THE AGRICULTURAL RISK PROTECTION ACT OF 2000: FEDERAL CROP INSURANCE, THE NON-INSURED CROP DISASTER ASSISTANCE PROGRAM, AND THE DOMESTIC COMMODITY AND OTHER FARM PROGRAMS

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I. INTRODUCTION

On June 20, 2000, President Clinton signed the Agricultural Risk Protection Act of 2000.[1] The Act makes significant changes to the federal crop insurance program and to the Non-Insured Crop Disaster Assistance Program ("NAP").[2] It also provides for

1. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, 2000 U.S.C.C.A.N. (114 Stat.) 358 (to be codified at 7 U.S.C. § 1505).

2. *See id.* The act makes several amendments to the Federal Crop Insurance Act, 7 U.S.C. § 1801 (1994), and the Noninsured Crop Disaster Program, otherwise known as the Agricultural Market Transition Act, 7 U.S.C. § 7333(a)(2) (Supp. V 1999).

direct financial assistance to producers of various crops; makes certain changes to the United States Department of Agriculture's ("USDA") nutrition, commodity, and credit programs; funds biomass research and development; and establishes the Plant Protection Act[3] as an omnibus means for regulating the movement of plant pests, plants, plant products, biological control organisms, noxious weeds, and related matters. This Article describes the major changes the Act made to the federal crop insurance program, NAP, and the domestic commodity and other farm programs.

II. CROP INSURANCE

Authorized by the Federal Crop Insurance Act ("FCIA"),[4] the federal crop insurance program provides subsidized crop insurance for farmers. It is administered by the Federal Crop Insurance Corporation ("FCIC" or "the Corporation") under the supervision of the USDA Risk Management Agency ("RMA").[5]

Federal crop insurance policies are sold and serviced by private insurance providers approved by the FCIC to sell and service the policies.[6] These approved providers are reinsured by the FCIC with respect to these policies and they receive an amount for their operating and administrative expenses.[7] In addition to approving providers, the FCIC approves the terms and conditions of federal crop insurance policies.[8]

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3. *See* Plant Protection Act, Pub. L. No. 106-224, 2000 U.S.C.C.A.N. (114 Stat.) 438 (to be codified at 7 U.S.C. § 7701).

4. *See* Federal Crop Insurance Act, 7 U.S.C. § 1501 (1994).

5. *See* 7 U.S.C. § 1503 (1994); 7 U.S.C. § 6933 (Supp. V 1999). The FCIC is a wholly government-owned corporation and an agency of the USDA. Its chief executive officer is the manager, who is responsible to the FCIC's Board of Directors. The Agricultural Risk Protection Act changed the composition of the Board. Under the act, the Board will consist of the following members:

> (A) The manager of the Corporation, who shall serve as a nonvoting ex officio member.
>
> (B) The Under Secretary of Agriculture responsible for the Federal crop insurance program.
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> (C) One additional Under Secretary of Agriculture (as designated by the Secretary).
>
> (D) The Chief Economist of the Department of Agriculture.
>
> (E) One person experienced in the crop insurance business.
>
> (F) One person experienced in reinsurance or the regulation of insurance.
>
> (G) Four active producers who are policy holders, are from different geographic areas of the United States, and represent a cross-section of agricultural commodities grown in the United States, including at least one specialty crop producer.

Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 142(a)(1), 2000 U.S.C.C.A.N. (114 Stat.) 358, 389-90 (to be codified at 7 U.S.C. § 1505(a)(2)). For a discussion of a history of the federal crop insurance program, see generally Steffen N. Johnson, *A Regulatory 'Waste Land': Defining a Justified Federal Role in Crop Insurance*, 72 N.D. L. REV. 505 (1996).

6. *See* U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-97-70, CROP INSURANCE: OPPORTUNITIES EXIST TO REDUCE GOVERNMENT COSTS FOR PRIVATE-SECTOR DELIVERY (1997) (the parties to federal crop insurance policies are the insured producer and the approved insurance provider; the FCIC is not a party).

7. *See id.* The relationship between the FCIC and the private reinsured companies has been described in several reports issued by the United States General Accounting Office. *See* U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-92-25, CROP INSURANCE: PROGRAM HAS NOT FOSTERED SIGNIFICANT

Federal crop insurance currently provides both yield-based coverage and revenue insurance.[9] Yield-based coverage compensates farmers for yield losses, measured either by the quantity or the value of their yield, depending on the policy. A form of yield-based coverage known as multiple peril crop insurance ("MPCI") is the most widely available and used type of federal crop insurance. MPCI provides comprehensive protection against weather-related causes and other unavoidable perils.

Revenue insurance protects against revenue or gross income losses due to yield or price declines. A relatively new form of crop insurance, revenue insurance policies vary in their definition of "revenue" and in the manner in which they provide coverage. For example, group revenue insurance ("GRIP") pays indemnities when the average county revenue for the insured crop declines below the revenue level chosen by the farmer. Adjusted gross revenue insurance ("AGR") insures the revenue of the entire farm, not just the revenue derived from individual crops, by guaranteeing a percentage of the farm's average gross revenue. Crop revenue coverage ("CRC") protects against price and yield losses below a guarantee based on the higher of an early season price or the harvest price. Income protection policies ("IP") protect farmers against reductions in gross income when the insured crop's price or yield falls from early-season expectations. Revenue assurance ("RA") allows farmers to select a dollar amount of target revenue from a range expressed in term of percentages of expected revenue.[10]

A. *Multiple Peril Crop Insurance Coverage*

The Agricultural Risk Protection Act substantially amends the MPCI provisions of the FCIA.[11] As with most of the amendments made by the act, these amendments become effective beginning with the 2001 crop year.[12]

RISK SHARING BY INSURANCE COMPANIES (1992); U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-90-32, CROP INSURANCE: PRIVATE COMPANY LOSS ADJUSTMENT IMPROVING, BUT OVERPAYMENTS STILL HIGH (1989); U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-88-7, CROP INSURANCE: OVERPAYMENTS OF CLAIMS BY PRIVATE COMPANIES COSTS THE GOVERNMENT MILLIONS (1987).

8. The FCIC Board must approve any insurance policy or plan offered under the federal crop insurance program. The Agricultural Risk Protection Act amended certain provisions of the Federal Crop Insurance Act relating to the submission of policies and materials to the Board. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 146, 2000 U.S.C.C.A.N. (114 Stat.) 358, 392 (to be codified at 7 U.S.C. § 1508(h)(1), (3), (4)). The act also requires the Board to establish procedures for the review of insurance policies, including those submitted for Board approval, by independent experts. *See id.* § 142(b), 2000 U.S.C.C.A.N. (114 Stat.) 358, 390-91 (to be codified at 7 U.S.C. § 1505(e)).

9. *See generally* 7 U.S.C. § 1508 (1994) (explaining the coverage of the crop insurance program).

10. *See generally* JOY HARWOOD ET AL., U.S. DEP'T AGRIC., AGRIC. ECON. REPT. NO. 774, MANAGING RISK IN FARMING: CONCEPTS, RESEARCH, AND ANALYSIS 52-55 (1999) (discussing revenue insurance); U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-98-111, CROP REVENUE INSURANCE: PROBLEMS WITH NEW PLANS NEED TO BE ADDRESSED (1998) (discussing revenue insurance and identifying deficiencies in the methods used to establish premiums).

11. *See generally* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, 2000 U.S.C.C.A.N. (114 Stat.) 358 (to be codified at 7 U.S.C. § 1501) (amending FCIA to strengthen the safety net for agricultural producers and to improve the efficiency and integrity of the federal crop insurance

Standard MPCI policies insure producers against yield losses caused by natural disasters, such as drought, excessive moisture, hail, wind, frost, insects, and disease. In certain circumstances, however, coverage for fire and hail losses can be deleted from an MPCI policy.[13]

Two levels of MPCI coverage are available. The first is known as "catastrophic risk protection."[14] This level of protection is often called "CAT" coverage. The second level is known as "additional coverage."[15] Additional coverage provides greater protection than CAT coverage and is often referred to as "buy-up" coverage. An administrative fee applies to both levels, but the premium for CAT coverage is completely subsidized while the premium for additional coverage is only partially subsidized.[16]

1. *CAT Coverage*

For the 1995 crop year, producers had to obtain at least CAT coverage to be eligible for the federal domestic commodity programs and certain other USDA programs.[17] Since then, however, participants in these programs could waive any claim to emergency crop loss assistance in lieu of obtaining CAT or additional coverage.[18]

In 1998 and 1999, Congress extended emergency crop loss assistance benefits to producers who had waived their claim to them.[19] To receive these benefits, these producers were required to purchase CAT or additional coverage in the subsequent two years for all crops of economic significance produced by such person for which insurance is available.[20]

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program).

12. As to the amendments that become effective beginning with the 2001 crop year, the existing provisions will remain in effect for the 2000 crop year. Except for its provisions that have a delayed effective date, the act became effective on the date of its enactment. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, §§ 171, 173, 2000 U.S.C.C.A.N. (114 Stat.) 358, 397-98 (to be codified at 7 U.S.C. § 1501).

13. *See* 7 U.S.C. § 1508(c)(7) (1994).

14. *Id*. § 1508(b).

15. *Id*. § 1508(c).

16. *See id*. § 1508(c), (e).

17. *See id.* § 1508(b)(7)(A).

18. *See id*. A "crop of economic significance" is a crop that has contributed, or is expected to contribute, ten percent or more of the total expected value of all crops grown by the producer. *Id*. § 1508(b)(7)(B).

19. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78, tit. VIII, § 801, 113 Stat. 1135, 1175-76; Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, App. E, tit. I, 113 Stat. 1501, 1537 (appropriations for 1999 crop losses); Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, tit. X, §§ 1101-1103, 112 Stat. 2681, 2681-44 to 2681-45 (appropriations for 1998 crop losses and losses in at least three of the years from 1994 through 1998).

20. *See* 65 Fed. Reg. 7,942, 7,964 (2000) (to be codified at 7 C.F.R. pt. 1498.7(a)) (1999 crop loss assistance); 7 C.F.R. § 1477.108(a) (1999) (1998 crop loss assistance).

