

not approximately 42 inches wide × 42 inches high × 40 inches long.

7. A new § 29.1136 is added to read as follows:

**§ 29.1136 Rule 30.**

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "B" after the grademark.

8. In § 29.1181, the undesignated text immediately following table "1 Grade of Scrap", is revised to read as follows:

**§ 29.1181 Summary of standard grades.**

\* \* \* \* \*

Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. The special factors "dirt" or "sand" may be applied to any grade in the Primings group, including first quality Nondescript from the Primings group. The special factor "B" may be applied to all bales to denote tobacco not opened for inspection. Tobacco not covered by the standard grades is designated "No-G," "No-G-F," or "No-G-Nested."

**Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets**

9. The authority citation for part 29, subpart G continues to read as follows:

**Authority:** Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98-180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

10. In § 29.9406, paragraphs (c)(1), (c)(2), (c)(3), and (d) are revised to read as follows:

**§ 29.9406 Failure of warehouse to comply with opening and selling schedule.**

\* \* \* \* \*

(c) \* \* \*

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 10,000 pounds; and for the third and subsequent violations, the

adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: May 6, 1999.

**Enrique E. Figueroa,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 99-11976 Filed 5-11-99; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 400**

**RIN 0563-AB70**

**General Administrative Regulations; Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations, to allow approved insurance providers to apply to the Federal Crop Insurance Corporation (FCIC) for authority to reduce the premium charged producers

in accordance with section 508(e)(3) of the Federal Crop Insurance Act (Act), as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds, and payments to insured-owned and record-controlling entities.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business July 12, 1999 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before July 12, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Reinsurance Services Division, Risk Management Agency, Stop 0804, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC. 20250-0804. A copy of each response will be available for public inspection and copying from 8 a.m. to 4:30 p.m., EDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information and a copy of the Cost-Benefit Analysis to the General Administrative Regulations, contact E. Heyward Baker, Director, Reinsurance Services Division, Risk Management Agency, at the Washington, DC, address listed above, telephone (202) 720-4286.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

**Cost-Benefit Analysis**

A cost-benefit analysis has been completed and is available to interested parties at the Washington, DC address listed above. In summary, the analysis found that: (1) The anti-rebating and record-controlling provisions will promote actuarial soundness of the crop insurance program; (2) premium reductions are more likely to be offered to large premium policy holders than small; (3) the proposed provisions authorize FCIC/RMA management to deny permission to implement premium reductions if there would be a reduction in the overall system's ability to serve all farmers; and (4) the authority and basic requirements for premium reductions are specified in the Act. In order to avoid any adverse impact on small farmers or on the crop insurance program itself, §§ 400.755(b)(1) to (10) provide grounds for FCIC/RMA management to reject premium

reduction applications. Based on the cost benefit analysis and the requirements of the Act FCIC finds that this regulation is in the best interest of the overall crop insurance program and should be proposed in the **Federal Register** for public review and comment.

#### **Paperwork Reduction Act of 1995**

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection or recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public comment concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses).

**Title:** General Administrative Regulations; Premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities.

**Abstract:** A new program is being proposed that will allow approved insurance providers to apply to FCIC for authority to reduce the premium charged to producers in accordance with the Federal Crop Insurance Act (Act), as amended, and to provide the limitation and procedures established by FCIC.

**Purpose:** The purpose of this proposed rule is to provide guidelines to

approved insurance providers and their agents, employees, and contractors regarding prohibited and permitted practices with respect to premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities.

**Burden Statement:** The information that FCIC collects on the requested application as defined in § 400.751 of this regulation, will be used to determine if the premium charged to producers may be reduced. The burden for this information collection assumes that approximately 18 reinsured companies will read this regulation. It is further assumed that all 18 reinsured companies will eventually complete an application to obtain written approval from RMA of premium reduction plans.

**Estimate of Burden:** We estimate it will take 18 reinsured companies 2 hours to read the regulation for a total of 36 hours. In addition, we also estimate it will take them 48 hours each to apply to the program twice a year.

