

**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Part 400**

RIN 0563-AB95

**General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans****AGENCY:** Federal Crop Insurance Corporation, USDA.**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations (7 CFR part 400, subpart V—Submission of Policies, Provisions of Policies, and Rates of Premium), to include provisions regarding the necessary revisions to the Plan of Operations and administration of the premium reduction plans authorized under section 508(e)(3) of the Federal Crop Insurance Act (Act).

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 25, 2005, and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before April 25, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Reinsurance Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, Ag Stop 0805, Washington, DC 20250. Comments titled "Premium Reduction Plan" may be sent via the Internet to [RMA.PRP@rma.usda.gov](mailto:RMA.PRP@rma.usda.gov), or the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Faxed comments may be faxed to (202) 690-2095, Attn: PRP Rule comments. If you are planning on submitting by mail, please be advised to submit your comments not later than 30 days after the date of publication of the rule to be assured of consideration when the rule is made final. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Lee Ziegler, Economist, Reinsurance Services Division, Risk Management Agency, United States Department of

Agriculture, 1400 Independence Avenue, Room 6739-S, Washington, DC 20250; telephone number (202) 720-0191, e-mail address: [lee.ziegler@rma.usda.gov](mailto:lee.ziegler@rma.usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule has been determined to be not significant for the purposes of Executive Order 12866, and, therefore, it has not been formally reviewed by the Office of Management and Budget (OMB).

**Independent Review**

The Risk Management Agency (RMA) provided five independent reviewers with a copy of the Federal Crop Insurance Act (Act), the current procedures, the Board of Directors' Memorandum, the submissions received from the approved insurance providers and a series of questions regarding the premium reduction plans, including: (1) An estimation of the effects of producer use of insurance as a risk management tool; (2) the impact on the delivery system such as agents, claims adjustment, approved insurance providers, and service; (3) the impact on small, minority and limited resource farmers; (4) whether phase-in should be required; (5) cost allocation for complex plans; (6) the affect of the use of affiliated entities; and (7) the impact on agent compensation plans.

In summary, the reviewers stated that implementation of a premium reduction plan could result in a modest increase in participation in the crop insurance program, although increases in coverage levels are more likely. Depending on how the premium reduction plans are structured, there could be significant changes in the delivery system through possible consolidation among agents or approved insurance providers, fewer part-time agents, and an increase in highly knowledgeable agents. The impact on small producers, limited resource farmers, women and minority producers is expected to be small. In proportion to the complexity of the premium reduction plans, verification of costs could have a significant impact on the workloads of the approved insurance providers and RMA and accounting guidelines may have to be developed that would increase the workload.

Complete copies of the reports of the independent reviewers is available to the public on RMA's Web site at <http://www.rma.usda.gov>. However, confidential business information has been redacted from such reports.

**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 and record keeping requirements included in this rule have been submitted for approval to OMB. Please submit written comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

Comments are being solicited from the public concerning this proposed information collection and record keeping requirements. This outside input will help:

(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 assumption 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 Regulation; Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans.

*Abstract:* FCIC proposes to amend the General Administrative Regulations (7 CFR part 400, subpart V—Submission of Policies, Provisions of Policies, and Rates of Premium), to include provisions regarding the necessary procedures that are applicable to revised Plans of Operations submitted by approved insurance providers for the purpose of obtaining approval of premium reduction plans as authorized under section 508(e)(3) of the Act.

*Purpose:* To amend 7 CFR part 400 by revising subpart V, to include specific information that must be submitted by approved insurance providers for the purpose of obtaining approval of premium reduction plans. This rule will have a separate paperwork package submitted to OMB to ensure that all the burden hours are accounted for.

*Burden statement:* This rule is necessary to ensure that RMA receives complete revised Plans of Operations from approved insurance providers for the purpose of obtaining approval of premium reduction plans.