CAT coverage extends to yield losses and prevented planting due to natural disasters, but it is very limited. An indemnity is paid only if the insured suffers at least a fifty percent loss in yield, and the price level is fifty-five percent of the expected market price for the insured crop.[21] The Agricultural Risk Protection Act did not change these yield loss and price level percentages.[22]

a. *New Alternative for Determining Loss*

Though the act did not change the yield loss and price level percentages, the available bases for determining the yield loss were changed.[23] Beginning with the 2001 crop year, producers have a choice between two alternatives for determining yield losses.[24] Under the first alternative, producers can elect to have their loss determined on an individual yield or area yield basis.[25] This alternative was the only alternative available under the FCIA before it was amended. However, a producer did not always have the choice between an individual yield basis or area yield basis because the FCIC had the discretion to decide whether both bases would be offered.[26]

> Under the second alternative, the alternative created by the Act, a producer can chose protection that:
> (i) indemnifies the producer on an area yield and loss basis if such a policy or plan of insurance is offered for the agricultural commodity in the county in which the farm is located;
> (ii) provides, on a uniform national basis, a higher combination of yield and price protection than the coverage available under . . . [the first alternative]; and
> (iii) the Corporation determines is comparable to the coverage available under . . . [the first alternative] for purposes . . . [of the premium to be paid by the Corporation].[27]

By its terms, this provision is intended to give producers who obtain CAT coverage the election to insure on an area yield and loss basis in lieu of an individual yield basis. It also directs the FCIC to provide "a higher combination of yield and price protection" than the coverage available under the first alternative.[28] Nevertheless, it

21. *See* 7 U.S.C. §1508(b)(2)(A)(ii) (1994) (applicable to the 1999 and subsequent crop years). Prior to the 1999 crop year, the price coverage level was 60% of the expected market price. *See id.* § 1508(b)(2)(A)(i) (applicable to the 1995 through 1998 crop years).

22. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 103, 2000 U.S.C.C.A.N. (114 Stat.) 358, 364-66 (to be codified at 7 U.S.C. § 1508(g)).

23. *See id.* § 105, 2000 U.S.C.C.A.N. (114 Stat.) 358, 366 (to be codified at 7 U.S.C. § 1508(g)).

24. *See id.* § 103, 2000 U.S.C.C.A.N. (114 Stat.) 358, 364 (to be codified at 7 U.S.C. § 1508(b)).

25. *See id.* (to be codified at 7 U.S.C. § 1508(b)(3)(A)).

26. *See* 7 U.S.C. § 1508(b)(3), *repealed by* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 103(a), 2000 U.S.C.C.A.N. (114 Stat.) 358, 364.

27. Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 103(a), 2000 U.S.C.C.A.N. (114 Stat.) 358, 364 (to be codified at 7 U.S.C. § 1508(b)(3)(B)).

28. *Id.* § 103(a) (to be codified as 7 U.S.C. § 1508(b)(3)(B)(ii)).

appears to give the FCIC the discretion to determine the availability of this alternative on a commodity and county basis.

b. *"Expected Market Price"*

CAT indemnities are based on a percentage of the "expected market price" for the insured commodity.[29] This phrase, however, was not defined in the FCIA. The Agricultural Risk Protection Act establishes a statutory definition of "expected market price."[30] This definition also applies to "additional coverage" and to revenue insurance, although the resulting price may vary depending on the type of insurance coverage.[31]

Under the statutory definition, the FCIC will either establish or approve a price level for each agricultural commodity for which insurance is available.[32] This price level will be the "expected market price."[33] As a general rule, the expected market price cannot be less than the projected market price of the commodity, as established by the FCIC.[34] For some types of policies, however, the expected market price can be different from that dictated by the general rule.[35] For example, in the case of revenue and other similar plans of insurance, the expected market price can be the actual market price of the commodity.[36]

c. *Administrative Fee for CAT Coverage*

Producers who purchase CAT coverage do not pay a premium. Instead, because the FCIC pays the premium, only an administrative fee is assessed.[37] Effective beginning

29. *See* Catastrophic Risk Protection Endorsement, 7 C.F.R. § 402.4 (2000).

30. Under the FCIC regulations for CAT coverage that were in effect before the enactment of the Agricultural Risk Protection Act, "expected market price" was defined as follows:

> The price per unit of production (or other basis as determined by the 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.

Id.

31. *See id.* §§ 402.1-.4.

32. *See id.* § 402.4.

33. Agricultural Risk Protection Act of 2000, Pub. L. No.106-224, § 101, 2000 U.S.C.C.A.N. (114 Stat.) 358, 360 (to be codified at 7 U.S.C. § 1508(c)(5)(A)).

34. *See id.* (to be codified at 7 U.S.C. § 1508(c)(5)(B)).

35. *See id.* (to be codified at 7 U.S.C. § 1508(c)(5)(C)).

36. *See id*. (to be codified at 7 U.S.C. § 1508(c)(5)(C)(ii)). The provisions relating to "expected market price" become effective beginning with the 2001 crop year. *See id*. § 171(b)(2), 2000 U.S.C.C.A.N. (114 Stat.) 358, 397 (to be codified at 7 U.S.C. § 1501 note).

37. *See id.* §§ 102, 103, 2000 U.S.C.C.A.N. (114 Stat.) 358, 363-65 (to be codified at 7 U.S.C. §§ 1508(h), 1508(b), 1508(b)(5)).

with the 2001 crop year, the administrative fee will be $100 per crop per county.[38] This fee can be waived for limited resource farmers.[39]

Under the existing FCIA, the per crop per county fee was $50 or ten percent of the CAT policy premium, subject to a cap of $60 per crop per county.[40] In a 1999 appropriations act, however, Congress provided that, notwithstanding this FCIA provision, the administrative fee would be $50 per crop per county beginning with the 1999 reinsurance year.[41]

The Agricultural Risk Protection Act amends both the FCIA and the appropriations act provisions by increasing the fee to $100 per crop per county.[42] The amendment to the FCIA, however, will not be in effect until the appropriations act provision is repealed or superseded.[43] The net result is that, until then, the administrative fee will be $100 per crop per county beginning with the 2001 crop year.[44]

The act eliminates the additional fees that were required to be paid under the FCIA.[45] It also authorizes a cooperative association or a nonprofit trade association to pay the CAT administrative fee on behalf of its members if state law permits such an arrangement.[46]

2. *Additional Coverage*

The Agricultural Risk Protection Act makes several changes to "additional" MPCI coverage.[47] The most significant change is an increase in the premium subsidies. The following table provides a comparison between the percentages of the premium paid by the FCIC at various coverage levels before and after the amendments made by the

38. *See id*. § 103, 2000 U.S.C.C.A.N. (114 Stat.) 358, 364 (to be codified at 7 U.S.C. § 1508(b)(5)(A)).

39. *See* 7 U.S.C. § 1508(b)(5)(E) (Supp. V 1999).

40. *See id*. § 1508(b)(5)(A), *amended by* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 103(b)(1)(A), 2000 U.S.C.C.A.N. (114 Stat.) 358, 364. *See also* Catastrophic Risk Production Endorsement, 7 C.F.R. § 402.4 (2000).

41. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, § 748, 112 Stat. 2681, 2681-32.

42. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 103(b)(2), 2000 U.S.C.C.A.N. (114 Stat.) 358, 364-65 (amending Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. No. 105-277, § 748, 112 Stat. 2681, 2681-32).

43. *See id.* (the amendment is a confirming amendment).

44. *See id.* § 103, 2000 U.S.C.C.A.N. (114 Stat.) 358, 364 (to be codified at 7 U.S.C. § 1505(b)(5)(A)).

45. *See id.* § 103(b)(1)(B), 2000 U.S.C.C.A.N. (114 Stat.) 358, 364 (to be codified at 7 U.S.C. § 1505(b)(5)(B)). The additional fees were $10 per crop per county. *See* 7 U.S.C. § 1508(b)(5)(B) (Supp. V 1999).

46. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 103, 2000 U.S.C.C.A.N. (114 Stat.) 358, 365 (to be codified at 7 U.S.C. § 1508(b)(5)(B)).

47. *See id*.

act.[48] The first number of the coverage level represents the percentage of the yield insured and the second percentage represents the percentage of the price insured.[49]

Coverage Level	50/100	55/100	60/100	65/100	70/100	75/100	80/100	85/100
Prior Law	55%	46%	38%	42%	32%	24%	17%	13%
2000 Act	67%	64%	64%	59%	59%	55%	48%	38%

In addition to increasing the premium subsidies, the Act requires that all policies or plans of insurance disclose the dollar amount of the portion of the premium paid by the FCIC.[50]

Under the existing FCIA, producers could increase coverage in one percent increments.[51] The Agricultural Risk Protection Act temporarily suspends this option by giving the FCIC only the authority to offer five percent increments "beginning at [fifty] percent of the recorded or appraised average yield" during each of the 2001 through 2005 reinsurance years.[52]

The act also authorizes the FCIC to "provide a performance-based premium discount for a producer of an agricultural commodity who has good insurance or production experience relative to other producers of that agricultural commodity in the same area, as determined by the Corporation."[53]

Under the existing FCIA, producers who purchased additional coverage were required to pay an administrative fee, the amount of which varied depending on the level of coverage purchased.[54] The Agricultural Risk Protection Act this provision so that an administrative fee of $30 per crop per county will apply to all levels of additional coverage.[55] This fee can be waived for limited resource farmers.[56]

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48. *See id*. § 101, 2000 U.S.C.C.A.N. (114 Stat.) 358, 360 (to be codified at 7 U.S.C. § 1508(c)). The increased premium subsidies take effect beginning with the 2001 crop year. *See id*. § 171, 2000 U.S.C.C.A.N. (114 Stat.) 358, 397 (to be codified at 7 U.S.C. § 1501 note). The act also requires the FCIC to review the rating and loss histories by areas and to make any appropriate adjustments for any excessive rates for the 2002 crop year. *See id*. § 106, 2000 U.S.C.C.A.N. (114 Stat.) 358, 367 (to be codified at 7 U.S.C. § 1508(i)).

49. *See id.* § 101, 2000 U.S.C.C.A.N. (114 Stat.) 358, 360 (to be codified at 7 U.S.C. § 1508(e)(2)). This table appears in a summary of the act, which is available at <http://www.agriculture.house.gov/2559conf.htm>.

50. *See id.* § 101(f) (to be codified at 7 U.S.C. § 1508(e)(5)).

51. *See* 7 U.S.C. § 1508(e)(4) (1994).

52. Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 101(d), 2000 U.S.C.C.A.N. (114 Stat.) 358, 363 (to be codified at 7 U.S.C. § 1508(e)(4)).

53. *Id*. § 101, 2000 U.S.C.C.A.N. (114 Stat.) 358, 360 (to be codified at 7 U.S.C. § 1508(d)).

54. *See* 7 U.S.C. § 1508(c)(10), *repealed by* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, 2000 U.S.C.C.A.N. (114 Stat.) 358, 366.

55. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 104, 2000 U.S.C.C.A.N. (114 Stat.) 358, 366 (to be codified at 7 U.S.C. § 1508(c)(10)(A)).

56. *See id*. (to be codified at 7 U.S.C. § 1508(c)(10)(B)).