**Respondents:** 18 reinsured companies.

**Estimated annual number of respondents:** 18.

**Estimated annual number of responses per respondent:** 2.

**Estimated annual number of responses:** 36.

**Estimated total annual burden on respondents:** The total public burden for this proposed rule is estimated at 900 hours.

**Recordkeeping Requirements:** FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW, Washington, DC 20250.

#### **Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### **Executive Order 12612**

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### **Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. The rule provides the guidelines to be used by all approved insurance providers or any other applicant and FCIC in the application, review, and approval of plans to reduce the premiums charged producers. Any submission is entirely voluntary and the guidelines contained in this rule does not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

#### **Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### **Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or action before the Board of Contract Appeals, whichever is applicable, must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

#### **Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

The Risk Management Agency (RMA) is charged with the administration of the crop insurance programs for FCIC. As such, RMA is responsible for maintaining an effective, orderly, and efficient crop insurance marketplace, including a delivery system capable of selling and servicing FCIC's crop insurance policies and other risk management products reinsured by FCIC to all producers in a manner that does not unfairly discriminate among producers or insurance companies. The delivery system must support efforts to operate in an actuarially sound manner, to assure program integrity, and to avoid and prevent waste, fraud, and abuse.

Premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities, if improperly made, may have an adverse effect on FCIC's ability to devise and establish an effective and efficient crop insurance marketplace so as to best meet the risk management needs of producers and its responsibility to protect the program and its participants. Rebates are illegal in most States for those lines of insurance regulated by State Departments of Insurance for several reasons, the most important being the destructive impact that they can have on delivery systems and on competition. Use of rebates could negatively impact the smaller insurance companies because they would not be able to provide the same economic incentives that larger companies could provide and, as a result, they may unfairly lose market share. FCIC relies on a healthy and competitive delivery system to assure that all producers are afforded the best quality service, regardless of the size of the farm or the amount of premium earned on the policy. The Standard Reinsurance Agreement in effect for the 1998 reinsurance year prohibits rebates.

Dividends and patronage refunds are normal business practices for mutual, cooperative, and certain other insurance companies as well as to certain kinds of cooperatives such as insurance-buying groups and certain agricultural lenders. While the use of dividends and patronage refunds are generally benign, they can also be used to disguise rebates if they are guaranteed in advance or they are made contingent upon the continued purchase of crop insurance policies. When they are disguised rebates, they have the potential to impact negatively on the delivery

system, competition, and the quality of service afforded producers. This rule in part provides procedures and limitations on providing such dividends or patronage refunds.

The use of insured-owned entities in marketing also embodies the potential for disguised rebates. There are instances where associations or cooperatives have contracted with insurance companies to provide a list of members and a product endorsement in exchange for a sum of money. In these cases, the insured may have an interest in the association or cooperative and the insured-owned entity may have the capacity to reward those producers who purchase insurance. Such inducements may be prohibited rebates. This rule is proposed to ensure that any funds paid to the insured-owned entity are used to the benefit of all members and not only those who purchase insurance.

The use of record-controlling entities presents different potential problems. Here the potential impact is not on the delivery system and competition but on FCIC's ability to achieve actuarial soundness and protect program integrity. Record-controlling entities are processors, packers, etc. that maintain the production records for the producer and also have an interest in the insurance policy as the insured or assignee of the policy. FCIC uses production records and related crop production information from storage facilities, packers, processors, and marketers to design insurance products, set premium rates, establish yield guarantees for individual producers through the actual production history program, and to determine the production to count when there is a claim. There are also cases where the record-controlling entity is recruited as an agent and paid a commission. This creates, at the least, a potential conflict of interest and may jeopardize actuarial soundness and program integrity. This rule provides the conditions under which record-controlling entities can participate in the Federal crop insurance program.

Premium reductions for FCIC-reinsured policies are specifically authorized by section 508(e)(3) of the Act, which specifically authorizes reinsured companies to reduce the amount of producer paid premiums if they can demonstrate that they can deliver the crop insurance program for less than the amount of administrative and operating expense reimbursement they receive under the Act. This rule establishes the procedures and limitations required to implement premium reductions.