The burden associated with this rule, with the exception of reading the rule, is in the modification to the Plans of Operations. FCIC estimates that annually 15 people (excluding Federal employees) will spend 2 hours reading this document for a total of 30 hours (15 × 2 = 30). FCIC estimates people in 6 positions (financial manager, accountant, computer programmer, underwriter, manager, and office assistant) will respond for a total of 90 respondents (6 positions × 15 submissions = 90). FCIC estimates 180 annual responses (15 × 12 = 180) due to 15 approved insurance providers submitting revised Plans of Operations complying with twelve requirements. To determine approximate annual burden hours, FCIC estimates 15 entities will prepare a revised Plan of Operations and will spend the following amount of time for each of the twelve requirements: (a) Identifying the approved insurance provider, naming the person who may be contacted for further information regarding the revised Plan of Operations, and naming the person who will be responsible for administration of the premium reduction plan—1.25 hours (15 approved insurance providers × 5 minutes = 1.25 hours); (b) preparing a detailed description of any and all terms and conditions that affect its availability—15 hours (15 approved insurance providers × 1 hour = 15); (c) preparing a detailed statement as to the amount of the premium reduction that is proposed to be offered to each eligible producer, how it will be calculated, and how it will be reported to RMA—60 hours (15 approved insurance providers × 4 hours = 60); (d) preparing a detailed proposal of how the approved insurance provider intends to deliver the premium reduction plan to producers—60 hours (15 approved insurance providers × 4 hours = 60); (e) preparing a detailed marketing plan focused solely on how the premium reduction will be promoted to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR, 457.8, women and minority producers—30 hours (15 approved insurance providers × 2 hours = 30); (f) preparing a detailed statement explaining how the approved insurance provider proposes to revise its procedures for the delivery, operation or administration of the Federal crop insurance program in order to achieve

the specified efficiency and how the premium reduction will correspond to the efficiency—45 hours (15 approved insurance providers × 3 hours = 45); (g) revision of applicable expense exhibits required by the Standard Reinsurance Agreement, or the applicable regulations if required by RMA, that are revised to reflect the implementation of the premium reduction plan and any documentation necessary to support the revisions—240 hours (15 approved insurance providers × 16 hours = 240); (h) A statement, based on the applicable expense exhibits, that summarizes the A&O costs before implementation of the efficiency, the cost savings associated with the efficiency, the administrative and operating (A&O) costs after implementation of the efficiency, the expected A&O subsidy and the projected total dollar amount of premium reduction to be provided to producers—30 hours (15 approved insurance providers × 2 hours = 30); (i) a financial reserve plan—60 hours (15 approved insurance providers × 4 hours = 60); (j) preparing a detailed description of all profit sharing arrangements paid by the approved insurance provider—45 hours (15 approved insurance providers × 3 hours = 45); (k) certification by approved insurance providers of the reasonableness, accuracy, and completeness of all cost projections relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered = 30 hours (15 approved insurance providers × 2 hours = 30); (l) certification that a copy of its marketing strategy under subsection (d) has been provided to the State Department of Insurance for all states where the premium reduction plan will be offered for its review to determine whether the licensing of agents and the conduct of agents in the solicitation and sale of insurance under the proposed premium reduction plan is in accordance with applicable state insurance laws—15 hours (15 approved insurance providers × 1 hour = 15).

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 42 hours per response.

*Respondents:* Approved insurance providers who wish to revise their Plans of Operations for the purpose of obtaining approval of a premium reduction plan.

*Estimated Annual Number of Respondents:* 90.

*Estimated Annual Number of Responses Per Respondent:* 2.

*Estimated Annual Number of Responses:* 180.

*Estimated Total Annual Burden of Respondents:* The total public burden for this rule is estimated at 7,560 hours. Record keeping requirements: FCIC requires records to be kept for three years, and all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to record keeping.

#### **Government Paperwork Elimination Act (GPEA) Compliance**

In its efforts to comply with GPEA, FCIC requires all approved insurance providers delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with approved insurance providers electronically.

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

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

#### **Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the states. The provisions contained in this rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### **Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because it merely clarifies the process to submit premium reduction plans of insurance to the FCIC Board of Directors for approval. The current requirements of the Standard Reinsurance Agreement and procedures for premium reduction plans approved by the Board contain provisions to ensure that small entities have access to policies and plans of

insurance, including premium reduction plans. The requirement to apply for a premium reduction plan is the same for small entities as it is for large entities. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### **Federal Assistance Program**

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

#### **Executive Order 12372**

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

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith, unless otherwise specified in the rule. The appeals procedures at 7 CFR 400.169 and 7 CFR part 24 must be exhausted before any action against FCIC for judicial review 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**

Under the Act, authority over the Federal crop insurance program is provided to FCIC, which is managed by the Board. However, section 226A of the Department of Agriculture Reorganization Act of 1994, gave the RMA supervision of FCIC and the administration and oversight over the programs authorized under the Act. The Board delegated certain functions to the Manager of FCIC, which are carried out through RMA. The Board also retained certain authorities or requires briefing by the Manager to the Board prior to the Manager taking certain actions. For the purposes of the background information, FCIC and RMA are collectively referred to as "RMA."