B. *Revenue Insurance*

The Agricultural Risk Protection Act removes a limitation on the percentage of the premium to be paid by the FCIC for approved policies providing coverage other than multiple peril coverage, such as revenue insurance.[57] Except with respect to insurance policies for livestock, the premium subsidy for policies other than MPCI generally will be equal to the percentage specified for a similar level of MPCI coverage of the total amount of the premium used to define the loss ratio. During a transition period covering the 2001 reinsurance year, however, the subsidy cannot exceed the dollar subsidy amount authorized by the act for MPCI.[58]

C. *Excluded Losses, Assigned Yields, and Actual Production History Adjustments*

1. *Excluded Losses*

The FCIA excludes coverage for losses caused by the producer's neglect or malfeasance, the producer's failure to reseed the same crop where and when it is customary to reseed, or the producer's failure to follow good farming practices. The Agricultural Risk Protection Act amends this provision by providing that "good farming practices" includes "scientifically sound sustainable and organic farming practices."[59]

The act also requires the FCIC to establish an informal administrative appeal process to provide producers with a right to a review of a determination regarding good farming practices.[60] Such determinations are expressly deemed not to be "adverse decisions" for purposes of the USDA National Appeals Division administrative appeal process.[61] Producers who receive such a determination have the right to seek judicial review without exhausting the informal administrative appeal process, but the "determination may not be reversed or modified as the result of judicial review unless the determination is found to be arbitrary or capricious."[62]

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57. *See id.* § 102, 2000 U.S.C.C.A.N. (114 Stat.) 358, 363-64 (to be codified at 7 U.S.C. § 1508(h)(5)).

58. *See id*.

59. *Id*. § 123, 2000 U.S.C.C.A.N. (114 Stat.) 358, 378 (to be codified at 7 U.S.C. § 1508(a)(3)(A)(iii)).

60. *See id*. (to be codified at 7 U.S.C. § 1508(a)(3)(B)(i)).

61. *See id*. (to be codified at 7 U.S.C. § 1508(a)(3)(B)(ii)(I)). The statutory authority for the USDA National Appeals Division ("USDA NAD") is found at 7 U.S.C. §§ 6991-7000. *See* 7 U.S.C. §§ 6991-7000 (1994). Appeals to the USDA NAD may be taken from "adverse decisions" of various USDA agencies, including the FCIC. *See id*.

62. Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 123, 2000 U.S.C.C.A.N. (114 Stat.) 358, 378 (to be codified at 7 U.S.C. § 1508(a)(3)(B)(ii)(I), (II)).

2. *Assigned Yields*

Crop yields for crop insurance purposes are based on the farmer's actual production history ("APH") for the crop over the preceding four to ten consecutive crop years.[63] Farmers who do not have satisfactory evidence for establishing an APH are assigned a yield.[64] When less than four years of actual yield data are available, an estimated yield known as a "transitional yield," or "T-yield," established by the FCIC for the crop is used.[65]

The Agricultural Risk Protection Act amends the assigned yields provisions of the FCIA by requiring the FCIC to assign a yield for a crop in four instances: (1) when the farmer has not provided satisfactory evidence of the yield of the crop; (2) when the farmer has not had a share of the production of the crop for more than two years; (3) when the farmer has not farmed the land before; or (4) when the farmer rotates to a crop that has not been produced on the farm previously.[66]

3. *Actual Production History Adjustments (APH)*

Because a farmer's APH for a crop is based on recent past yields, yield losses in these years due to natural disasters can lower the APH. As a result, the farmer's yield for crop insurance purposes is lower than it would have been if the earlier yield losses had not occurred. The Agricultural Risk Protection Act addresses this situation by providing for the adjustment of APH beginning with the 2001 crop year.[67] The act provides that if in one or more of the crop years used to establish the farmer's APH for a crop the farmer's appraised or recorded yield was less than 60 percent of the transitional yield, the farmer may elect to exclude that yield and replace each excluded yield with a yield equal to 60 percent of the applicable transitional yield.[68] If, however, a farmer makes an election under this provision, the FCIC is required to "adjust the premium to reflect the risk associated with the adjustment made in the actual production history of the producer."[69]

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63. *See* 7 C.F.R. § 400.55(a) (2000).

64. The Agricultural Risk Protection Act amends the records and reporting requirement imposed on producers by providing that producers are required to "provide annually records acceptable to the Secretary regarding crop acreage, acreage yields, and production for each agricultural commodity insured under this title or accept a yield determined by the Corporation . . . ." Agricultural Risk Protection Act of 2000, Pub. L. No.106-224, § 124, 2000 U.S.C.C.A.N. (114 Stat.) 358, 378 (to be codified at 7 U.S.C. § 1508(f)(3)(A)).

65. *See, e.g.*, 7 C.F.R. § 400.52(p) (2000) (defining transitional yield (T-Yield)).

66. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 105(a), 2000 U.S.C.C.A.N. (114 Stat.) 358, 367 (to be codified at 7 U.S.C. § 1508(g)(2)(B)).

67. *See id.* § 171, 2000 U.S.C.C.A.N. (114 Stat.) 358, 397 (to be codified at 7 U.S.C. § 1501 note).

68. *See id.* (to be codified at 7 U.S.C. § 1508(g)(4)(A), (B)).

69. *Id.* § 105, 2000 U.S.C.C.A.N. (114 Stat.) 358, 366 (to be codified at 7 U.S.C. § 1508(g)(4)(C)).

While this provision was apparently intended to address situations in which the yields used to determine the producer's APH for a crop were reduced by natural disasters, it is not so limited by its terms. Thus, for example, a producer who lost an insurable organic crop due to contamination by a chemical and who accordingly had no yield in that year might be able to use this provision to avoid a drastic reduction in the APH for that crop in subsequent years. Whether this provision will apply in such circumstances is likely to depend on how this provision is interpreted by the FCIC regulations implementing it.

The act also directs the FCIC to develop a methodology for adjusting APH for farmers who have increased yields as a result of successful pest control efforts.[70] Three conditions must be satisfied before such an adjustment can be made. First, the producer's farm must be

> located in an area where systematic, area-wide efforts have been undertaken using certain operations or measures, or the producer's farm is a location at which certain operations or measure have been undertaken, to detect, eradicate, suppress, or control, or at least to prevent or retard the spread of, a plant disease or plant pest . . . .[71]

Second, "[t]he presence of the plant disease or plant pest [must have been] found to adversely affect the yield of the agricultural commodity for which the producer is applying for insurance."[72] Third, the efforts must have been effective.[73] The resulting adjustment must "reflect the degree to which the success of [the] systematic, area-wide efforts . . . on average, increases the yield of the commodity on the producer's farm, as determined by the Corporation."[74]

D. *Quality Loss Adjustment Coverage*

The Agricultural Risk Protection Act requires the FCIC to offer quality loss adjustment coverage, although the FCIC already offered such coverage.[75] Under the act, an insurance policy offering this coverage will provide "for a reduction in the quantity of production of the agricultural commodity considered produced during a crop year, or a similar adjustment, as a result of the agricultural commodity not meeting the quality standards established in the policy or plan of insurance."[76]

A special "unit" option will be available for quality loss adjustment coverage.[77] Acreage insured under the federal crop insurance program is insured in "units."[78] A

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70. *See id*. (to be codified at 7 U.S.C. § 1508(g)(5)(A)).
71. *Id.* (to be codified at 7 U.S.C. § 1508(g)(5)(A)(i)).
72. *Id.* (to be codified at 7 U.S.C. § 1508(g)(5)(A)(ii)).
73. *See id*. (to be codified at 7 U.S.C. § 1508(g)(5)(A)(iii)).
74. *Id*. (to be codified at 7 U.S.C. § 1508(g)(5)(B)).
75. *See id.* § 107, 2000 U.S.C.C.A.N. (114 Stat.) 358, 368 (to be codified at 7 U.S.C. § 1508(m)(2)).
76. *Id*. (to be codified at 7 U.S.C. § 1508(m)(1)).
77. *See id.* (to be codified at 7 U.S.C. § 1508(m)(2)(A)).

"basic unit" generally is all of the insurable acreage of the insured crop in the county in which the farmer has a one hundred percent share or is operated by a landowner and tenant on a share basis.[79] Under certain policies and in certain circumstances, a basic unit can be divided into "optional units."[80] With respect to quality loss adjustment coverage, the act requires the FCIC to offer farmers the option insuring on a smaller than a unit basis if all of the following requirements are satisfied:

> (i) The agricultural commodity is sold on an identity-preserved basis.
> (ii) All quality determinations are made solely by the Federal agency designated to grade or classify the agricultural commodity.
> (iii) All quality determinations are made in accordance with standards published by the Federal Agency in the Federal Register.
> (iv) The discount schedules that reflect the reduction in quality of the agricultural commodity are established by the Secretary.[81]

Because of the restrictive nature of these requirements, not all crops will qualify. Cotton is currently the only crop that qualifies.

The FCIC is also required to "set the quality standards below which quality losses will be paid based on the variability of the grade of the agricultural commodity from the base quality for the agricultural commodity."[82] Finally, the act requires the FCIC to obtain the services of a qualified person to review its quality loss adjustment procedures "so that the procedures more accurately reflect local quality discounts that are applied to [insured] agricultural commodities . . . ."[83] Based on this review, the FCIC must modify its procedures, "taking into consideration the actuarial soundness of the adjustment and the prevention of fraud, waste, and abuse."[84]

E. *New Procedures for Double Insurance and Prevented Planting*

1. *Double or "Substitute" Insurance*

The Agricultural Risk Reduction Act establishes new procedures for handling losses when one crop follows another on the same acreage during the same crop year. In such circumstances, the "first crop" is the first insured commodity planted for harvest or prevented from being planted on that specific acreage during that crop year.[85] The

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78. *See* Common Crop Insurance Policy, 7 C.F.R. § 457.8(34) (1999).
79. *See id.* § 457.8(1).
80. *See id.* § 457.8(34). Under some policies, basic and optional units can be combined into "enterprise" units or "whole farm" units. *See id.* § 457.8(1). The premium costs of insuring on a basic unit basis are usually lower than insuring on an optional basis. Insuring on an enterprise or whole farm basis, however, usually results in lower premium costs to the producer than insuring on a basic unit basis.
81. Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 107, 2000 U.S.C.C.A.N. (114 Stat.) 358, 368 (to be codified at 7 U.S.C. § 1508(m)(2)(A)).
82. *Id.* (to be codified at 7 U.S.C. § 1508(m)(2)(B)).
83. *Id.* (to be codified at 7 U.S.C. § 1508(m)(3)).
84. *Id.* (to be codified at 7 U.S.C. § 1508(m)(3)).
85. *See id.* § 108, 2000 U.S.C.C.A.N. (114 Stat.) 358, 368 (to be codified at 7 U.S.C. §

"second crop" is a second crop of the same or a different commodity planted on the same acreage as the first crop for harvest in the same crop year, excluding a replanted crop.[86] A "replanted crop" is a crop replanted on the same acreage of the first crop to satisfy the requirements of an insurance policy covering the first crop.[87]

The act gives producers whose first crop suffered a total or partial insurable loss the ability to elect one of two options: Under the first option, the producer may elect not to plant a second crop and collect an indemnity payment equal to one hundred percent of the insurable loss for the first crop.[88] Under the second option, the producer can elect to plant a second crop and collect an indemnity payment on the first crop in an amount established by the FCIC, but not exceeding thirty-five percent of the insurable loss for the first crop.[89] Under the second option, if the producer does not suffer an insurable loss to the second crop, the producer can collect an indemnity payment of one hundred percent of the insurable loss for the first crop less the amount previously paid as an indemnity on the first crop.[90] Under this option, the premium related to the first crop will be adjusted to reflect either the partial or full indemnity payment.[91]

As discussed below, different provisions apply to established double-cropping practices and producers who plant a crop subsequent to the second crop are ineligible for crop insurance and NAP, except with respect to established double-cropping.

