart U, FCIC discovered the Area Risk Insurance Policy Basic Provisions regarding debt for persons in bankruptcy were inconsistent with the existing provisions.

#### Part 457, Common Crop Insurance Policy Basic Provisions

1. Revise section 2(f) to be consistent with the provisions in 7 CFR, part 400, subpart U. After it had published the proposed rule for 7 CFR, part 400, subpart U, FCIC discovered the Common Crop insurance Policy Basic Provisions regarding debt for persons in bankruptcy were inconsistent with the existing provisions.

#### List of Subjects in 7 CFR Part 400, 407 and 457

Administrative practice and procedure, crop insurance, reporting and recordkeeping requirements.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 400, 407 and 457 as follows:

#### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

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

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

#### Subpart C [Removed and Reserved]

■ 2. Remove and reserve subpart C.

#### Subpart F [Removed and Reserved]

■ 3. Remove and reserve subpart F.

■ 4. Revise subpart U to read as follows:

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

400.675	Purpose.
400.676	[Reserved]
400.677	Definitions.
400.678	Applicability.
400.679	Criteria for ineligibility.
400.680	Controlled substance.
400.681	Written payment agreement.
400.682	Determination and notification.
400.683	Period of ineligibility.
400.684	Effect of ineligibility.
400.685	Criteria for regaining eligibility.
400.686	Administration and maintenance.

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

##### § 400.675 Purpose.

This subpart prescribes conditions under which a person may be determined to be ineligible to participate in any program administered under the authority of the Federal Crop Insurance Act. This subpart also establishes the criteria for regaining eligibility.

##### § 400.676 [Reserved]

##### § 400.677 Definitions.

As used in this subpart:

*Act* means the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

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

*Authorized person* means any current or past officer, employee, elected official, managing general agent, agent, or contractor of an insurance provider, FCIC, or any other government agency whose duties require access to the ITS to administer the Act.

*Controlled substance* has the same meaning provided in 7 CFR 3021.610.

*Conviction* means a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of no contest.

*Date of delinquency* means: The termination date specified in the applicable policy for administrative fees and premiums owed for insurance issued under the authority of the Act, and any interest and penalties on those amounts, if applicable; and the due date specified in the notice to the person of the amount due for any other amounts due the insurance provider or FCIC for insurance issued under the authority of the Act. Other amounts due include, but are not limited to, indemnities, prevented planting payments, or replant payments found not to have been earned or that were overpaid, premium billed with a due date after the termination date for the crop year in which premium is earned, and any interest,

administrative fees, and penalties on such amounts, if applicable. Payments postmarked or received before the date of delinquency by the insurance provider or its agent for debts owed to the insurance provider, or by FCIC for debts owed to FCIC, are not delinquent.

*Debt* means an amount of money that has been determined to be owed by any person to FCIC or an insurance provider, excluding money owed to an insurance provider's agent, under any program administered under the Act. The debt may have arisen from nonpayment of interest, penalties, premium, or administrative fee; overpayment of indemnity, prevented planting or replant payment; cost of collection; or other causes. A debt does not include debts discharged in bankruptcy.

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

*Delinquent debt* means a debt that is not satisfied on or before the date of delinquency. To avoid delinquency or ineligibility due to a delinquent debt, a debtor may enter into a written payment agreement acceptable to the insurance provider or FCIC to pay any such debt as long as all payments are made by the due dates specified in such written payment agreement. A delinquent debt does not include debts discharged in bankruptcy or any debt to an insurance provider's agent.

*Employer Identification Number (EIN)* means a Tax Identification Number issued by the Internal Revenue Service used to identify a business entity, and may also be referred to as a Federal Tax Identification Number.

*Excluded Parties List System (EPLS)* means a list maintained by the General Services Administration that provides a source of current information about persons who are excluded or disqualified from covered transactions, including the date the person was determined ineligible and the date the period of ineligibility ends.

*Federal Crop Insurance Corporation (FCIC)* means a wholly owned government corporation within the USDA.

*Ineligible person* means a person who is denied participation in any program administered under the authority of the Act.