In October 1994, Congress amended the Act to add section 508(e)(3), which states: "If an approved insurance provider determines that the provider may provide insurance more efficiently than the expense reimbursement amount established by the Corporation [FCIC], the approved insurance provider may reduce, subject to the approval of the Corporation [FCIC], the premium charged the insured by an amount corresponding to the efficiency. The approved insurance provider shall apply to the Corporation [FCIC] for authority to reduce the premium before making such a reduction, and the reduction shall be subject to the rules, limitations, and procedures established by the Corporation [FCIC]."

This means that an approved insurance provider can apply to RMA for authority to reduce premiums payable by producers if the approved insurance provider is able to provide insurance more efficiently than the administrative and operating expense reimbursement paid by RMA. RMA administers such reimbursements under a cooperative financial assistance agreement between FCIC and the approved insurance providers known as the Standard Reinsurance Agreement (SRA). The SRA contains various requirements, limitations and procedures that approved insurance providers must follow to sell and service Federal crop insurance to producers in accordance with Federal law and regulations and to qualify for Federal reinsurance, premium subsidy, and administrative and operating expense reimbursement under the Act.

Since section 508(e)(3) involves administrative and operating expense reimbursement, a term contained in the SRA, RMA had a choice. The implementation of this provision could have been accomplished by simply incorporating it into the SRA, like any other term and condition of RMA reinsurance, or RMA could implement this provision through an amendment to the regulations governing the Federal crop insurance program contained in 7 CFR part 400. Initially, RMA determined to implement the provision through the SRA. Effective for the 1997 reinsurance year, the SRA was amended to add a section III.I., which stated, "In the event the Company determines that it can deliver multiple peril crop insurance policies more efficiently than the amount of premium subsidy attributed to the administrative and operating expenses paid under this section, it may apply to FCIC for authority to reduce the amount of premium charges to the policyholder by an amount commensurate with the

amount of the efficiency." Effective for the 1998 reinsurance year, the SRA language was changed slightly to read, "In the event the Company determines that it can deliver eligible crop insurance contracts for less than the A&O subsidy paid under this section, it may apply to FCIC for approval to reduce the amount of producer premium charged to policyholders by an amount corresponding to the value of the efficiency."

In 1999, the Federal crop insurance program was facing numerous issues regarding rebating, patronage refunds, and insured-owned and record-controlling entities. It became clear that some parties, in addition to approved insurance providers, may be directly affected and concerned about these issues. Therefore, RMA decided to solicit comments and address these concerns through a rulemaking process. Because of the similarity of premium reduction plans to rebates, which at the time were prohibited, RMA decided to clarify the situation by including some rules and limitations on premium reduction plans in this rulemaking activity. The proposed rule was published in May 1999.

During the rulemaking process, the Agricultural Risk Protection Act of 2000 (ARPA) was enacted. Section 103 of ARPA amended section 508(b)(5) of the Act and authorized cooperatives and trade associations to pay the catastrophic risk protection fee on behalf of their members in states where rebating was permitted and in contiguous states. Section 508(b)(5) of the Act also authorized cooperatives and trade associations who received funds from an approved insurance provider to pay a portion of the premium for their members if permitted by state law. The provisions contained in section 103 of ARPA were significantly different than what was proposed by RMA in its May 1999 proposed rule. RMA determined that the provisions regarding rebating and patronage refunds in the proposed rule were no longer applicable.

RMA determined the issues that remained from the proposed rule after enactment of section 103 of ARPA should be handled administratively. With respect to the issue of premium reduction plans, RMA elected to continue to handle the issue through the SRA as it had done in the past, since the SRA requires approved insurance providers to comply with the procedures and directives of RMA. RMA determined it could issue procedures under the SRA if necessary.