2. *Prevented Planting*

The act also provides that if a first insured crop is prevented from being planted, the producer may elect one of two options. First, the producer may elect not to plant a second crop and collect an indemnity payment equal to one hundred percent of the prevented planting guarantee for the acreage for the first crop.[92] This option, however, is available only in "those situations in which other producers, in the area where a first crop is prevented from being planted is located, are also generally affected by the conditions that prevented the first crop from being planted."[93]

Under the second option, the producer may plant a second crop and collect an indemnity payment established by the FCIC for the first crop not to exceed thirty-five percent of the prevented planting guarantee for the acreage for the first crop.[94] This option is only available if other producers in the area where the first crop is prevented from being planted are also generally affected by the conditions that prevented the first crop's planting and the producer plants the second crop after the latest planting date

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1508a(a)(1)).

86. *See id*. (to be codified at 7 U.S.C. § 1508a(a)(2)).
87. *See id*. (to be codified at 7 U.S.C. § 1508a(a)(3)).
88. *See id*. (to be codified at 7 U.S.C. § 1508a(b)(1)(A)).
89. *See id*. (to be codified at 7 U.S.C. § 1508a(b)(1)(B)).
90. *See id*. (to be codified at 7 U.S.C. § 1508a(b)(2)).
91. *See id*. (to be codified at 7 U.S.C. § 1508a(b)(3)).
92. *See id*. (to be codified at 7 U.S.C. § 1508A(c)(1)(A)).
93. *Id*. (to be codified at 7 U.S.C. § 1508A(c)(4)).
94. *See id*. (to be codified at 7 U.S.C. § 1508A(c)(1)(B)(ii)).

established by the FCIC for the first crop.[95] If this option is elected, the FCIC is required to "assign the producer a recorded yield for that crop year for the first crop equal to 60 percent of the producer's actual production history for the agricultural commodity involved, for purposes of determining the producer's actual production history for the subsequent crop years."[96]

As discussed below, established double-cropping practices are treated differently, and producers who plants a crop subsequent to the second crop are ineligible for crop insurance and NAP, except in the case of established double-cropping.[97]

3. *Established Double-Cropping Practices*

The Agricultural Risk Protection Act provides that a producer may receive full indemnity payments on two or more insured crops planted for harvest in the same crop year if each of the following conditions is satisfied:

> (1) There is an established practice of planting two or more crops for harvest in the same crop year in the area, as determined by the Corporation.
> (2) An additional coverage policy or plan of insurance is offered with respect to the agricultural commodities planted on the same acreage for harvest in the same crop year in the area.
> (3) The producer has a history of planting two or more crops for harvest in the same crop year or the applicable acreage has historically had two or more crops planted for harvest in the same crop year.
> (4) The second or more crops are customarily planted after the first crop for harvest on the same acreage in the same year in the area.[98]

4. *Disqualification for Planting a Crop Subsequent to the Second Crop*

The act provides that, except in the case of double-cropping, "if a producer elects to plant a crop (other than a replanted crop) subsequent to a second crop on the same acreage as the first crop and second crop for harvest in the same crop year, the producer shall not be eligible for [federal crop] insurance . . . or noninsured crop assistance . . . for the subsequent crop."[99]

F. *Measures Intended to Improve Program Integrity*

The Agricultural Risk Protection Act provides for the initiation of a variety of measures to improve the integrity of the federal crop insurance program. In general, the measures contemplate coordinated efforts among the FCIC, approved insurance

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95. *See id*. (to be codified at 7 U.S.C. § 1508A(c)(1)(B), (4), (5)).
96. *Id*. (to be codified at 7 U.S.C. § 1508A(c)(3)).
97. *See id.* (to be codified at 7 U.S.C. § 1508A(d)).
98. *Id*. (to be codified at 7 U.S.C. § 1508A(d)).
99. *Id*. (to be codified at 7 U.S.C. § 1508A(e)).

providers, and other USDA agencies and offices, such as the Farm Service Agency ("FSA") and the USDA Office of Inspector General.

The first of these measures requires the FCIC to provide written notification to reinsured insurance providers within three years after the end of the insurance period of any error, omission, or failure to follow FCIC regulations or procedures by the provider that may result in a debt being owed by the provider to the FCIC.[100] This limitation, however, does not apply "with respect to an error, omission, or procedural violation that is willful or intentional."[101] The FCIC's failure to give timely notice to the provider will relieve the provider from any debt owed by the provider to the FCIC.[102]

The act also directs the Secretary of Agriculture to develop and implement a coordinated plan for the FCIC and the FSA to reconcile all relevant information received by each agency from a producer who obtains crop insurance coverage. Beginning with the 2001 crop year, this information must be reconciled annually to identify and address any inconsistencies.[103]

The Secretary is also required to develop and implement a plan for the FSA to assist FCIC conduct ongoing monitoring of the crop insurance programs.[104] The Act specifies that the FSA must report to the FCIC if it "has reason to suspect the existence of program fraud, waste, or abuse."[105] The FSA must assist the FCIC and approved insurance providers "in auditing a statistically appropriate number of claims made under any policy or plan of insurance."[106]

The FSA may conduct its own inquiries if the FCIC does not respond within five days after receiving a report from the FSA.[107] If the FSA concludes that further investigation is warranted but the FCIC declines to undertake that investigation, the FSA may refer the results of its inquiries to the USDA Office of Inspector General.[108] The FSA is directed by the act to assign appropriate numbers of personnel within the field offices to carry out the monitoring plan and to train them to the level of competency as is required of loss adjusters for approved insurance providers.[109]

The act obligates the FCIC to notify the appropriate approved insurance provider of reports received from the FSA regarding program fraud, waste, and abuse.[110] Providers, however, are not relieved of their audit obligations.[111]

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100. *See id.* § 121, 2000 U.S.C.C.A.N. (114 Stat.) 358, 372 (to be codified at 7 U.S.C. § 1514(b)(1)).
101. *Id*. (to be codified at 7 U.S.C. § 1514(b)(2)).
102. *See id*. (to be codified at 7 U.S.C. § 1514(b)(3)).
103. *See id*. (to be codified at 7 U.S.C. § 1514(c)).
104. *See id.* (to be codified at 7 U.S.C. §1514(d)).
105. *Id* (to be codified at 7 U.S.C. § 1514(d)(1)(A)).
106. *Id*. (to be codified at 7 U.S.C. § 1514(d)(1)(C)).
107. *See id.* (to be codified at 7 U.S.C. § 1514(d)(2)).
108. *See id.*
109. *See id*. (to be codified at 7 U.S.C. § 1514(d)(2), (3)).
110. *See id.* (to be codified at 7 U.S.C. § 1514(d)(4)(B)).
111. *See id*. (to be codified at 7 U.S.C. § 1514(d)(4)(A)).

If an approved insurance provider reports suspected wrongdoing or waste to the FCIC, the FCIC must respond within ninety days with a written report describing its intended actions.[112] If it fails to do so, the provider may request the FSA for assistance "in an inquiry into the alleged program fraud, waste, or abuse."[113]

Under the act, the Secretary must establish procedures for the FCIC to use in identifying insurance agents with abnormally high loss claims and claims adjusters with abnormally high accepted or denied claims.[114] In addition to reviewing the performance of these agents and adjusters and taking remedial action where appropriate, the FCIC is directed by the act to develop procedures for approved insurance providers to use in conducting annual reviews of each agent and claims adjuster used by the provider.[115]

In support of the compliance measures, approved insurance providers will be required to report to the FCIC the name and identification number of each insured, the commodity insured, and the elected coverage level approximately thirty days after the applicable insurance sales closing date.[116] Currently this occurs after acreage reporting.

The act also establishes sanctions for any person, including producers and approved insurance providers, who willfully and intentionally provides false or inaccurate information to the FCIC or an approved insurance provider with respect to an insurance policy or plan.[117] The sanctions also apply to any person who willfully and intentionally fails to comply with a requirement of the FCIC.[118]

The sanctions include the imposition of a civil fine for each violation in an amount not to exceed either the greater of the amount of the financial gain obtained as a result of the false or inaccurate information or noncompliance or $10,000.[119] Producers may also be disqualified from other farm program benefits for up to five years.[120] Persons other than producers, such as agents and claims adjusters, may be disqualified from participating in or benefiting from the crop insurance program for up to five years.[121] The Secretary is required to consider the gravity of the violation in determining whether a sanction is to be imposed and, if one is imposed, the type and amount of the sanction.[122] Insurance policies and plans are required to disclose these potential sanctions.[123]

Finally, the act requires the FCIC to report to Congress annually on its efforts to carry out the act's program integrity provisions.[124] The FCIC is also directed to improve

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112. *See id.* (to be codified at 7 U.S.C. § 1514(d)(5)).
113. *Id*. (to be codified at 7 U.S.C. § 1514(d)(5)(c)).
114. *See id.* (to be codified at 7 U.S.C. § 1514(f)).
115. *See id*.
116. *See id*. (to be codified at 7 U.S.C. § 1514(g)).
117. *See id*. (to be codified at 7 U.S.C. § 1514(h)(1)).
118. *See id*. (to be codified at 7 U.S.C. § 1514(h)(2)).
119. *See id*. (to be codified at 7 U.S.C. § 1514(h)(3)(A)).
120. *See id*. (to be codified at 7 U.S.C. § 1514(h)(3)(B)).
121. *See id*. (to be codified at 7 U.S.C. § 1514(h)(3)(C)).
122. *See id*. (to be codified at 7 U.S.C. § 1514(h)(4)).
123. *See id*. (to be codified at 7 U.S.C. § 1514(h)(5)).
124. *See id*. (to be codified at 7 U.S.C. § 1514(i)).

its information management systems, including upgrading its computer hardware and software.[125]

G. *Measures to Protect Information Furnished by Producers*

The Agricultural Risk Protection Act establishes a general prohibition against public disclosure by the USDA and approved insurance providers of information furnished by a producer with respect to federal crop insurance.[126] Producers, however, may consent to the public release of information furnished by them, but crop insurance benefits cannot be conditioned on the producer providing such consent.[127] The general prohibition does not apply to statistical or aggregated data that does not allow the identification of the person who supplied particular information.[128] The violation of this prohibition can result in the imposition of penalties.[129]

H. *Research and Development for New Crop Insurance Policies*

The Agricultural Risk Protection Act provides for research and development relating to crop insurance policies.[130] Effective October 1, 2000, the FCIC must terminate its research and development activities.[131] Thereafter, parties outside of the FCIC will do all research and development.

The act gives the FCIC the authority to contract for research and development services with persons or entities with experience in crop insurance or farm or ranch risk management, including colleges and universities, approved insurance providers, and trade or research organizations.[132] The act also requires the FCIC to enter into research and development contracts for certain types of policies, such as revenue coverage plans with certain specified features, and it establishes research and development priorities, including the development of a pasture, range, and forage program.[133]

The act also authorizes the FCIC to reimburse any applicant seeking reimbursement for its crop insurance policy research and development costs if the policy is approved by the FCIC Board of Directors and, if applicable, is offered for sale.[134] Such

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125. *See id*. (to be codified at 7 U.S.C. § 1514(j)(1)).