*Ineligible Tracking System (ITS)* means an electronic system to identify persons who are ineligible to participate in any program pursuant to this subpart.

*Insurance Provider* means a legal entity which has entered into a Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement, or other reinsurance agreement, as

applicable, with FCIC for the applicable reinsurance year.

*Livestock Price Reinsurance Agreement* means a cooperative financial assistance agreement between FCIC and an insurance provider to deliver eligible livestock price insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible livestock price insurance policies sold.

*Meaningful opportunity to contest* means the opportunity for the insured to resolve disagreements with a decision by the insurance provider through requesting a review of the decision by the insurance provider, mediation, arbitration, or judicial review, as applicable.

*Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or political subdivision or agency of a State. "Person" does not include the United States Government or any agency thereof.

*Qualified alien* has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).

*Social Security Number (SSN)* means an individual's Social Security Number as issued under the authority of the Social Security Act.

*Standard Reinsurance Agreement (SRA)* means a cooperative financial assistance agreement between FCIC and an insurance provider to deliver eligible crop insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible crop insurance policies sold.

*Substantial beneficial interest* has the same meaning as contained in the applicable policy.

*USDA* means the United States Department of Agriculture.

*United States non-citizen national* has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. § 1408).

*Written payment agreement* means a written document between a debtor and the insurance provider, or FCIC, that is signed and dated by all applicable parties to satisfy financial obligations of the debtor with scheduled installment payments under conditions that modify the terms of the original debt in accordance with § 400.681.

#### § 400.678 Applicability.

This subpart applies to any program administered under the authority of the Act, including but not limited to:

- (a) The catastrophic risk protection plan of insurance;
- (b) The additional coverage plans of insurance as authorized under section 508(c) of the Act;
- (c) Private insurance products authorized under section 508(h) or 523(d) of the Act and reinsured by FCIC; and
- (d) Persons entering contracts or cooperative agreements under sections 506(l), 522(c), 522(d), or 524(a) of the Act.

#### § 400.679 Criteria for ineligibility.

Except as otherwise provided, a person is ineligible to participate in any program administered under the authority of the Act if the person meets one or more of the following criteria:

- (a) Has a delinquent debt:
  - (1) The existence and delinquency of the debt must be verifiable.
  - (2) The person has to be provided a meaningful opportunity to contest the debt.
  - (3) If the person contests the debt, such action does not delay or preclude:
    - (i) Effect of the determination of ineligibility;
    - (ii) Determination or notification of ineligibility in accordance with § 400.682;
    - (iii) Termination of the applicable crop insurance policies; or
    - (iv) Ineligible persons being reported in accordance with § 400.682 or the ineligible persons being recorded in the ITS.
  - (4) If the person is determined not to owe the debt, eligibility is reinstated retroactive to the date of the determination of ineligibility, any applicable policies will be reinstated, and any applicable indemnity, prevented planting or replant payment earned may be paid provided the person has continued to comply with the terms of the policy;

(b) Is an individual and has been convicted of a controlled substance violation according to § 400.680;

(c) Has been disqualified under section 515(h) of the Act;

(d) Is an individual and is not a United States citizen, United States non-citizen national, or a qualified alien. Such individuals may not be recorded in the ITS; however, such individuals are ineligible under the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1611;

(e) Has been suspended or debarred for committing a crime specified in 2

CFR part 180 or 2 CFR part 417, or 7 U.S.C. 2209j (Ineligibility determinations will not be stayed pending review. However, reversal of the determination of ineligibility will reinstate eligibility retroactive to the date of the determination of ineligibility, and any applicable policies will be reinstated); or

(f) Has been debarred for knowingly doing business with a person debarred or suspended under 2 CFR part 180 or 2 CFR part 417 or 7 U.S.C. 2209j.

#### § 400.680 Controlled substance.

(a) This section implements section 1764 of the Food Security Act of 1985 (Pub. L. 99-198) and Chapter 13 of Title 21 requiring the denial of Federal Benefits, including crop insurance, to individuals convicted of controlled substance violations in accordance with paragraphs (b) and (c) of this section.