### List of Subjects in 7 CFR part 400

Administrative practice and procedure, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

### Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 by adding subpart W, effective for the 1999 and succeeding reinsurance years, to read as follows:

### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

#### Subpart W—Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-controlling Entities for the 1999 and Subsequent Crop Years

Sec.

- 400.750 Basis, purpose, and applicability.
- 400.751 Definitions.
- 400.752 Payment of Rebates.
- 400.753 Dividends and Patronage Refunds.
- 400.754 Payments to Insured-Owned and Record-Controlling Entities.
- 400.755 Reductions in premiums.
- 400.756 Records and Review.
- 400.757 Sanctions.

**Authority:** 7 U.S.C. 1506(1), 1506(p), 1508(e)(3)

#### Subpart W—Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-owned and Record-controlling Entities for the 1999 and Subsequent Crop Years

##### § 400.750 Basis, purpose, and applicability.

(a) There is a growing trend to use marketing techniques that compensate or reward insureds who obtain crop insurance in order to increase the amount of premium written and the potential profitability of the reinsured companies. This rule is intended to regulate such conduct to protect the integrity of the crop insurance program.

(b) Section 508(e)(3) of the Act, as amended, authorizes FCIC to approve applications by approved insurance providers to reduce premiums payable by insureds when the private insurance provider is able to demonstrate that it can sell and service the crop insurance program, in accordance with the Act, the Standard Reinsurance Agreement, and the applicable regulations, directives, bulletins and procedures, for less than the amount paid by FCIC to the approved insurance provider for administrative and operating expenses. This subpart provides the timing of the application, the material to be included,

and describes FCIC's approval process for such application.

**§ 400.751 Definitions.**

*Act.* The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

*Application.* A written request to RMA for authority to reduce producer paid premiums

*Approved insurance provider.* A private insurance company that has been approved by FCIC to sell and service crop insurance policies reinsured by FCIC under the Act.

*Cost-accounting statement.* A listing of all of the approved insurance provider's administrative and operating costs related to the delivery of the Federal crop insurance program, prepared in a manner that permits comparison with the Expense Exhibit submitted to RMA with the Plan of Operation.

*Covered person.* An approved insurance provider; any employee, contractor, agent, broker, or solicitor of such approved insurance provider; any agency representing the approved insurance provider; any owner, employer or controller of any such agency or contractor; any spouse or family member residing in the same household as any such, employee, contractor, agent, broker, solicitor, owner, or controller; or any affiliate of any such approved insurance provider, agency, or contractor.

*Dividend.* Profits or earnings divided among the owners or shareholders in proportion to their ownership share.

*Efficiency.* A measurable monetary savings realized by an approved insurance provider from changes to the compensation paid to its owners, agents, or employees, or from changes to the administrative and operating procedures that it employs in selling or servicing FCIC-reinsured policies in accordance with the Act, the Standard Reinsurance Agreement, and the applicable regulations, directives, bulletins and procedures. Efficiency does not include underwriting profits earned on such policies, or investment returns.

*Entity.* Any person, whether incorporated or not, including associations, cooperatives, mutuals, corporations, and similar business organizations that provide any good or service to insured producers.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

*Insured.* The named person shown on the properly completed application for insurance that has been accepted by an approved insurance provider and any

person with a substantial beneficial interest in the insured.

*Insured-owned entity.* Any entity that is at least 25 percent owned or controlled by insureds.

*Insured's premium.* The portion of the FCIC-approved insurance premium for the risk of loss that the insured must pay.

*Patronage refund.* A payment to an entity's clients in proportion to the volume of business that each did with the entity or the amount of profit generated from that business.

*Person.* Any individual or legal entity.

*Premium reduction.* Payment of a portion of the insured's premium by the approved insurance provider in accordance with section 508(e)(3) of the Act and these regulations.

*Rebate.* The giving or paying, either directly or indirectly, by a covered person of anything of value to an insured or applicant, or a person affiliated with an insured or applicant, such that the gift or payment may reasonably be construed by RMA as intended to induce the insured or applicant to obtain or maintain insurance coverage with or through the covered person.