126. *See id.* § 122, 2000 U.S.C.C.A.N. (114 Stat.) 358, 377 (to be codified at 7 U.S.C. § 1502(c)(1)).

127. *See id.* (to be codified at 7 U.S.C. § 1502(c)(2)(B)).

128. *See id.* (to be codified at 7 U.S.C. § 1502(c)(2)(A)).

129. *See id*. (to be codified at 7 U.S.C. § 1502(c)(3)). Records submitted for crop insurance purposes can be made available to USDA agencies and local offices, "appropriate State and Federal agencies and divisions, and approved insurance providers for use in carrying out [the FCIA] . . . and other agricultural programs." *Id*. § 124, 2000 U.S.C.C.A.N. (114 Stat.) 358, 378 (to be codified at 7 U.S.C. § 1506(h)).

130. *See id.* § 131, 2000 U.S.C.C.A.N. (114 Stat.) 358, 379 (to be codified at 7 U.S.C. § 1522).

131. *See id.* (to be codified at 7 U.S.C. § 1522(e)(4)(A)).

132. *See id*. (to be codified at 7 U.S.C. § 1522(c)(1), (3)).

133. *See id*. (to be codified at 7 U.S.C. § 1522(c)(4), (6)-(9)).

134. *See id.* (to be codified at 7 U.S.C. § 1522(b)(1)).

costs will also be reimbursed with respect to policies approved by the Board before the enactment of the act.[135] In either case, reimbursement will be made only if the Board determines that the policy is marketable based on a reasonable marketing plan.[136]

Reimbursement will also be made for the maintenance costs associated with the annual cost of underwriting a policy for which the research and development costs have been reimbursed for up to four years.[137] Thereafter, the approved insurance provider responsible for the maintenance of the policy may charge a fee to other approved insurance providers that elect to sell the policy or transfer the responsibility for maintenance to the FCIC.[138]

The act provides that the reimbursement amount for an approved policy is to be based "on the complexity of the policy and the size of the area in which the policy or material is expected to be sold."[139] Reimbursement payments are "considered as payment in full by the Corporation for the research and development conducted with regard to the policy and any property rights to the policy."[140]

I. *Authorization for Various Crop Insurance Pilot Programs*

The Agricultural Risk Protection Act authorizes the FCIC to conduct pilot programs to test the marketability and suitability of new crop insurance policies.[141] In addition to giving the FCIC the general authority to conduct pilot programs, the act specifically directs the FCIC to conduct at least one pilot program for livestock,[142] revenue insurance,[143] and a premium rate reduction pilot program.[144] Otherwise, the range of permissible and required pilot programs is remarkable, for it extends from the destruction of bees due to pesticides to coverage for wild salmon losses.[145] The act also expands the existing options pilot program.[146]

J. *Education and Risk Management Assistance Programs*

The Agricultural Risk Protection Act requires the FCIC and the Secretary, acting through the Cooperative State Research, Education, and Extension Service, to provide crop insurance education and information in states where crop insurance participation has

135. *See id.* (to be codified at 7 U.S.C. § 1522(b)(2)).
136. *See id*. (to be codified at 7 U.S.C. § 1522(b)(1)-(3)).
137. *See id.* (to be codified at 7 U.S.C. § 1522(b)(4)).
138. *See id*.
139. *Id*. (to be codified at 7 U.S.C. § 1522(b)(6)).
140. *Id*. (to be codified at 7 U.S.C. § 1522(b)(5)).
141. *See id*. § 132, 2000 U.S.C.C.A.N. (114 Stat.) 358, 383 (to be codified at 7 U.S.C. § 1523(a)).
142. *See id*. (to be codified at 7 U.S.C. § 1523(b)).
143. *See id*. (to be codified at 7 U.S.C. § 1523(c)).
144. *See id*. (to be codified at 7 U.S.C. § 1523(d)).
145. *See id*. (to be codified at 7 U.S.C. § 1523(a)(3)).
146. *See id*. § 134, 2000 U.S.C.C.A.N. (114 Stat.) 358, 388 (to be codified at 7 U.S.C. § 7331(b), (c)(2), (h)).

traditionally been low and where the crop insurance program under serves producers.[147] The act also authorizes the transfer of monies from the insurance fund for the purpose of awarding grants to colleges, universities, and other qualified public and private entities to educate producers about risk management strategies.[148]

The Secretary must provide cost share assistance to producers in not less than ten, or more than fifteen, states in which participation in the crop insurance program is historically low.[149] Producers may use this assistance for the following uses:

> (A) construct or improve–
> (i) watershed management structures; or
> (ii) irrigation structures;
> (B) plant trees to form windbreaks or to improve water quality;
> (C) mitigate financial risk through production diversification or resource conservation practices, including–
> (i) soil erosion control;
> (ii) integrated pest management; or
> transition to organic farming;
> (D) enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk;
> (E) enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk; or
> (F) conduct any other activity related to the activities described in subparagraphs (A) through (E), as determined by the Secretary.[150]

Beginning in the 2001 fiscal year, the Commodity Credit Corporation is authorized to make $10 million in cost share funds available for this assistance.[151] Individual producer payments are limited at $50,000 per person.[152]

K. *Miscellaneous Changes*

The Agricultural Risk Protection Act makes various other changes to the FCIA. In general terms, these changes include the following:

- Removing any federal crop insurance policy or plan from the jurisdiction of the Commodity Futures Trading Commission or the Securities and Exchange Commission.[153]

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147. *See id*. § 133, 2000 U.S.C.C.A.N. (114 Stat.) 358, 387 (to be codified at 7 U.S.C. § 1524(a)(2)).
148. *See id*.
149. *See id*. (to be codified at 7 U.S.C. § 1524(b)(1)).
150. *Id*. (to be codified at 7 U.S.C. § 1524(b)(2)).
151. *See id*. (to be codified at 7 U.S.C. § 1524(b)(3)(B)).
152. *See id*. (to be codified at 7 U.S.C. § 1524(b)(2)).
153. *See id*. § 141, 2000 U.S.C.C.A.N. (114 Stat.) 358, 389 (to be codified at 7 U.S.C. § 1502(d)).

- Requiring the FCIC to make information electronically available to producers and approved insurance providers and, "to the maximum extent practicable," to "allow producers and approved insurance providers to use electronic methods to submit information required by the Corporation."[154]
- Permitting the FCIC to renegotiate the Standard Reinsurance Agreement once during the 2001 through 2005 reinsurance years.[155]
- Limiting revenue coverage for potatoes to whole farm policies or plans of insurance.[156]
- Beginning with the 2001 crop year, requiring the FCIC to offer coverage for cotton and rice losses resulting from the failure of irrigation water supplies due to drought and saltwater intrusion.[157]
- Permitting producers who had obtained a 1999 Crop Revenue Coverage policy that had been voided by FCIC Bulletin MGR-99-004 to receive full indemnities under the policy.[158]

III. THE NON-INSURED CROP DISASTER ASSISTANCE PROGRAM

NAP provides assistance to producers of crops that are not covered by federal crop insurance.[159] It is, in effect, a disaster assistance program, not an insurance program. Because it is not an insurance program, it is administered by the USDA Farm Service Agency rather than the FCIC. The assistance it provides is equivalent to the coverage provided under federal crop insurance at the CAT level.

The Agricultural Risk Protection Act makes several changes to NAP, including the elimination of the "area loss" requirement and the assessment of "service fees" for the receipt of NAP benefits.[160] These changes will take effect beginning in the 2001 crop year.[161]

The act eliminates the "area loss" requirement.[162] Under the law as it existed previously, an individual producer who had suffered a qualifying individual loss could

154. *Id*. § 144, 2000 U.S.C.C.A.N. (114 Stat.) 358, 391 (to be codified at 7 U.S.C. § 1508(a)(5)).

155. *See id*. § 148, 2000 U.S.C.C.A.N. (114 Stat.) 358, 394 (to be codified at 7 U.S.C. 1506).

156. *See id*. § 161, 2000 U.S.C.C.A.N. (114 Stat.) 358, 395 (to be codified at 7 U.S.C. § 1508(a)(3)(C)).

157. *See id*. § 162, 2000 U.S.C.C.A.N. (114 Stat.) 358, 395 (to be codified at 7 U.S.C. § 1508(a)(8)). This provision takes effect beginning in the 2001 crop year. *See id*. § 171(b)(2), 2000 U.S.C.C.A.N (114 Stat.) 358, 397 (to be codified at 7 U.S.C. § 1501 note).

158. *See id*. § 163, 2000 U.S.C.C.A.N (114 Stat.) 358, 395. This provision becomes effective on October 1, 2000. *See id*. § 171(b)(1)(C), 2000 U.S.C.C.A.N. (114 Stat.) 358, 397 (to be codified at 7 U.S.C. § 1501 note).

159. *See* 7 U.S.C. § 7333 (Supp. IV 1999); 7 C.F.R. pt. 1437 (1999).

160. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 109, 2000 U.S.C.C.A.N. (114 Stat.) 358, 371 (to be codified at 7 U.S.C. § 7333(c)(4), (e)).

161. *See id.* § 171(b)(2), 2000 U.S.C.C.A.N. (114 Stat.) 358, 397 (to be codified at 7 U.S.C. § 1501 note).