(b) Notwithstanding any other provision of law, an individual will be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the individual is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year.

(c) Notwithstanding any other provision of law, an individual may, as determined by the court, be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the person is convicted under Federal or State law of possession of or trafficking in a controlled substance.

#### § 400.681 Written payment agreement.

(a) Written payment agreements shall:

(1) Require scheduled installment payments that will allow for full repayment of the debt within the time frame allotted in paragraph (a)(2) of this section;

(2) Not exceed two years in duration; and

(3) Not be modified, replaced, or consolidated after it has been executed in accordance with paragraph (b) of this section.

(b) To avoid being determined to be ineligible through the execution of a written payment agreement:

(1) For a debt arising from any unpaid premium, administrative fees, or catastrophic risk protection fees:

(i) Only one written payment agreement is permitted per termination date. A written payment agreement may cover multiple crops provided they all have the same termination date; and

(ii) The written payment agreement must be signed by both parties, the debtor and the insurance provider or FCIC, as applicable, on or before the

termination date specified in the applicable policy to prevent an ineligible determination for a delinquent debt.

(2) For all other debts, the written payment agreement must be signed by both parties, the debtor and the insurance provider or FCIC, as applicable, on or before the due date specified in the notice to the person of the amount due to prevent an ineligible determination for a delinquent debt.

**§ 400.682 Determination and notification.**

(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. Once a debtor has filed bankruptcy and the insurance provider is formally informed of such through the court or the debtor, no request for payment of the debt can be made, unless approved in writing by the Office of General Counsel. The debtor may be notified of the amount of debt and ineligibility for crop insurance.

(1) The insurance provider shall evaluate the person's response, if any, and determine if the debt is owed and delinquent.

(2) Upon request by FCIC, the insurance provider shall submit all documentation related to the debt to FCIC.

(b) If an insurance provider or any other person has evidence that a person meets criteria set forth in § 400.679(a), (b), (c), (e) or (f), they must immediately notify FCIC.

(c) After the insurance provider determines a person has met one or more of the criteria in § 400.679 and notifies FCIC, FCIC will issue and mail a Notice of Ineligibility to the person's last known address and to the insurance provider. Notices sent to such address will be conclusively presumed to have been received by that person.

(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 right to appeal the determination to be placed on the ITS in accordance with paragraph (e) of this section.

(e) Within 30 days of receiving the Notice of Ineligibility, the ineligible person may appeal FCIC's determination to be placed on ITS to the National Appeals Division in accordance with 7 CFR part 11. The existence and amount of the debt is determined by the insurance provider, not FCIC; therefore, those

determinations are not appealable to the National Appeals Division.

(f) If the person appeals FCIC's determination to be placed on ITS 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.

**§ 400.683 Period of ineligibility.**

(a) The beginning of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, beginning on the date stated in the applicable policy;

(2) For ineligibility as a result of a conviction under Federal or State law of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, the beginning of the crop year in which the individual is convicted; or

(ii) Possession of or trafficking in a controlled substance, the beginning of the crop year in which the individual is convicted, unless determined otherwise by the court.

(3) For ineligibility as a result of a disqualification, debarment, or suspension under 515(h) of the Act, 2 CFR part 180, 2 CFR part 417, the date the person was disqualified, debarred, or suspended by debarment official, Administrative Law Judge, or such other person authorized to take such action; and

(4) For debarment under 7 U.S.C. 2209j, the beginning of the crop year in which the person is convicted.

(b) The duration of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, until the debt has been paid in full discharged in bankruptcy, or the person has executed a written payment agreement.

(2) For ineligibility as a result of a conviction under Federal or State law of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, four crop years succeeding the crop year in which the person was convicted; and

(ii) Possession of a controlled substance or trafficking in a controlled substance, in addition to the time of ineligibility imposed in paragraph (b)(2)(i) of this section, until the period of time imposed by a court has expired.