In July 2002, a revised Plan of Operation for a premium reduction plan

for the 2003 crop year was received by the Board from an approved insurance provider under section 508(h) of the Act. The approved insurance provider claimed the authority for the submission came from section 523(d) of the Act. Section 523(d) of the Act applies when approved insurance providers believe the risk premium charged to producers is too high and that the premium can still be actuarially sound if less total premium is charged. It was not until the revised Plan of Operations was reviewed by the Board that it was discovered the approved insurance provider was seeking to reduce the producer paid portion of the premium because the approved insurance provider claimed it could deliver the crop insurance program for less money than received for the administrative and operating expense reimbursement. This meant it would be more appropriate to consider the revised Plan of Operations under section 508(e)(3) of the Act than section 523(d) of the Act.

After reviewing this approved insurance provider's revised Plan of Operations for premium reduction plan, the Board determined that procedures were necessary to address certain issues raised by the revised Plan of Operations that had not previously been raised regarding premium reduction plans, including the issue of an approved insurance provider that was new to the crop insurance program and, therefore, lacked a track record to assess the extent of any proposed efficiencies. In December 2002, the Board provided guidance and conditions for the development of such approval procedures to the Manager of FCIC in Board Memorandum No. 694, Docket No. CI-PDP-02-1 (Board Memorandum). Under such guidance, premium reduction plans are required to be offered initially in a limited number of states and expanded over time as the capacity and ability of the approved insurance provider to deliver the plan is determined. Further, the Manager is required to report the performance of any premium reduction plan to the Board at each meeting.

For the 2003 crop year, the approved insurance provider's proposed premium reduction plan reduced producer paid premium by an amount equal to 3.5 percent of net book premium for all Federally reinsured plans of insurance for corn, grain sorghum, soybeans, sugar beets, and wheat in Iowa, Illinois, Nebraska, Kansas, Minnesota, Indiana, and North Dakota. The premium reduction was based on administrative efficiencies attained by the approved insurance provider through sales of the premium reduction plan over the

Internet, through their operational and distribution systems, and certain reductions in agent commissions. RMA evaluated the approved insurance provider's proposed premium reduction plan, determined that it met the conditions imposed by the Board and approved the plan in January 2003, effective for the 2003 crop year.

Part of the Board's guidance required that the conditions of approval contained in the Board Memorandum must apply to all subsequent approved insurance providers. Consistent with the Board Memorandum, RMA established procedures that were reviewed by the Board and transmitted to the approved insurance providers through Manager's Bulletin MGR-03-008.

Some of the substantive provisions included in the procedures and Board Memorandum were the requirement that there not be a reduction in service to policyholders; assurance that the premium reduction plan is not unfairly discriminatory; requiring detailed information regarding any efficiency, its previous costs and the costs to be incurred after application of the efficiency; ensuring that a premium reduction plan will not place an excessive operational or financial hardship on the approved insurance provider; requiring descriptions and examples of how any premium reduction will be calculated and presented to the policyholder; requiring the determination of the number of producers affected and the projected total amount of any reduction; and requiring that any efficiency be subject to verification by RMA.

In addition, the procedures included accounting for startup costs for newly approved insurance providers; ensuring the use of licensed agents; requiring greater detail in the expense documentation, including certification from a certified public accountant regarding the reasonableness, accuracy and completeness of the accounting statements; comprehensive reviews by the approved insurance provider of the potential impact of the premium reduction plan and any steps to be taken to address potential vulnerabilities; and requiring semi-annual reports by the approved insurance provider to assist RMA in monitoring the program.

The approved insurance provider's premium reduction plan was reviewed at the end of the 2003 crop year to determine whether it met stated efficiencies. RMA's analysis found that it was less than one percent short of meeting its stated efficiencies on a dollar basis. The revised Plan of Operations contained a contingency plan to allow for a further reduction of

costs to ensure it attained the efficiencies claimed. The contingency was applied and RMA determined that the approved insurance provider was in compliance with the procedures, the Board's conditions, and section 508(e)(3) of the Act.