*Record-controlling entity.* Any entity, or its employee, agent, contractor, or affiliate, that produces or controls the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, who also has an interest in the insurance policy as the insured or assignee of the policy.

*RMA.* The Risk Management Agency, an agency of the United States Department of Agriculture that administers the crop insurance program for FCIC.

*Sales closing date.* The final date by which an FCIC-reinsured policy may be purchased.

*Small Producer.* The producer of an insurable crop, which if insured at 65 percent of the recorded or appraised average yield indemnified at 100 percent of the market price, or an equivalent coverage, would have earned a premium, including premium subsidy but excluding administrative and operating subsidy, of no more than \$500.

**§ 400.752 Prohibited practices.**

(a) Rebating in any form is a prohibited practice. Any covered person who provides a rebate to any insured or applicant will be subject to the sanction provisions in § 400.757.

(b) No crop insurance policy will be eligible for FCIC reinsurance, premium

subsidy, or administrative and operating subsidy if any covered person makes any of the following payments to the insured producer:

- (1) Rebate;
- (2) Premium reduction, except with the prior approval of RMA; and
- (3) Dividend or patronage refund, if such dividend or refund is promised to the applicant or insured, or is contingent upon the insured maintaining coverage with or through the entity;

(c) No crop insurance policy will be eligible for FCIC reinsurance, premium subsidy, or administrative and operating subsidy if a covered person makes any payment to:

- (1) A record-controlling entity or to any employee, agent, or contractor of such an entity, or any entity controlled by such an entity, except as specified in paragraph (d) of this section; or
- (2) An insured-owned entity, except an insurance company, or to any employee, agent, or contractor of such an entity, or any entity controlled by such an entity, when the entity participates in or effects any control over the sale of policies and the establishment or verification of the yields upon which insurance guarantees are based or claims for indemnities are made, except as specified in paragraph (d) of this section.

(d) Crop insurance policies specified in paragraph (b)(1) and (2) of this section will be eligible for FCIC reinsurance, premium subsidy, and administrative and operating subsidy when the specified payments:

- (1) Are approved in writing by RMA;
- (2) Are not based on the amount of FCIC-reinsured crop insurance business sold through the entity; and
- (3) The approved insurance provider presents a plan, accepted by RMA, that demonstrates how, in cases involving record-controlling entities, the integrity of the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, will be protected.

(e) The approved insurance provider presents a plan, accepted by RMA, that demonstrates how, in cases involving record-controlling entities, the integrity of the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, will be protected.

**§ 400.753 Dividends and patronage refunds.**

(a) Dividends and patronage refunds are permitted unless:

- (1) A dividend or patronage refund is promised or guaranteed to be paid to the insured or applicant;
- (2) The payment of the dividend or patronage refund is contingent upon the insured or applicant obtaining or maintaining coverage with or through a specific covered person; or

(3) The payment of the dividend, crop insurance, or patronage refund is made only to insureds.

(b) Prior to paying any dividends or patronage refunds to insureds or applicants, the covered person must certify that such payments do not violate paragraph (a) of this section. The covered person making such payments will make those financial records applicable to such payments available for inspection at the request of RMA.

(c) Payment of any dividend or patronage refund in violation of this section will result in the imposition of sanctions in accordance with § 400.757.

**§ 400.754 Payments to insured-owned and record-controlling entities.**

(a) Covered persons may not enter into agreements with insured-owned entities to purchase a list of producers affiliated with the insured-owned entity or an endorsement of the covered person by the insured-owned entity except as specified in this section.

(1) The covered person must request approval from FCIC in writing in accordance with paragraph (d) of this section.

(2) Covered persons may not execute agreements or make any payments to insured-owned entities until receiving written approval from FCIC.

(3) The insured-owned entity must agree in writing not to make any payments or provide any benefits to any insured or applicant affiliated with the insured-owned entity that is contingent upon the insured or applicant obtaining or maintaining insurance coverage with or through a covered person.

(4) The insured-owned entity must agree in writing that all payments made by the covered person will be deposited in the general fund to be used for the benefit of all producers affiliated with the insured-owned entity equally or in proportion to the persons interest in the insured-owned entity, as applicable.