(3) For ineligibility as a result of a disqualification, debarment, or suspension under section 515(h) of the Act, or 2 CFR part 180 and 2 CFR part 417 until the period of time of disqualification, debarment, or suspension, as applicable, has expired.

(4) For ineligibility as a result of not being a United States citizen, United States non-citizen national, or a qualified alien, until the date such individual becomes a United States citizen, United States non-citizen national, or a qualified alien.

(5) For ineligibility as a result of a conviction falling under 7 U.S.C. 2209j, permanent unless otherwise determined by the Secretary of Agriculture for a period of not less than 10 years.

**§ 400.684 Effect of ineligibility.**

(a) The effect of ineligibility depends on the basis for the determination.

(1) Persons who are ineligible as a result of a delinquent debt are ineligible for crop insurance authorized under the Act for a certain time period in accordance with § 400.683. Filing for bankruptcy does not make the person eligible for crop insurance or preclude the ineligible person from being placed on the ITS in accordance with § 400.684(b)(1).

(2) Persons who are ineligible as a result of a suspension or debarment are precluded from:

(i) Participating in all programs authorized under the Act, including but not limited to:

(A) Obtaining crop insurance;

(B) Acting as an agent, loss adjuster, insurance provider, or affiliate, as defined in the Standard Reinsurance Agreement or Livestock Price Reinsurance Agreement, or successor agreements;

(C) Entering into any contracts with FCIC under sections 506(l) and section 522(c) of the Act; and

(D) Entering into any cooperative agreements or partnerships under sections 506(l), 522(d) and 524(a) of the Act; and

(ii) Participating in any other covered transaction as specified in 2 CFR part 180 and 2 CFR part 417.

(3) Persons who are ineligible because of disqualification under section 515(h) of the Act are precluded from participating in all programs authorized under the Act indicated in paragraph (a)(2)(i) of this section, and those listed in section 515(h)(3)(B) and (C) of the Act.

(4) Individuals who are ineligible because of a conviction of a violation of the controlled substance provisions or are not a United States citizen, United States non-citizen national, or a qualified alien are precluded from participating in any program authorized under the Act indicated in paragraph (a)(2)(i) of this section.

(5) Persons who are ineligible as a result of a conviction falling under 7 U.S.C. 2209j, are precluded from

participating in any program offered by USDA.

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

(1) The ineligible person will be placed on the ITS and may be reported to other government agencies, unless the ineligible person is an individual and the sole reason for ineligibility is because the individual is not a United States citizen, United States non-citizen national, or qualified alien.

(2) If the ineligible person is an individual:

(i) All crop insurance policies in which the ineligible person is the sole insured will terminate if the person is ineligible for any reason other than a controlled substance violation, or be void if the person is ineligible due to conviction of a controlled substance violation according to § 400.680, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(ii) The ineligible person must be reported on all policies in which the ineligible person has a substantial beneficial interest in the applicant or insured, and the insured share under such policy will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the ineligible person remains ineligible in accordance with § 400.683.

(3) If the ineligible person is a general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and is ineligible as a result of:

(i) A delinquent debt:

(A) All partners or members of the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will be ineligible;

(B) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and all partners and members of the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683;

(C) All crop insurance policies in which the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture is the sole insured will terminate;

(D) All crop insurance policies in which the ineligible partner or member is the sole insured will terminate; and

(E) The ineligible general partnership, limited partnership, limited liability

partnership, limited liability company, or joint venture and all ineligible partners or members must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture or the ineligible partners' or members' substantial beneficial interest in the applicant or insured for as long as they remain ineligible in accordance with § 400.683; or

(ii) Meeting the criteria specified in § 400.679(c), (e) or (f):

(A) All crop insurance policies in which the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture is the sole insured will terminate, and the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(B) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible general partnership's, limited partnership's, limited liability company's, or joint venture's substantial beneficial interest in the applicant or insured for as long as it remains ineligible in accordance with § 400.683.