162. *See id.* § 109, 2000 U.S.C.C.A.N. (114 Stat.) 358, 371 (amending 7 U.S.C. § 7333(c)(4)).

not receive NAP benefits unless other producers in the geographic area in which the producer was located had suffered, in the aggregate, a qualifying loss.[163]

The act also requires producers to submit a service fee with their application for NAP that is equal to the lesser of $100 per crop per county or $300 per producer per county, but not to exceed a total of $900 per producer.[164] This fee will be waived for limited resource farmers.[165]

Under the act, the loss of the non-insured commodity must still have been caused by a drought, flood, natural disaster as provided in section (a)(3) of the pre-existing statute.[166] The act's loss requirement provision, however, changes the loss requirement by repealing the pre-existing loss requirement that included an area loss requirement.[167] The act's loss requirement provision provides as follows:

> (1) Cause. – To be eligible for assistance under this section, a producer of an eligible crop shall have suffered a loss of a noninsured commodity as the result of a cause described in subsection (a)(3).
> (2) Assistance. – On making a determination described in subsection (a)(3), the Secretary shall provide assistance under this section to producers of an eligible crop that have suffered a loss as a result of the cause described in subsection (a)(3).
> (3) Prevented Planting. – Subject to paragraph 1, the Secretary shall make a prevented planting uninsured crop disaster assistance payment if the producer is prevented from planting more than 35 percent of the acreage intended for the eligible crop because of drought, flood, or other natural disaster, as determined by the Secretary.
> (4) Area Trigger. – The Secretary shall provide assistance to individual producers without any requirement of an area loss.[168]

The act amends the NAP statute in other respects, including the following changes. The provisions relating to eligible crops are expanded to include, at the option of the Secretary, all types or varieties of an otherwise eligible crop.[169] Such types and varieties are to be considered a single eligible crop for NAP purposes.[170] Producers must make an application for NAP "not later than 30 days before the beginning of the coverage period, as determined by the Secretary."[171] As a condition of eligibility for NAP benefits,

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163. *See* 7 U.S.C. § 7333(c)(1), *repealed by* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 109, 2000 U.S.C.C.A.N. (114 Stat.) 358, 371.
164. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 109, 2000 U.S.C.C.A.N. (114 Stat.) 358, 372 (to be codified at 7 U.S.C. § 7333(k)(1)).
165. *See id.* (to be codified at 7 U.S.C. §7333(k)(2)).
166. *See* 7 U.S.C. § 7333(a)(3) (Supp. V 1999).
167. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 109, 2000 U.S.C.C.A.N. (114 Stat.) 358, 371 (to be codified at 7 U.S.C. § 7333(c)).
168. *Id.*
169. *See id.* (to be codified at 7 U.S.C. § 7333(a)(2)(c)).
170. *See id.*
171. *Id.* (to be codified at 7 U.S.C. § 7333(b)(1)).

a producer "must provide annually to the Secretary records of crop acreage, acreage yields, and production for each crop as required by the Secretary."[172]

IV. DOMESTIC COMMODITY PROGRAMS AND OTHER FARM PROGRAMS

Many of commodity and other farm program provisions of the Agricultural Risk Protection Act of 2000 directly affect agricultural producers. Of special importance to producers are the act's provisions for direct financial assistance to producers of various crops. The most significant of these are direct payments to persons who are parties to production flexibility contracts and to producers of certain crops not covered by production flexibility contracts. Other assistance is provided to producers of certain crops through surplus crop purchases, low interest rate loans, or both. While most of this assistance is intended to at least partially compensate its recipients for market losses due to low prices, some of it is intended to offset losses caused by natural disasters or plant or animal diseases.

The act also changes some FSA-administered commodity and credit program rules. Some of these changes are for a single crop year or other limited period.

Various research projects are authorized and funded under the act. While these projects are not discussed here because they do not directly involve agricultural producers, a grant program relating to value-added agricultural product market develop is described because that program makes funds available directly to producers.

Finally, the act provides financial assistance for farmland protection and on-farm conservation measures. This assistance, along with the market loss assistance measures, program changes, and the value-added grant program are described below.

A. *Market Loss, Natural Disaster, and Disease Assistance*

1. *Market Loss Assistance for Production Flexibility Contract Payment Recipients*

Since 1996, production flexibility contract payments have been the primary mechanism for supporting the income of persons who own or operate land that historically had been enrolled in one or more of the acreage reduction programs for feed grains, wheat, upland cotton, and rice. These payments originated under a title of the Federal Agricultural Improvement and Reform Act of 1996 ("FAIR Act") known as the Agricultural Market Transition Act ("AMTA").[173] These payments, therefore, are sometimes called "AMTA payments." The payment delivery mechanism, however, is a standardized production flexibility contract ("PFC") between the Commodity Credit Corporation and eligible landowners and producers.[174] For this reason, this Article refers to these payments as "PFC payments."

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172. *Id*. (to be codified at 7 U.S.C. § 7333(b)(2)).

173. *See* Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, tit. I, §§ 111-118, 110 Stat. 888, 896-904 (codified at 7 U.S.C. §§ 7201-7218).

174. *See* 7 C.F.R. § 1412 (2000) (listing the regulations defining the production flexibility contract terms and enrollment provisions). *See also* DAVID ORDEN, POLICY REFORM IN AMERICAN

PFC payments were controversial in 1996, and they remain so today. When the AMTA was first enacted, Congress authorized expenditures in excess of $35 billion for PFC payments over the seven-year term of the contracts from fiscal year 1996 through fiscal year 2002. One of the touted virtues of these payments was the budgetary certainty provided by a seven-year stream of fixed annual payments.

This virtue has turned out to be illusory. Although the originally established PFC payment sums have not changed, Congress supplemented them in 1998, 1999, and 2000 with additional payments known as "market loss assistance payments."[175] As a result, the amount of direct income support payments to farmers and landowners has changed from year-to-year for three fiscal years.

The Agricultural Risk Protection Act provides for market loss assistance payments to landowners and producers who are eligible to receive production flexibility contract payments in fiscal year 2000.[176] As a result of the supplementation of PFC payments for fiscal years 1998, 1999, and now 2000, an additional amount totaling in excess of $13 billion will have been paid to contract holders as of the fifth year of the PFC program.[177]

More specifically, in 1998 Congress appropriated $3.057 billion to supplement PFC payments for fiscal year 1998.[178] This appropriation effectively provided a 50 percent increase in PFC payments for fiscal year 1998.[179] In fiscal year 1999, the total amount of the PFC supplements was approximately $5.5 billion.[180] This amount effectively doubled the amount of PFC payments in fiscal year 1999.[181]

AGRICULTURE: ANALYSIS AND PROGNOSIS 125-95 (1999) (discussing the political history of the 1996 legislation); Christopher R. Kelley, *Recent Federal Farm Program Developments*, 4 DRAKE J. AGRIC. L. 93, 93-119 (1999) (giving a detailed explanation of production flexibility contracts and the other domestic commodity programs).

175. *See* Letter from Robert E. Robertson Assoc. Dir., Food and Agric. Issues, *United States General Accounting Office*, to Honorable Dan Glickman, Secretary of Agric., at 1 (June 30, 2000) [hereinafter Robertson Letter] (this letter's subject line is: Farm Programs: Observations on Market Loss Assistance Payments. The letter is numbered GAO/RCED-00-177R, and is recorded at the U.S. GEN. ACCOUNTING OFFICE).

176. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 201, 2000 U.S.C.C.A.N. (114 Stat.) 358, 398 (to be codified at 7 U.S.C. § 1421).

177. *See* Robertson Letter, *supra* note 175, at 1.

178. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, § 1111, 112 Stat. 2681, 2681-44 to -45.

179. *See* Robertson Letter, *supra* note 175, at 3.

180. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78, § 802, 1999 U.S.C.C.A.N. (113 Stat.) 1135, 1176 (to be codified at 7 U.S.C. § 1421).

181. *See* Robertson Letter, *supra* note 175, at 3. Market loss assistance payments were ostensibly intended to compensate producers of wheat, feed grains, rice, and cotton for low market prices. *See id.* However, producers were not required to have planted these crops to receive the payments. *See id.* at 4-5. Instead, market loss assistance payments simply "followed" PFC payments. As a result, based on actual plantings, some producers were "over-compensated" while others were "under-compensated." *See id.* at 2. Based on an analysis of $4.5 billion of 1999 market loss assistance payments, the United States General Accounting Office found that "about 893,000 farms received about $1.22 billion more than they would have received had the payments been based on the type or amount of crops planted in 1999" and that "about

The amount appropriated by the Agricultural Risk Protection Act follows the formula used for the 1999 fiscal year.[182] Therefore, in fiscal year 2000 individual PFC payments will be doubled so that the total amount of the PFC payments in fiscal year 2000 will exceed $10 billion. The payments will be made between September 1 and September 30, 2000.[183]

2. *Market Loss Assistance for Producers of Oilseeds*

The Agricultural Risk Protection Act authorizes $500 million in payments to producers of the 2000 crop of oilseeds who are eligible to obtain a marketing assistance loan.[184] Individual payment amounts will be determined by multiplying the producer's acreage and yield of oilseeds by a payment rate determined by the Secretary.[185]

For purposes of the individual payment formula, a producer's acreage will be "equal to the number of acres planted to the oilseed by the producer[ ] on the farm during the 1997, 1998, or 1999 crop year, whichever is greatest, as reported by the producer[ ] on the farm to the Secretary (including any acreage reports that are filed late)."[186] A producer who planted oilseeds in the 2000 crop year, but not in 1997, 1998, or 1999, will have an acreage equal to the reported acreage in the 2000 crop year, including the acreage shown on any late-filed acreage reports.[187]

A producer's yield, for purposes of the payment formula, will depend on whether the crop planted is soybeans or another oilseed. For soybeans, the yield for producers other than "new producers" will be equal to the greatest of either of the following yields:

> (A) the average county yield per harvested acre for each of the 1995 through 1999 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or
> (B) the actual yield of the producers on the farm for the 1997, 1998, or 1999 crop year.[188]

400,000 farms adversely affected by falling prices would have received about an additional $300 million in MLA payments if the payments had been based on that year's plantings." *Id.*

182. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 201, 2000 U.S.C.C.A.N. (114 Stat.) 358, 398 (to be codified at 7 U.S.C. § 1421 note).

183. *See id*. (to be codified at 7 U.S.C. § 1421 note).

184. *See id*. § 202, 2000 U.S.C.C.A.N. (114 Stat.) 358, 398 (to be codified at 7 U.S.C. § 1421 note). For the 1999 crop of oilseeds, Congress appropriated $475 million in assistance. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78, § 804, 1999 U.S.C.C.A.N. (113 Stat.) 1135, 1178-79 (codified at 7 U.S.C. § 1421 note). The oilseeds program regulations are found at 65 Fed. Reg. 36,550, 36,561-36,563 (2000) (interim final rules to be codified at 7 C.F.R. pt. 1411).

185. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 202, 2000 U.S.C.C.A.N. (114 Stat.) 358, 398 (to be codified at 7 U.S.C. § 1421 note).

186. *Id*.

187. *See id*.

188. *Id*.