For the 2004 crop year, the approved insurance provider sought expansion of its premium reduction plan. RMA evaluated its revised Plan of Operations for the 2004 crop year under the procedures and reviewed the revised Plan of Operations with the Board. To address potential concerns regarding the possibility of unfair discrimination, the Board required the approved insurance provider make the premium reduction plan available to producers of all crops in the states it was approved to offer the premium reduction plan, not just selected crops. The Board viewed the expansion to several more states as particularly important to test the premium discount plan in states with varying crop insurance performance.

Once the approved insurance provider agreed to this condition, its previously approved premium reduction plan was amended and approved to include all crops in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. The approved insurance provider was recently approved to again offer a premium reduction plan for 2005 under the same terms and conditions as the 2004 premium reduction plan but expanded the number of states where it was offered.

The approved insurance provider's premium reduction plan is simple. As currently approved, the same efficiencies applied to all states the approved insurance provider does business and there is only one level of premium reduction applicable to all such states. This made verification of expense reductions associated with the efficiency straightforward because all costs associated with the sale and service of Federal crop insurance policies were considered and compared with the amount the approved insurance provider claimed was needed to deliver the program (e.g. 24.5 percent [2004 A&O] - 3.5 percent = 21.0 percent of the net book premium for all policies). Further, it would be easy to determine if practices were unfairly discriminatory because the approved insurance provider was required to offer the discount to all producers who wanted it. It was also easy to determine whether the reduction in premium from the efficiencies corresponded to the states from which they were derived since the same efficiencies and same

reductions applied to all states in which the approved insurance provider wrote business.

Over the last few months, RMA has received additional revised Plans of Operations for premium reduction plans for the 2005 crop year from other approved insurance providers. The revised Plans of Operations received are diverse: some offering a premium reduction for select plans of insurance, in select states; some at different premium reduction rates; some under new and complex organizational structures; and, finally, some at the discretion of the approved insurance provider or agent.

These diverse plans raised issues or problems that had not been previously considered by RMA when it developed its procedures. Requests to offer a premium reduction plan for only select plans of insurance, in select states or at differing premium reduction rates raised issues regarding the requirement in the Act that the efficiencies correspond to the amount of the premium reduction. Corresponding means that the dollar amount of savings from the efficiencies implemented in a state must correspond to the amount of premium reduction in that state. Further, it means that if the premium reduction is only available for select plans of insurance, the efficiencies must come from those plans of insurance. It also means that when the amount of premium reduction differs among states, the dollar amount of efficiency in each state must be sufficient to cover the premium reduction in that state. Savings realized from one state could not be used to finance a premium reduction in another state without violating the corresponding requirement in the Act. A review of the premium reduction plans with these options revealed that RMA could not verify that efficiencies corresponded with the premium reductions and that very complex accounting rules would be required to allocate costs on a state or insurance plan basis.

These plans also raised the possibility that there could be unfair discrimination. Unfair discrimination results when producers are denied an opportunity to participate under the premium reduction plan based on their risk of loss or farm size. The ability to offer premium reduction plans in certain states or plans of insurance could result in the approved insurance provider only offering such plans in states with good loss history or with larger than average farm sizes.

Another problem identified with these premium reduction plans is the proposal to change the operational

structure to have one or more entities associated with the approved insurance provider offer a premium reduction plan and another entity not, or allow agents to decide whether or not they will offer premium reduction plans and to whom. Again, this raises the possibility that approved insurance providers could divide their book of business between the two or more entities such that one entity receives the policies with a good loss history and the others received the policies with a bad loss history. Not only would this be unfair discrimination, such division could be used to manipulate gains and losses under the SRA if it was based on loss history. Further, some of the potential organizational structures may have been in violation of the SRA, such as the use of two managing general agents.

RMA recognizes that premium reduction plans may be controversial. From the beginning, RMA has attempted to strike a balance between the interests of producers in having their premiums reduced through competition in the marketplace and the need to have a strong delivery system. RMA has attempted to address problems and issues as they have arisen to ensure a strong, stable program.

Throughout the consideration process of premium reduction plans, RMA determined that there were several principles that must be met in order to comply with the requirements of section 508(e)(3) of the Act. The first is that the approved insurance provider must provide sufficient documentation to demonstrate that not only can the approved insurance provider operate within its administrative and operating expense reimbursement, but it can also reduce its costs to a level below the amount received from RMA for administrative and operating expense reimbursement. The second is that the efficiencies claimed by the approved insurance provider must be easily verifiable by RMA through auditing and monitoring. The third is that the premium reduction plan must comply with all requirements of the Act, the regulations, procedures, and the SRA.