(4) If the ineligible person is an association, estate, trust, corporation, or other similar entity, and is ineligible as a result of:

(i) A delinquent debt:

(A) Any partners, members, shareholders, administrators, executors, trustees, or grantors may be individually ineligible if the delinquent debt occurred as a result of their actions or inactions, as determined by the insurance provider or FCIC;

(B) All policies in which the ineligible association, estate, trust, corporation, or other similar entity is the sole insured will terminate, and it will remain ineligible for crop insurance for the applicable period specified in § 400.683.

(C) The ineligible association, estate, trust, corporation, or other similar entity must be reported on any other policy in which it has a substantial beneficial

interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible entity's substantial beneficial interest in the applicant or insured for as long as the person remains ineligible in accordance with § 400.683;

(D) All policies in which a partner, member, shareholder, administrator, executor, trustee, or grantor determined ineligible according to § 400.684(b)(4)(i)(A) is the sole insured will terminate, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(E) The ineligible partner, member, shareholder, administrator, executor, trustee, or grantor must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the person remains ineligible in accordance with § 400.683; or

(ii) Meeting the criteria specified in § 400.679(c), (e) or (f):

(A) All crop insurance policies in which the ineligible association, estate, trust, corporation, or other similar entity is the sole insured will terminate, and the ineligible association, estate, trust, corporation, or other similar entity will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(B) The ineligible association, estate, trust, corporation, or other similar entity must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible association, estate, trust, corporation, or other similar entity's substantial beneficial interest in the applicant or insured for as long as it remains ineligible in accordance with § 400.683.

(5) If an applicant or insured is a corporation, partnership, joint venture, trust, corporation, limited liability company, limited liability partnership, limited partnership, or other similar entity that was created to conceal the interest of an ineligible person or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or insured, the policy will be void.

(6) All crop insurance policies in which the ineligible person is insured as landlord/tenant will terminate on the next termination date. The other person(s) on such policy may submit a new application for crop insurance

coverage on or before the applicable sales closing date to obtain insurance coverage for the crop, if they are otherwise eligible for such coverage.

(c) The spouse and minor child of an individual insured is considered to be the same as the individual for purposes of this subpart and subject to the same ineligibility, except when:

(1) The individual is ineligible due to a conviction of a controlled substance violation in accordance with § 400.680;

(2) The individual is ineligible as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA;

(3) The individual is ineligible because they are not a United States citizen, United States non-citizen national, or a qualified alien;

(4) The individual is ineligible as a result of a disqualification, debarment, or suspension;

(5) The spouse can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws; or

(6) The minor child has a separate legal interest in such person or is engaged in a separate farming operation from the individual.

(d) Notwithstanding § 400.684(f), when a policy is voided in accordance with this subpart:

(1) No indemnities or payments will be paid for the voided policy;

(2) Any indemnities or payments already made for the voided policy will be declared overpayments and must be repaid in full; and

(3) No premiums will be due and any premium paid will be refunded except when the policy is void due to a conviction of a controlled substance violation according to § 400.680, in which case the insured will still be required to pay 20 percent of the premium the insured would otherwise be required to pay to offset costs in the servicing of the policy.

(e) When the insured share of a policy is reduced in accordance with this subpart:

(1) Any indemnities or payments commensurate with the share reduced already made will be declared overpayments and must be repaid in full; and

(2) Any premiums paid by the insured commensurate with the share reduced will be refunded.

(f) Any insurance written by an insurance provider to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance by FCIC. All premium subsidies, expenses, or other payments made by FCIC for insurance written for any person who is

ineligible under the provisions of this subpart must be immediately refunded to FCIC. However, with regard to policies that would be void due to a conviction of a controlled substance violation according to § 400.680, if the insurance provider follows the procedures of FCIC and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or insurance provider had knowledge of the facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

#### **§ 400.685 Criteria for regaining eligibility.**

After the period of ineligibility as specified in § 400.683 has ended, the ineligible person is eligible to participate in programs authorized under the Act, provided the person meets all eligibility requirements.

(a) After a person regains eligibility for crop insurance when their policy was terminated or voided, the person must submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop. If the date of regaining eligibility occurs after the applicable sales closing date for the crop, the person may not participate until the following year unless that crop policy allows for applications to be accepted after the sales closing date.