(5) The amount of the covered persons' payment to the insured-owned entity must be a fixed amount and must not be based on the number of crop insurance policies sold to producers affiliated with the insured-owned entity or the volume of premium written.

(b) For any other type of agreement between covered persons and insured-owned entities, the covered person must comply with all the requirements of this section.

(c) A covered person is prohibited from providing any crop insurance or making any payment to a record-controlling entity unless:

(1) The covered person or the record-controlling entity provides a written request for approval for the record-

controlling entity to obtain insurance or receive a payment from FCIC;

(2) The covered person or the record-controlling entity obtains the written approval from FCIC; and

(3) The covered person agrees in writing to appraise any crop under the control of the record-controlling entity and insured with or through the covered person not less than 5 days prior to harvest.

(d) All requests for approval under this section must comply with the following:

(1) All requests for approval must be received not later than 60 days prior to the date an agreement between covered persons and insured-owned entities is to be effective or, for insurance or payments for record-controlling entities, the sales closing date or payment date (requests received after the deadline will be considered for the next crop year unless the request is withdrawn by the approved insurance provider or unless FCIC otherwise agrees in writing);

(2) Each request must include the following material and address each of the following items:

(i) The name of the covered person and the person who may be contacted for further information regarding the request for approval;

(ii) A detailed description of the amounts to be paid by the covered persons and the goods or services to be provided by the insured-owned entity or record-controlling entity; and

(iii) Any other information required by FCIC.

(e) Entering into any agreement, providing insurance or making any payment under this section without the prior written consent of FCIC will result in the imposition of sanctions in accordance with § 400.757.

(f) Approval under this section will only be valid for the period specified by FCIC in its written approval.

**§ 400.755 Reductions in premiums.**

(a) Approved insurance providers may obtain written approval of premium reduction plans by submitting an application to RMA as follows:

(1) Applications must be received not later than 120 days before the first sales closing date on any crop for which a premium reduction is requested.

Applications filed less than 120 days before the sales closing date will be considered for the next crop year unless the application is withdrawn by the approved insurance provider or unless FCIC otherwise agrees in writing.

(2) The application under this section must be sent to the Director, Reinsurance Services Division, USDA/RMA/Stop 0804, 1400 Independence

Avenue, SW, Washington, DC 20250-0804.

(3) Each application must include the following:

(i) The name of the approved insurance provider, the person who may be contacted for further information regarding the application, and the person who will be responsible for administration of the premium reduction;

(ii) The crops, insurance plans, the states or counties, and all other eligibility criteria used to determine which insureds will be offered the premium reduction;

(iii) An estimate of the number of producers who will be affected, the crops, counties, and states affected, and the projected total dollar amount of the reduction;

(iv) The first crop year for which the premium reduction is proposed to be offered;

(v) A detailed description of the changes in administrative and operating procedures that produce the efficiency and a detailed cost-accounting statement verifying the existence and the amount of the efficiency (Both statements must be certified by the person authorized to sign the Standard Reinsurance Agreement for the approved insurance provider. The cost-accounting statement must include historical data that permits a comparison of administrative and operating costs before and after the introduction of the new procedures. Estimates may be supplied whenever the procedures have not yet been implemented or have not been implemented long enough to permit the proper collection of cost accounting data);

(vi) A description and an example as to how the approved insurance provider will calculate the premium reduction and present it to eligible insureds;

(vii) A description of those features of the proposed premium reduction plan that will assure that it will not discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(viii) A narrative statement explaining how the application satisfies all applicable approval criteria specified in § 400.755; and

(ix) Any other information that the approved insurance provider wishes to submit or that is required by FCIC.