The yield for producers of other oilseeds, except for "new producers," will be equal to the greatest of either of the following yields:

> (A) the average national yield per harvested acre for each of the 1995 through 1999 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or
> (B) the actual yield of the producers on the farm for the 1997, 1998, or 1999 crop year.[189]

"New producers" are those who planted an oilseed in the 2000 crop year, but who did not plant an oilseed in the 1997 through 1999 crop years.[190] The yield for these producers will be equal to the greater of the following yields:

> (A) the average county yield per harvested acre for each of the 1995 through 1999 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or
> (B) the actual yield of the producers on the farm for the 2000 crop.[191]

3. *Market Loss and Disease Assistance for Specialty Crops*

The act authorizes the Secretary to spend $200 million "to purchase specialty crops that have experienced low prices during the 1998 or 1999 crop years, including apples, black-eyed peas, cherries, citrus, cranberries, onions, melons, peaches, and potatoes.[192] In addition, the Secretary is directed to spend $25 million to compensate certain growers whose crops were affected by plum poxvirus, Pierce's disease, or, with respect to commercial producers only, citrus canker.[193] Another $5 million is made available for low-interest loans for terms of up to three years to apple producers who are suffering economic loss as a result of low prices for apples.[194] With the exception of the funds made available for loans to apple producers, these funds are to be expended in the 2001 fiscal year.[195]

4. *Market Loss Assistance for Peanuts*

The act requires the Secretary to make payments to producers of quota or additional peanuts for the 2000 crop year to partially compensate them for low prices and

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189. *Id*.
190. *See id.*
191. *Id*.
192. *Id*. § 203, 2000 U.S.C.C.A.N. (114 Stat.) 358, 399 (to be codified at 7 U.S.C. § 1421 note). The Act also authorizes appropriations totaling approximately $60 million to replenish the Perishable Agricultural Commodities Act Trust Fund and the trust fund that covers the costs of inspections and other services provided under the Agricultural Marketing Act of 1946, specifically 7 U.S.C. § 1622(h). *See id.*
193. *See id*.
194. *See id*.
195. *See id*. § 261, 2000 U.S.C.C.A.N. (114 Stat.) 358, 427 (to be codified at 7 U.S.C. § 1421 note).

increased costs of production.[196] The amount paid to producers on a farm will be equal to the product obtained by multiplying "(A) the quantity of quota peanuts or additional peanuts produced or considered produced by the producers; and (B) a payment rate equal to (i) in the case of quota peanuts, $30.50 per ton; (ii) in the case of additional peanuts, $16.00 per ton."[197]

5. *Market Loss Assistance for Tobacco*

The Agricultural Risk Protection Act authorizes the expenditure of $340 million to make payments to producers of certain varieties of tobacco.[198] Eligible producers are those whose farm's quota was reduced from the 1999 crop year to the 2000 crop year and who use the farm to grow eligible tobacco during the 2000 crop year.[199] Eligible tobacco are types 11, 12, 13, and 14 of flue-cured tobacco; type 21 of fire-cured tobacco; type 31 of burley tobacco; and cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 54, and 55.[200]

The available funds are to be allocated among the tobacco-growing states in amounts specified in the act and then further allocated among the farms in each state based on each farm's "quota of eligible tobacco available to each farm of an eligible person for the 2000 crop year."[201] The funds available to each farm are then divided among the eligible persons who are quota owners, quota lessees, and tobacco producers on farms in the state under a formula that takes into account whether the state is a party to the National Tobacco Grower Settlement Trust.[202] Payments to eligible producers in Georgia are conditioned on the state paying eligible producers an equal amount in the

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196. *See id.* § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 401 (to be codified at 7 U.S.C. § 1421 note).

197. *Id*. Congress provided similar relief for the 1999 crop year. In 1999, however, the payment rate was an amount equal to five percent of the loan rate established for quota peanuts or additional peanuts for quota and additional peanuts, respectively. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78, 1999 U.S.C.C.A.N. (113 Stat.) 1135, 1176-77. The regulations implementing the 1999 Peanut Marketing Assistance Program are found at 65 Fed. Reg. 7,942, 7,958-59 (2000) (to be codified at 7 C.F.R. pt. 1447).

198. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224 § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 402 (to be codified at 7 U.S.C. § 1421 note).

199. *See id.* In 1999, Congress appropriated $330.8 million to make payments to producers of tobacco on farms for which the quota was reduced from the 1998 crop year to the 1999 crop year. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. No. 106-78, § 803(c), 1999 U.S.C.C.A.N. (113 Stat.) 1135, 1177-78 (codified at 7 U.S.C. § 1421) (authorizing $328 million); Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 1999 U.S.C.C.A.N. (113 Stat.) 1501, 1537 (authorizing $2.8 million). The regulations implementing the tobacco loss assistance program are found at 65 Fed. Reg. 7,942, 7,960 (2000) (to be codified at 7 C.F.R. §§ 1464.201-.205).

200. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 400 (to be codified at 7 U.S.C. § 1421 note).

201. *Id*.

202. *See id*.

same manner as the federal funds would be paid in Georgia, but not to exceed $13 million.[203]

6. *Market Loss Assistance for Honey Producers*

The Agricultural Risk Protection Act requires the Secretary to make recourse loans available to producers of the 2000 crop of honey.[204] The loan rate will be "equal to 85 percent of the average price of honey during the five crop year period preceding the 2000 crop year, excluding the crop year in which the average price of honey was the highest and the crop year in which the average price of honey was the lowest in the period."[205]

7. *Market Loss Assistance for Wool and Mohair Producers*

The Agricultural Risk Protection Act directs the Secretary to make payments to wool and mohair producers for the 1999 marketing year at the rate of twenty cents per pound for wool and forty cents per pound for mohair.[206]

8. *Market Loss Assistance for Producers and First-Handlers of Cottonseed*

The Agricultural Risk Protection Act provides for $100 million to assist producers and first-handlers of the 2000 crop of cottonseed.[207]

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203. *See id*.

204. *See id.* (to be codified at 7 U.S.C. § 1421 note).

205. *Id*. A honey recourse loan program was also in effect for the 1998 and 1999 crop years. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, § 1122, 112 Stat. 2681, 2681-45 (codified at 7 U.S.C. § 1421) (1998 crop year); Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. No. 106-78, § 801, 1999 U.S.C.C.A.N., (113 Stat.) 1135, 1176 (codified at 7 U.S.C. § 1421) (1999 crop year). The regulations are found at 7 C.F.R. pt. 1434 (2000) and 65 Fed. Reg.7,942, 7,956 (2000) (to be codified at 7 C.F.R. §§ 1434.1, 1434.6, 1434.9).

206. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224 § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 404 (to be codified at 7 U.S.C. § 1421 note). A recourse loan program also was authorized for wool and mohair producers for the 1999 and 2000 crop years. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277 § 1126, 112 Stat. 2681, 2681-46 (codified at 7 U.S.C. § 1421) (1998 crop year); Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. No. 106-78, § 801, 1999 U.S.C.C.A.N. (113 Stat.) 1135, 1176 (codified at 7 U.S.C. § 1421). The regulations are found at 7 C.F.R. pt. 1469 (2000) and 65 Fed. Reg. 7,942, 7,960-61 (2000) (to be codified at 7 C.F.R. §§ 1469.4, 1469.5, 1469.13, 1469.17).

207. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 404 (to be codified at 7 U.S.C. § 1421 note). Assistance for producers and first-handlers of cottonseed was also authorized for the 1999 crop. *See* Consolidated Appropriations Act, Pub. L. No. 106-113 § 104, 1999 U.S.C.C.A.N. (113 Stat.) 1501, 1537 (codified at 7 U.S.C. § 1421). The regulations are found at 65 Fed. Reg. 36,550, 36,563-565 (2000) (to be codified at 7 C.F.R. §§ 1427.1100-.1111).

9. *Crop and Pasture Flood Compensation Program*

The Agricultural Risk Protection Act provides for $24 million to compensate producers whose land was rendered unusable as the result of long-term flooding during the 2000 crop year.[208] In addition to being unusable for agricultural production during the 2000 crop year due to flooding, the land must have been used for agricultural production during at least one of the 1992 through 1999 crop years, be a contiguous parcel of at least one acre, and be located in a county in which producers were eligible for assistance under the 1998 Flood Compensation Program.[209]

Certain lands are excluded. These excluded lands include those for which the producer had federal crop insurance, those for which the producer applied for NAP benefits or any crop disaster program established for the 2000 crop year, and those that were enrolled in the Conservation Reserve Program, the Wetland Reserve Program, "any emergency watershed protection program or Federal easement program that prohibits crop production or grazing . . . or any other Federal or State water storage program, as determined by the Secretary."[210] Payments under this program are limited to $40,000 per person.[211]

10. *Animal Disease Assistance*

The Agricultural Risk Protection Act makes available $7 million to cover pseudorabies vaccination costs incurred by pork producers.[212] Another $6 million is authorized to respond to bovine tuberculosis in Michigan.[213] These funds are to be expended in the 2001 fiscal year.[214]

11. *Loans for Seed Producers Affected by the AgriBiotech Bankruptcy*

The Agricultural Risk Protection Act authorizes over $35 million to make and administer loans to producers of the 1999 crop of grass, forage, vegetable, and sorghum seed who have not received payments because of the bankruptcy of AgriBiotech.[215] The loans are interest-free and become due on the earlier of the distribution of the assets in the bankruptcy proceeding or eighteen months after the loan was made.[216] However, if a

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208. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 257, 2000 U.S.C.C.A.N. (114 Stat.) 358, 424-25 (to be codified at 7 U.S.C. § 1421 note). The regulations governing the 1998 Flood Compensation Program are found at 7 C.F.R. pt. 1439.

209. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 257, 2000 U.S.C.C.A.N. (114 Stat.) 358, 424-25 (to be codified at 7 U.S.C. § 1421 note).

210. *Id.*

211. *See id.* The term "person" is defined at 7 U.S.C. § 1308(5) and in the regulations found at 7 C.F.R. § 1400.3.

212. *See id.* § 252(a), 2000 U.S.C.C.A.N. (114 Stat.) 358, 422.

213. *See id.* § 252(b), 2000 U.S.C.C.A.N. (114 Stat.) 358, 422.

214. *See id.* § 261(a)(2)(E), 2000 U.S.C.C.A.N. (114 Stat.) 358, 427.

215. *See id.* § 253(a), 2000 U.S.C.C.A.N. (114 Stat.) 358, 423.

216. *See id.*

borrower receives less than the loan amount in the final distribution of assets in the bankruptcy proceedings, the balance of the loan can be "converted, but not refinanced, to a loan that has the same terms and conditions as an operating loan under subtitle B of the Consolidated Farm and Rural Development Act."[217] The funds for these loans are to be expended in the 2001 fiscal year.[218]

This is at least the second time in recent years that Congress has provided assistance to producers who suffered losses as the result of the bankruptcy of a purchaser or warehouseman of their products. In 1999, Congress contributed $5 million dollars to an indemnity fund established by the state of Georgia to compensate cotton producers for the loss of stored cotton as the result of the bankruptcy of a warehouse where the cotton had been delivered.[219]

B. *Changes to Domestic Commodity Programs*

1. *Payments for Grazed Wheat, Barley, and Oats*

Beginning with the 2001 crop year, producers who would be eligible for a loan deficiency payment ("LDP") for wheat, barley, oats but who elect to use their acreage planted to one or more of these crops for livestock grazing may receive a payment if they agree not to harvest any of the wheat, barley, or oats on the acreage used for grazing.[220] The payment amount will be equal to the amount determined by multiplying the following:

> (1) the loan deficiency payment rate determined [under existing law] in effect, as of the date of the agreement, for the county in which the farm is located; by
> (2) the payment quantity determined by multiplying–
> (A) the quantity of the grazed acreage on the farm with respect to which the producer elects to forgo harvesting of wheat, barley, or oats; and
> (B) the greater of–
> (i) the established yield for the crop on the farm; or
> (ii) the average county yield per harvested acre of the crop, as determined by the Secretary.[221]

These payments are to be made at the same time and in the same manner as LDP payments, but not later than September 30, 2001.[222] The Secretary is required to establish