The last principle is that no premium reduction plan can be unfairly discriminatory against producers based on their loss history, size of operation, or the amount of premium generated within the program. There have been concerns expressed that premium reduction plans may lead to unfair discrimination against small producers, limited resource farmers, women and minority producers. As stated previously, variations in premium reductions among states or only offering premium reduction plans in certain

states or with certain plans of insurance could result in unfair discrimination against such producers. Even if the premium reduction is the same for all states and plans of insurance, there is the possibility that limited resources farmers could be excluded from the marketing of premium reduction plans.

RMA has tried to address this issue in this rule by: (1) Requiring that the premium reduction plan be provided to all producers insured by the approved insurance provider; (2) requiring approved insurance providers to provide marketing plans for how they will reach these producers; (3) denying approval for premium reduction plans with inadequate marketing plans; and (4) allowing for withdrawal of approval by RMA for failure of the approved insurance provider to follow the marketing plan. RMA is expressly seeking comments on whether these provisions should be modified or additional provisions added to ensure that all producers have access to all premium reduction plans offered in their state.

RMA is also considering an alternative program structure to that contained in this proposed rule. The main feature of this alternative is that any premium reimbursement to the producer would be based on the actual cost savings realized by the approved insurance provider after the application of the efficiencies; not projected cost savings. The approved insurance provider would apply to be able to provide a reimbursement to producers based on the intent to implement specified efficiencies, but the approved insurance provider would have to validate the cost savings and receive approval of the applicable premium reimbursement from RMA after the end of the applicable reinsurance year before the provider could announce and remit the reimbursement to the producer.

As a result, approved insurance providers would project what they intend to save through efficiencies and estimate the amount of the premium reimbursement in their revised Plan of Operations, but they would not be able to advertise or otherwise represent the amount of the premium reimbursement to producers in advance of the sale because they would not know the final amount of savings or the approved reimbursement at the time they submitted their revised Plan of Operations. Approved insurance providers may only be able to refer to historical reimbursements in accordance with applicable State laws.

This alternative structure is intended to avoid the uncertainty resulting from reliance on cost projections and to

reduce the chance that an approved insurance provider will fail to achieve the represented savings, thereby causing disruption in the marketplace. Use of actual costs would preserve program integrity and the financial stability of the approved insurance providers.

Under the alternative structure, approved insurance providers would not be able to market the plan to producers based on a guaranteed amount of premium reimbursement. The alternative structure would eliminate the need for approved insurance providers to build a reserve into the plan because the premium reimbursements would be based on actual verified savings from applied efficiencies rather than projections that may not be realized.

Because of the timing of the financial accounting of the approved insurance provider, the actual costs and savings will not be known until months after the end of the crop year and premium reimbursements cannot occur until after such accounting. This means producers will be required to pay the full amount of their premium before they receive any possible reimbursement.

RMA is soliciting comments on this alternative process to determine if such a structure should replace the proposed structure when RMA finalizes the proposed rule. RMA is particularly interested in comments that address issues relating to the benefits of using actual versus projected costs, impacts on the workload of the approved insurance providers and RMA, market conduct oversight requirements that may be required, impacts on competition, the delay in the reimbursements to producers, whether such reimbursements create any income tax issues, or any other substantial adverse or positive effect of this approach in contrast to the approach included in the proposed rule.

An analysis of the existing procedures and review of the recently submitted revised Plans of Operations revealed that revisions to the procedures were necessary. Following are a summary of the current procedures and the proposed changes.

#### 1. Fundamental Program Change

Under the existing procedures, approved insurance providers could name the states and crops for which their premium reduction plan would be applicable. RMA explored continuation of this practice but it has identified significant problems in the administration of a program that permits state or other types of variability. Problems were identified in the selection of states. Allowing approved

insurance providers to select states may result in unfair discrimination because approved insurance providers could elect only to offer a premium reduction plan in states with low risks. In addition, RMA determined that state variability would require complex accounting rules because section 508(e)(3) of the Act requires the efficiencies to correspond to the location and amount of premium reduction. As stated above, this means that the dollar amount of savings from the efficiencies implemented in a state must correspond to the amount of premium reduction in that state. Further, the workload on RMA and approved insurance providers to identify cost allocations and determine whether the projected cost savings from efficiencies are reasonable and correspond to the premium reductions in the state would be enormous. This would be followed by the workload required to verify that savings in each state were realized and that premium reductions paid out did not exceed the amount of such savings.