(b) Compliance with all the following criteria is required for FCIC's approval:

(1) All required information must be timely submitted;

(2) There must not be a reduction in service to policyholders;

(3) There must not be a reduction in training and supervising of agents, loss adjusters, or underwriting and quality assurance personnel;

(4) There must not be a reduction in program integrity or an adverse affect on actuarial soundness;

(5) There must not be a reduction in the total delivery system's ability to serve all producers, including small producers, limited resource farmers as defined in the Basic Provisions, 7 CFR 457.8, minority producers, and producers located in areas with small volumes of crop insurance business;

(6) There must not be a reduction in the total delivery system's ability to provide risk management education to all producers;

(7) The efficiency must be measurable in dollar terms;

(8) RMA must be able to verify the existence and amount of the efficiency and that it is derived from the administrative and operating subsidy and not any expected underwriting gain;

(9) The efficiency must not derive from marketing or underwriting practices that are unfairly discriminatory; such as discriminating among producers on the basis of farm size or premium amount; and

(10) The premium reduction must not jeopardize or diminish the financial condition of the approved insurance provider.

(c) Each application will be reviewed to determine if all necessary documentation is included. FCIC may require changes or adjustments to the application consistent with the Act and FCIC's regulations.

(d) An application to reduce premium will not be approved if FCIC determines that it will discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(1) If the insurance provider proposes to offer the premium reduction to an identifiable group of producers or in a specific geographical area, then the premium reduction must be made available to all producers in that group or area, regardless of the amount of premium to be earned on the producer's policy.

(2) No group or geographical area may be defined in such a manner as to exclude small producers, limited resource farmers, or minority producers.

(e) The Director of the Reinsurance Services Division will notify the approved insurance provider of the action taken.

(1) If the application is disapproved, the approved insurance provider:

(i) Will be notified of the reason for disapproval and will be allowed to amend the application in an effort to obtain FCIC's approval. If the approved insurance provider amends the application, the review process starts again and it may not be possible to approve the application in time to have it applicable for the crop year for which such application was submitted; and

(ii) May request reconsideration of the decision with the Deputy Administrator of Insurance Services within 30 days of disapproval. Such request must provide a detailed narrative of the basis for reconsideration.

(2) Approval is solely within the discretion of FCIC.

(3) An approved application may be implemented by the approved insurance provider by the next sales closing date for the affected crop after approval by RMA.

(4) Approved applications for premium reduction will only be valid for the period specified by RMA.

(5) FCIC may rescind any approval at any time that it determines that the requirements imposed by this rule are no longer satisfied or if a change in the Act necessitates rescission. In such case, rescission will not take effect earlier than the date of FCIC's written notice to the approved insurance provider.

(6) The approved insurance provider must report all changes causing a material impact upon a previously-approved application to the Director of the Reinsurance Services Division.

#### **§ 400.756. Records and Review.**

At any time after approval, RMA may conduct a review or audit of any action approved under this subpart and require additional information or access to records pertaining to such actions. Failure to comply with this section will result in the impositions of sanctions in accordance with § 400.757.

#### **§ 400.757 Sanctions.**

(a) No crop insurance policy in violation of this subpart will be eligible for reinsurance, premium subsidy, or administrative and operating expenses. If reinsurance, premium subsidy, or administrative and operating expenses have been paid for such policy, they must be repaid to FCIC.

(b) Approved insurance providers are responsible for the conduct of all of their covered persons. If such covered person violates any provision in this subpart, the approved insurance provider will be held strictly liable.

Signed in Washington, DC, on May 4, 1999.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

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## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Chap. I**

[Docket No. 99-05]

### **Community Bank-Focused Regulation Review**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is undertaking a review of its regulations with a view toward identifying rules that may impose disproportionate or unnecessary burden on community banks. This advance notice of proposed rulemaking (ANPR) identifies several parts of the OCC's regulations that are already under review, requests comment on changes that could be made to these regulations, and solicits suggestions for improvements in other areas that would be helpful to community banks. The intended effect of this action is to identify areas where the OCC could reduce unnecessary burden on community banks without impairing their safety and soundness.

**DATES:** Comments must be received by July 12, 1999.

**ADDRESSES:** Please direct your comments to: Docket No. 99-05, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to FAX number (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

**FOR FURTHER INFORMATION CONTACT:** Stuart Feldstein, Assistant Director, or Heidi Thomas, Senior Attorney, Legislative and Regulatory Activities, at (202) 874-5090.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The OCC supervises over 2,400 national banks that vary widely in size, business strategy, complexity, and