(b) If a person who was determined ineligible according to this subpart is subsequently determined to be an eligible person for crop insurance through mediation, arbitration, appeal, or judicial review, such person's policies will be reinstated effective at the beginning of the crop year for which the producer was determined ineligible, and such person will be entitled to all applicable benefits under such policies, provided the person meets all eligibility requirements and complies with the terms of the policy.

#### **§ 400.686 Administration and maintenance.**

(a) Ineligible producer data will be maintained in a system of records established and maintained by the Risk Management Agency in accordance with the Privacy Act (5 U.S.C. 552a).

(1) The ITS 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 of ineligibility.

(2) Information in the ITS may be used by an authorized person. The information may be furnished to other

users as may be appropriate or required by law or regulation, including but not limited to, FCIC contracted agencies, other government agencies, credit reporting agencies, and collection agencies, and in response to judicial orders in the course of litigation. The individual information may be made available in the form of various reports and notices.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement or regaining of eligibility will be maintained by FCIC, or its contractors, insurance providers, Federal agencies, and State agencies. This documentation will be maintained and retained consistent with the electronic information contained within the ITS.

(b) Information may be entered into the ITS by FCIC employees or contractors, or insurance providers.

(c) All persons applying for crop insurance policies or with an existing policy, issued or reinsured by FCIC, will be subject to validation of their eligibility status against the ITS. Applications, transfers, or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

(d) Insurance providers, partners, cooperators, and contractors must check to ensure that the persons with whom they are doing business are eligible to participate in the programs authorized under the Act. Insurance providers, partners, cooperators, and contractors must check the ITS but the ITS may not include all persons ineligible to receive government benefits, such as persons debarred, disqualified or suspended from receiving government benefits by an agency other than FCIC. Insurance providers, partners, cooperators, and contractors must check other sources that contain ineligible persons, including but not limited to EPLS, or successor list, provide data on persons ineligible to participate in programs authorized under the Act.

### **PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS**

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

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

■ 6. Amend § 407.9 as follows:

■ a. Amend section 2(k)(1)(i)(B) by adding the word “or” after the semicolon at the end;

■ b. Amend section 2(k)(1)(i)(C) by removing the phrase “; or” and adding a period in its place;

■ c. Remove section 2(k)(1)(i)(D);

- d. Amend section 2(k)(1)(ii) by removing the phrase “2(k)(2)(i)(A), (B), (D) or (E)” and adding the phrase “2(k)(2)(i)(A), (B) or (D)” in its place;
- e. Amend section 2(k)(2)(i)(C) by adding the word “or” after the semicolon at the end;
- f. Amend section 2(k)(2)(i)(D) by removing the phrase “; or” and adding a period in its place;
- g. Remove section 2(k)(2)(i)(E);
- h. Amend section 2(k)(2)(ii) by removing the phrase “2(k)(2)(i)(A), (B), (D) or (E)” and adding the phrase “2(k)(2)(i)(A), (B) or (D)” in its place;
- i. Revise section 2(k)(3)(iii); and
- j. Amend section 2(p)(2) by removing the phrase “or you file a petition to discharge the debt in bankruptcy” in the last sentence and adding the phrase “or you have your debts discharged in bankruptcy” in its place.

The revised text reads as follows:

**§ 407.9 Area risk protection insurance policy.**

- \* \* \* \* \*
2. Life of Policy, Cancellation, and Termination.
- \* \* \* \* \*
- (k) \* \* \*
- (3) \* \* \*
- (iii) Have your debts discharged in bankruptcy.
- \* \* \* \* \*

**PART 457—COMMON CROP INSURANCE REGULATIONS**

- 7. The authority citation for 7 CFR part 457 continues to read as follows:

