

**PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT**

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AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42985, Aug. 20, 1996, unless otherwise noted.

**§ 402.1 General statement.**

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect producers in the event of a catastrophic crop loss due to loss of yield or prevented planting, if provided by the Corporation, provided the crop loss or prevented planting is due to an insured cause of loss specified in the crop insurance policy. This Catastrophic Risk Protection Endorsement is a continuous endorsement that is effective in conjunction with a crop insurance policy for the insured crop. Catastrophic risk protection coverage will be offered through approved insurance providers if there are a sufficient number available to service the area. If there are an insufficient number available, as determined by the Secretary, local offices of the Farm Service Agency will provide catastrophic risk protection coverage.

**§ 402.2 Applicability.**

This Catastrophic Risk Protection Endorsement is applicable to each crop for which catastrophic risk protection coverage is available and for which the producer elects such coverage.

**§ 402.3 OMB control numbers.**

The information collection activity associated with this rule has been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 35) under OMB control number 0563-0053.

[61 FR 42985, Aug. 20, 1996, as amended at 69 FR 48730, Aug. 10, 2004]

**§ 402.4 Catastrophic Risk Protection Endorsement Provisions.**

The Catastrophic Risk Protection Endorsement Provisions for the 2005 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Catastrophic Risk Protection Endorsement*

(This is a continuous endorsement)

If a conflict exists between this Endorsement and any of the policies specified in section 2 or the Special Provisions for the insured crop, this endorsement will control.

*Terms and Conditions*

## 1. Definitions

*Approved insurance provider.* A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance coverage to producers participating in the Federal Crop Insurance program.

*Approved yield.* The amount of production per acre computed in accordance with FCIC's actual production history program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee in accordance with the Crop Provisions or the Special Provisions, and any adjustments elected in accordance with section 36 of the Basic Provisions.

*County.* The political subdivision of a state listed in the actuarial table and designated on your accepted application, including land in an adjoining county, provided such land is part of a field that extends into the adjoining county and the county boundary is not readily discernable. For peanuts and tobacco, the county will also include any land identified by a FSA farm serial number for the county but physically located in another county.

*Crop of economic significance.* A crop that has either contributed in the previous crop year, or is expected to contribute in the current crop year, ten percent (10%) or more of the total expected value of your share of all crops grown in the county. However, a crop will not be considered a crop of economic significance if the expected liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required for the crop.

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*Expected market price.* (price election) The price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

*FSA.* The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

*Household.* A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

*Insurance is available.* When crop information is contained in the county actuarial documents for a particular crop.

*Limited resource farmer.* A person with:

(1) Direct or indirect gross farm sales not more than \$100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS)); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

*Linkage requirement.* The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with section 12(e), unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

*Secretary.* The Secretary of the United States Department of Agriculture.

*USDA.* The United States Department of Agriculture.

*Zero acreage report.* An acreage report filed by you that certifies you do not have a share in the crop for that crop year.

### 2. Eligibility, Life of Policy, Cancellation, and Termination

(a) You must have one of the following policies in force to elect this Endorsement:

(1) The General Crop Insurance Policy (7 CFR 401.8) and crop endorsement;

(2) The Common Crop Insurance Policy (7 CFR 457.8) and crop provisions;

(3) The Group Risk Plan Policy, if available for catastrophic risk protection; or

(4) A specific named crop insurance policy.

(b) You must have made application for catastrophic risk protection on or before the sales closing date for the crop in the county.

(c) You must be a "person" as defined in the crop policy to be eligible for catastrophic risk protection coverage.

### 3. Unit Division

(a) This section is in lieu of the unit provisions specified in the applicable crop policy.

(b) For catastrophic risk protection coverage, a unit will be all insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have one hundred percent (100%) crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.)

(c) Further division of the units described in paragraph (b) above is not allowed under this Endorsement.

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

(a) Notwithstanding any provision contained in any other policy document, for the 1995 through 1998 crop years, catastrophic coverage will offer protection equal to fifty percent (50%) of your approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC.

(b) Notwithstanding any provision contained in any other policy document, for the 1999 and subsequent crop years, catastrophic coverage will offer protection equal to fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

(c) 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 sixty percent (60%) of the expected market price for the 1995 through 1998 crop years and fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price for the 1999 and subsequent crop years.

(d) You may elect catastrophic coverage for any crop insured or reinsured by FCIC on

either an individual yield and loss basis or an area yield and loss basis, if both options are offered as set out in the Actuarial Table or the Special Provisions.