217. *Id*. § 253(b), (c), 2000 U.S.C.C.A.N. (114 Stat.) 358, 423.
218. *See id*. § 261(a)(2)(E), 2000 U.S.C.C.A.N. (114 Stat.) 358, 427.
219. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277 § 1126, 112 Stat. 2681, 2681-44 to 2681-45 (codified at 7 U.S.C. 1421).
220. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 205, 2000 U.S.C.C.A.N. (114 Stat.) 358, 404 (to be codified at 7 U.S.C. § 1421 note).
221. *Id*.
222. *See id.*

an availability period for these payments that is consistent with the availability period for marketing assistance loans for wheat, barley, and oats.[223]

2. *Expanded Eligibility for Loan Deficiency Payments*

The Agricultural Risk Protection Act expands the availability of LDPs for the 2000 crop year by making such payments available to producers who are not parties to a production flexibility contract but who nonetheless produce a commodity that would be covered by such a contract if they were parties to one.[224] In effect, this provision suspends the rule that only producers who have entered into a production flexibility contract can obtain LDP payments for feed grains, wheat, upland cotton, and rice for the 2000 crop year.[225]

Producers who apply for an LDP payment must have a "beneficial interest" in the commodity.[226] In light of the act's provision expanding the availability of LDP payments for the 2000 crop year, the act provides that a producer who seeks the benefits of this expanded availability of LDP payments is excepted from the beneficial interest requirement for a thirty day period after the promulgation of regulations implementing the provision.[227] Otherwise, the beneficial interest requirement applies to all producers who seek an LDP payment.[228]

3. *Tobacco Quotas*

The Agricultural Risk Protection Act eliminates the ten acre limitation on transfers of allotments or quotas on fire-cured, dark air-cured, or Virginia sun-cured tobacco.[229] It also gives the Secretary the authority to forego making a downward adjustment in the inventories of the producer associations of burley tobacco for any of the 2001 or subsequent crop years if the Secretary determines that the non-committed pool stocks are equal to or less than the established reserve stock level.[230]

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223. *See id*.

224. *See id*. § 206, 2000 U.S.C.C.A.N. (114 Stat.) 358, 405 (to be codified at 7 U.S.C. § 7235(a)).

225. LDP payments are available to producers of feed grains, wheat, upland cotton, rice, and oilseeds who are eligible to obtain a nonrecourse marketing assistance loan but who chose to forego obtaining one. *See* 7 U.S.C. § 7235(a) (Supp. V 1999). With respect to feed grains, wheat, upland cotton, and rice, only producers of these crops who have entered into a production flexibility contract are eligible for marketing assistance loans for these crops. *See id.* § 7231(b)(1).

226. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 206, 2000 U.S.C.C.A.N. (114 Stat.) 358, 405-06 (to be codified at 7 U.S.C. § 7235(f)). In general, having a "beneficial interest" in a commodity means retaining control, title, and risk of loss in the commodity. *See* 7 C.F.R. § 1421.5(c) (2000).

227. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 206, 2000 U.S.C.C.A.N. (114 Stat.) 358, 405 (to be codified at 7 U.S.C. § 7235(e)).

228. *See id*. (to be codified at 7 U.S.C. § 7235(f)).

229. *See id*. § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 401 (to be codified at 7 U.S.C. § 1314d(g)).

230. *See id*. (to be codified at 7 U.S.C. § 1314e(c)(3)(D)).

Other changes include the imposition of a limit of fifteen percent of the quota on the transfer of the total quantity of burley quota due to natural disasters.[231] In addition, persons who own a farm that has a burley tobacco-marketing quota are required to file an annual acreage report for the farm's burley tobacco and the Secretary is required to establish a computer recording system for this information.[232] The act also requires the Secretary to permit the parties to a sale of a farm with a burley tobacco-marketing quota to determine the percentage of the quota that is transferred with the acreage.[233]

Finally, the act responds to recent court decisions that invalidated statewide referenda in Indiana and Kentucky relating to the lease and transfer of burley tobacco quotas within those states.[234] These decisions construed the statutory language authorizing the referenda as requiring the approval of a majority of all active burley tobacco growers within the state, not just a majority of those voting in the referenda.[235] While these decisions applied only to the referenda in Indiana and Kentucky, the same language is found in the statutory authorizations for referenda in Ohio, Tennessee, and Virginia.[236] In response to these decisions, the act permits the Secretary to permit the lease and transfer of burley tobacco quota within the states of Tennessee, Ohio, Indiana, Kentucky, and Virginia "if, in a state-wide referendum conducted by the Secretary, a majority of the active Burley tobacco producers voting in the referendum approve the use of that type of lease and transfer."[237]

C. *Provisions Relating to Credit Programs, 1999 Crop Loss Assistance, and USDA Field Office Combinations*

1. *Farm Service Agency Credit Programs: Temporary Direct Loan Priorities and Temporary Suspension of Graduation Requirements*

The Agricultural Risk Protection Act requires the FSA, during the period from the act's date of enactment to December 31, 2002, to give priority in the making of direct loans to a qualified beginning farmer or rancher who either has not operated a farm or

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231. *See id*. (to be codified at 7 U.S.C. § 1314e(k)(3)).

232. *See id*. (to be codified at 7 U.S.C. § 1314e(m)).

233. *See id*. (to be codified at 7 U.S.C. § 1314e(n)).

234. *See* Green v. United States Dep't of Agric., No. IP 00-579-C H/G, 2000 WL 682657, at *14 (S.D. Ind. May 5, 2000); Rankin v. United States Dep't of Agric., No. 00-90, 2000 U.S. Dist. LEXIS 8843, at *11-12 (E.D. Ky. Mar. 30, 2000) (unreported decision).

235. *See Green*, 2000 WL 682657, at *4; *Rankin*, 2000 U.S. Dist. LEXIS 8843, at *6-7.

236. *See* Food, Agriculture, Conservation and Trade Act Amendments of 1991, Pub. L. No. 102-237, tit. I, § 116, 105 Stat. 1818, 1840 (formerly codified at 7 U.S.C. § 1314e(l)) (applicable to Tennessee and Virginia); Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78, tit. VII, § 755(a), 113 Stat. 1135, 1170 (same) (applicable to Ohio, Indiana, and Kentucky).

237. Agricultural Risk Protection Act of 2000, Pub. L. No.106-224, § 204, 2000 U.S.C.C.A.N. (114 Stat.) 358, 403 (to be codified at 7 U.S.C. § 1314e(l)).

ranch or who has not done so for more than five years in making direct farm operating loans.[238]

The act also suspends, for the period from its date of enactment to December 31, 2002, the graduation requirements applicable to borrowers with direct or guaranteed operating loans.[239] It accomplishes this by suspending the force and effect of sections 1941(c) and 1949 of title 7 of the U.S Code during this period.[240]

2. *1999 Crop Loss Assistance: Non-Recognition of Change in Producer's Legal Status*

In 1998 and 1999, Congress passed "ad hoc" crop disaster assistance programs known as "crop loss assistance programs."[241] With respect to the 1999 crop loss assistance program, some producers were deemed ineligible because, as of the time for applying for benefits, they were no longer in existence as a result of a subsequent change in the legal structure of the entity.[242] The Agricultural Risk Protection Act provides that such producers are eligible for benefits they would have received had they not changed their legal structure, minus any benefits they actually did receive directly or indirectly based on the acreage eligible for assistance.[243]

3. *Temporary Suspension of Authority to Combine Certain USDA Field Offices*

The Agricultural Risk Protection Act suspends for the period beginning on its enactment and ending on June 1, 2001, the authority of the Secretary to combine at the state level the offices of the FSA, the Natural Resources Conservation Service, the Rural Utilities Service, the Rural Housing Service, and the Rural Business-Cooperative Service. The Secretary must also describe in a report to Congress to be submitted by April 1, 2001, any proposed combination of these offices and must include in the report a certification that the proposed combination "would result in the lowest cost to the federal government over the long term."[244]

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238. *See id.* § 255, 2000 U.S.C.C.A.N. (114 Stat.) 358, 424 (to be codified at 7 U.S.C. § 1949 note). In 1999, Congress also directed the Secretary to favor beginning farmers and ranchers in expending funds made available by supplemental appropriations legislation for fiscal year 1999. *See* Pub. L. No. 106-2, § 2, 1999 U.S.C.C.A.N. (113 Stat.) 5 (codified at 7 U.S.C. § 1994).

239. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 255, 2000 U.S.C.C.A.N. (114 Stat.) 358, 424 (to be codified at 7 U.S.C. § 1949).

240. *See id.* (to be codified at 7 U.S.C. § 1949).

241. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, §§ 1101-1103, 112 Stat. 2681, 2681-42 to 2681-44 (1998 disaster assistance); Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, Pub. L. No. 106-78, § 801, 1999 U.S.C.C.A.N. (113 Stat.) 1135, 1175; Consolidated Appropriations Act, Pub. L. No. 106-113 App. E, 113 Stat. 1501, 1501A-289 (1999 disaster assistance).

242. *See* Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, § 259, 2000 U.S.C.C.A.N. (114 Stat.) 358, 426 (to be codified at 7 U.S.C. § 1421).

243. *See id.*

244. *Id.* § 254, 2000 U.S.C.C.A.N. (114 Stat.) 358, 424 (to be codified at 7 U.S.C. § 1941 note).

D. *Conservation Assistance*

The Agricultural Risk Protection Act authorizes the appropriation of $10 million to make payments to state and local governments and Indian tribes, including farmland protection boards and resource councils, and certain private organizations to carry out the farmland protection programs authorized by the Federal Agriculture Improvement and Reform Act.[245]

The act also appropriates $40 million to provide financial assistance in the form of cost-share or incentive payments to farmers and ranchers for the following purposes:

> (A) address threats to soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat;
> (B) comply with Federal and State environmental laws; and
> (C) make beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management land uses, or other measures needed to conserve and improve soil, water, and related natural resources.[246]

E. *Value-Added Agricultural Product Market Development Grants*

The Agricultural Risk Protection Act makes $15 million available for the Secretary to make competitive grants to independent producers of value-added agricultural commodities and the products of agricultural commodities.[247] These grants are to be for the purpose of assisting the grant recipients with the development of business plans and marketing strategies.[248] Individual grants are limited to $500,000.[249] The funds for these grants are to be expended in the 2001 fiscal year.[250]

V. CONCLUSION

The Agricultural Risk Protection Act represents a substantial step in the direction of making federal crop insurance more attractive to agricultural producers and more widely available. At the same time, the increased insurance subsidies, together with the direct payments to certain producers authorized by the Act, represent the continuation of substantial investments in the farm sector by the federal government. As the first major farm legislation of this century the Act does not fundamentally alter existing federal farm policy. To the contrary, it essentially maintains the same structure of subsidies that was largely put in place during the first half of the last century. Whether Congress will reconsider this structure in the next major farm bill debate remains to be seen.

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245. *See id*. § 211, 2000 U.S.C.C.A.N. (114 Stat.) 358, 406 (to be codified at 16 U.S.C. § 3830).
246. *Id*.
247. *See id.* § 231, 2000 U.S.C.C.A.N. (114 Stat.) 358,409 (to be codified at 7 U.S.C. § 1621 note).
248. *See id.*
249. *See id*.
250. *See id*. § 261(a)(2)(D), 2000 U.S.C.C.A.N. (114 Stat.) 358, 427.