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

- 8. Amend § 457.8 as follows:
  - a. Amend section 2(f)(1)(i)(B) by adding the word “or” after the semicolon at the end;
  - b. Amend section 2(f)(1)(i)(C) by removing the phrase “; or” and adding a period in its place;
  - c. Remove section 2(f)(1)(i)(D);
  - d. Amend section 2(f)(1)(ii) by removing the phrase “2(f)(2)(i)(A), (B), (D) or (E)” and adding the phrase “2(f)(2)(i)(A), (B) or (D)” in its place;
  - e. Amend section 2(f)(2)(i)(C) by adding the word “or” after the semicolon at the end;
  - f. Amend section 2(f)(2)(i)(D) by removing the phrase “; or” and adding a period in its place;
  - g. Remove section 2(f)(2)(i)(E);
  - h. Amend section 2(f)(2)(ii) by removing the phrase “2(f)(2)(i)(A), (B), (D) or (E)” and adding the phrase “2(f)(2)(i)(A), (B) or (D)” in its place;
  - i. Revise section 2(f)(3)(iii); and
  - j. Amend section 2(f)(5) by removing the phrase “or you file a petition to

discharge the debt in bankruptcy” in the last sentence and adding the phrase “or you have your debts discharged in bankruptcy” in its place.

The revised text reads as follows:

**§ 457.8 The application and policy.**

- \* \* \* \* \*
2. Life of Policy, Cancellation, and Termination.
- \* \* \* \* \*
- (f) \* \* \*
- (3) \* \* \*
- (iii) Have your debts discharged in bankruptcy.
- \* \* \* \* \*

Signed in Washington, DC, on December 20, 2013.

**Brandon Willis,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2013–31357 Filed 1–10–14; 8:45 am]

**BILLING CODE 3410–08–P**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 115**

**RIN 3245–AG56**

**Surety Bond Guarantee Program**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is issuing this final rule to conform the regulations governing the Surety Bond Guarantee Program to certain provisions of the National Defense Authorization Act for Fiscal Year 2013 (NDAA), including the provisions that increase the contract amounts for which SBA is authorized to guarantee bonds, grant SBA the authority to partially deny liability under its bond guarantee, and prohibit SBA from denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program. This rule also makes changes to the Quick Bond Guarantee Application and Agreement, the timeframes for taking certain actions related to claims, and the dollar threshold for determining when a change in the Contract or bond amounts meets certain criteria or requires certain action. Finally, the final rule eliminates references to the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) that have expired.

**DATES:** This rule is effective February 12, 2014.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Brannan, Office of Surety

Guarantees, 202–205–6545, email: [Barbara.brannan@sba.gov](mailto:Barbara.brannan@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

The U.S. Small Business Administration (SBA) guarantees bid, payment and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA’s guarantee gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. SBA’s guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety’s loss should a contractor default on the underlying contract.

On August 1, 2013, SBA published a notice of proposed rulemaking with a request for comments in the **Federal Register**. The rule proposed to: (1) Conform SBA’s Surety Bond Guarantee Program (“SBG Program”) to certain provisions of the National Defense Authorization Act of 2013 (NDAA); (2) clarify the extent to which a Principal may subcontract work performed under the Contract; (3) make changes to the Quick Bond Guarantee Application and Agreement; (4) increase the dollar threshold for determining when a change in the Contract or bond amounts may result in denial of liability or require certain actions; (5) reduce the timeframes for taking certain actions related to claims; and (6) eliminate references to the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) that have expired. See 78 FR 46528.

The comment period was open until September 30, 2013. SBA received two comments, both from trade associations, that expressed their support for the proposed rule and indicated that the changes are favorable to small businesses. With respect to the proposed increases in the dollar thresholds, one commenter noted that a Surety may not be in a position to notify SBA or seek SBA’s approval when a change order exceeds the specified dollar threshold because a Surety may be required contractually to waive notice of contract amount changes. Under section 115.32(d), a Prior Approval Surety is required to notify SBA of any required changes in the Contract or bond amount that aggregate 25% or \$50,000 (to be increased to \$100,000 under this final rule) “as soon as the Surety acquires knowledge of the change”. Thus, the Surety is required to provide notice to SBA under this provision upon acquiring knowledge of