(e) To be eligible for an indemnity under this endorsement you must have suffered at least a 50 percent loss in yield.

#### 5. Report of Acreage

(a) The report of crop acreage that you file in accordance with the crop policy must be signed on or before the acreage reporting date. For catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf, the operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

(b) For the purpose of determining the amount of indemnity only, your share will not exceed your insurable interest at the earlier of the time of loss or the beginning of harvest. Unless the accepted application clearly indicates that insurance is requested for a partnership or joint venture, insurance will only cover the crop share of the person completing the application. The share will not extend to any other person having an interest in the crop except as may otherwise be specifically allowed in this endorsement. Any acreage or interest reported by or for your spouse, child or any member of your household may be considered your share. A lease containing provisions for both a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) *and* a crop share will be considered a crop share lease. A lease containing provisions for either a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) *or* a crop share will be considered a cash lease. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee.

#### 6. Annual Premium and Administrative Fees

(a) Notwithstanding any provision contained in any other policy document, you will not be responsible to pay a premium, nor will the policy be terminated because the premium has not been paid. FCIC will pay a premium subsidy equal to the premium established for the coverage provided under this endorsement.

(b) In return for catastrophic risk protection coverage, you must pay an administrative fee to the insurance provider within 30 days after you have been billed by us, unless otherwise specified in 7 CFR part 400 (You

will be billed by the date stated in the Special Provisions);

(1) The administrative fee owed is \$100 for each crop in the county.

(2) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

(c) The administrative fee provisions of paragraph (b) of this section do not apply if you meet the definition of a limited resource farmer (see section 1). The administrative fee will be waived if you request it and:

(1) You qualify as a limited resource farmer; or

(2) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

(d) When a crop policy has provisions to allow you the option to separately insure individual crop types or varieties, you must pay a separate administrative fee in accordance with paragraph (b) of this section for each type or variety you elect to separately insure.

(e) If the administrative fee is not paid when due, you, and all persons with an insurable interest in the crop under the same contract, may be ineligible for certain other USDA program benefits as set out in section 12, and all such benefits already received for the crop year must be refunded.

#### 7. Insured Crop

The crop insured is specified in the applicable crop policy, however:

(a) Notwithstanding any other policy provision requiring the same insurance coverage on all insurable acreage of the crop in the county, if you purchase additional coverage for a crop, you may separately insure acreage under catastrophic coverage that has been designated as "high risk" land by FCIC, provided that you execute a High Risk Land Exclusion Option and obtain a catastrophic risk protection policy with the same approved insurance provider, if available, on or before the applicable sales closing date. If catastrophic coverage is not available from the same insurance provider, you may obtain the catastrophic risk protection policy for the high risk land from another approved insurance provider or FSA, if available. You will be required to pay a separate administrative fee for both the additional coverage policy and the catastrophic coverage policy.

(b) A tobacco producer may insure one hundred percent (100%) of the tobacco crop that is identified by a tobacco marketing

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card issued by FSA for a specific producer and Farm Serial Number under one CAT policy, provided the producer and other persons each have a share in the crop, all the shareholders agree in writing to such arrangement, and none of the persons hold any other interest in another tobacco crop for which they are required to obtain at least catastrophic coverage. If the tobacco crop is insured under one policy:

(1) The linkage requirements will be satisfied for each shareholder of the crop; and

(2) The producer insuring the crop will:

(i) Make application for insurance and provide the name and social security number, or employer identification number, of each person with a share in the tobacco crop;

(ii) File the acreage report showing a one-hundred percent (100%) share in the crop (all insurable acreage covered by such marketing card will be considered as one unit);

(iii) Be responsible to pay the one administrative fee for all the producers within the county;

(iv) Fulfill all requirements under the crop insurance contract; and

(v) Receive any indemnity payment under his or her social security number or employer identification number and distribute the indemnity payments to the other persons sharing in the crop.

(c) A landowner will be allowed to obtain catastrophic coverage to satisfy linkage requirements for all other landowners who hold an undivided interest in the insurable acreage, provided:

(1) All the landowners must agree in writing to such arrangement and have their social security number or employer identification number listed on the application, without regard to the actual amount of their interest in the insured acreage;

(2) All landowners must have an undivided interest in the insurable acreage;

(3) None of the landowners may hold any share in other acreage for which they are required to obtain at least catastrophic coverage;

(4) The total cumulative liability under the Catastrophic Risk Protection Endorsement for all landowners must be \$2,500 or less;

(5) The landowner insuring the crop will:

(i) Make application for insurance and provide the name and social security number or employer identification number of each person with an undivided interest in the insurable acreage;

(ii) Be responsible to pay the one administrative fee for all the producers within the county;

(iii) Fulfill all requirements under the insurance contract; and

(iv) Receive any indemnity payment under the landowner's social security number, or when applicable, employer identification number, and distribute the indemnity pay-

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ments to the other persons sharing in the crop.

### 8. Replanting Payment

Notwithstanding any provision contained in any other crop insurance document, no replant payment will be paid whether or not replanting of the crop is required under the policy.

### 9. Claim for Indemnity

(a) If two or more insured crop types, varieties, or classes are insured within the same unit, and multiple price elections are applicable, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each type, variety, class, etc., that have separate price elections and then totaled to determine the total liability or dollar amount of production to be counted for the unit.

(b) If you are eligible to receive an indemnity under this endorsement and benefits compensating you for the same loss under any other USDA program, you must elect the program from which you wish to receive benefits. Only one payment or program benefit is allowed. However, if other USDA program benefits are not available until after you filed a claim for indemnity, you may refund the total amount of the indemnity and receive the other program benefit. Notwithstanding the first sentence of this subsection, farm ownership, operating, and emergency loans may be obtained from the USDA in addition to an indemnity under this endorsement.

### 10. Concealment or Fraud

Notwithstanding any provision contained in any other crop insurance document, your CAT policy may be voided by us on all crops without waiving any of our rights, including the right to collect any amounts due:

(a) If at any time you conceal or misrepresent any material fact or commit fraud relating to this or any other contract issued under the authority of the Federal Crop Insurance Act with any insurance provider; and

(b) The voidance will be effective as of the beginning of the crop year during which such act or omission occurred. After the policy has been voided, you must make a new application to obtain catastrophic risk protection coverage for any subsequent crop year. If your policy is voided under this section, any waiver of eligibility for emergency crop loss assistance in connection with the crop will not be effective for the crop for the year in which the voidance occurred.

### 11. Exclusion of Coverage

(a) Options or endorsements that extend the coverage available under any crop policy offered by FCIC will not be available under

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this endorsement, except the Late Planting Agreement Option. Written agreements are not available for any crop insured under this endorsement.

(b) Notwithstanding any provision contained in any other crop policy, hail and fire coverage and high-risk land may not be excluded under catastrophic risk protection.

### 12. Eligibility for Other USDA Program Benefits

(a) Even if it was a crop of economic significance for the previous crop year, if you do not intend to plant the crop in the current crop year, you do not have to obtain crop insurance or execute a waiver of your eligibility for any emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in subsection (e). However, if, after the sales closing date, you plant that crop, you will be unable to obtain insurance for that crop and you must execute a waiver of your eligibility for emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in section 12(e). Failure to execute such a waiver will require you to refund any benefits already received under a program specified in section 12(e).

(b) You are initially responsible to determine the crops of economic significance in the county. The insurance provider may assist you in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop, times your share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer in the county; and

(3) Divide the value of the specific crop by the result of section 12(b)(2).

(c) You may use the type of price such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that you use the same type of price for all crops in the county.

(d) You may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

(e) You must obtain at least catastrophic coverage for each crop of economic significance in the county in which you have an insurable share, if insurance is available in the county for the crop, unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for:

(1) Benefits under the Agricultural Market Transition Act;

(2) Loans or any other USDA provided farm credit, including: guaranteed and direct farm

ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(3) Benefits under the Conservation Reserve Program derived from any new or amended application or contracts executed after October 13, 1994.

(f) Failure to comply with all provisions of the policy constitutes a breach of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If you breach the insurance contract, the execution of a waiver of any eligibility for emergency crop loss assistance will not be effective for the crop year in which the breach occurs.

[61 FR 42985, Aug. 20, 1996, as amended at 63 FR 40631, July 30, 1998; 64 FR 40740, July 28, 1999; 65 FR 40484, June 30, 2000; 69 FR 48730, Aug. 10, 2004]

## PARTS 403–406 [RESERVED]

## PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2005 AND SUCCEEDING CROP YEARS

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407.15 Group risk plan for sorghum.

407.16 Group risk plan for soybean.

407.17 Group risk plan for wheat.

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

SOURCE: 64 FR 30219, June 7, 1999, unless otherwise noted.

### § 407.1 Applicability.

The provisions of this part are applicable only to those crops and crop years for which a Crop Provision is contained in this part.