RMA considered whether it was possible to remedy all the problems that allowing variability by state could produce and discovered it could not. Therefore, the proposed rule requires that approved insurance providers who submit revised Plans of Operations must offer the premium reduction plan to all producers, in all states where the approved insurance provider does business, and for all applicable crops, policies and plans of insurance. The amount of the premium reduction based on the percentage of the net book premium may not have any variations. For example, variations by state, coverage level, etc. are not permitted. In reaching its conclusion, RMA considered the following principles and is soliciting comments on its analysis and whether a premium reduction plan could be developed that allowed for a variation of the reduction by state consistent with these principles.

a. *The ability to offer such a reduction by state must not cause competitive harm in the marketplace.* Premium reductions plans are intended to create competition in the marketplace. However, the procedures governing such plans cannot be developed in such a manner as to create a competitive disadvantage. Therefore, RMA is striving to develop procedures that provide a level playing field to the maximum extent practicable.

The ability to vary the reduction by state could represent a substantial advantage for an approved insurance provider to be able to target reductions to meet specific market conditions in a

particular state. As a result, RMA believes that such an advantage must be available to all approved insurance providers, if it is to be available to any.

One cost reduction measure that appears in nearly all proposed premium reduction plans received by RMA where the reduction varies by state is the varying of agent commission reductions by state. The focus is on agents' commissions because they are relatively easy to administer by the approved insurance provider and verify by RMA, and agent compensation constitutes about seventy percent of the expenses that are incurred in the delivery of the crop insurance program. Because the crop insurance books of business of all approved insurance providers are currently divided by state and agent commissions are reported to RMA by state, it would be straightforward to allocate the cost reductions by state. However, not all approved insurance providers in the Federal crop insurance program use independent agents who are paid on a commission basis. Some approved insurance providers use "captive agents" that are employees of the provider who are compensated on a salary, not a commission, basis and may be doing business in more than one state.

RMA believes that it would be very difficult, if not impossible, for these approved insurance providers to allocate their agent compensation costs in a manner that would clearly show how such agent compensation reductions matched the associated premium reduction on a state by state basis. If RMA were to allow premium reductions on a state by state basis, and such reductions were generated by reductions in agent compensation, approved insurance providers with "captive agents" would likely suffer from a competitive disadvantage simply based on how they obtain, and compensate for, agent services.

b. *A premium reduction plan where the efficiencies and reductions vary by state must be easy for the approved insurance provider to administer and easy for RMA to verify.* The purpose behind section 508(e)(3) of the Act is to encourage approved insurance providers to reduce administrative and operating expenses in order to provide competitive discounts to producers. RMA believes it would be directly against the intent of this provision to authorize premium reduction plans that require the application of complex cost accounting rules to ensure that the premium reductions correspond to the efficiencies, as specifically required by the Act. Other than efficiencies tied to reductions in agent compensation,

nearly all of the efficiencies that varied by state in the premium reduction plans submitted to RMA for the 2005 reinsurance year involved cost reductions in general operating costs of the approved insurance provider, which are incurred in many states (*e.g.* information technology costs, policy servicing costs, and basic overhead costs). For example, the approved insurance provider proposes savings as a result of the implementation of a new computer system that would reduce errors by 20 percent. The computer system is applicable to all policies in the approved insurance provider's book of crop insurance business. If the premium reduction plan calls for different premium reductions in each state, the approved insurance provider would have to allocate the dollar savings associated with the new software to each state. It is also possible that such computer software is used in the approved insurance provider's other lines of business, which would require additional allocations. This type of allocation would have to be done for each type of efficiency. Therefore, to allocate these costs to each state would require the application of very complex cost accounting rules. Further, to the extent these costs represent activities conducted by salaried employees, as opposed to independent contractors, the cost accounting rules become even more difficult. Salaried employees and some contract employees, such as loss adjusters, frequently conduct work in more than one state. To allocate the costs among the states would also require additional complex accounting rules.

*c. Uniform service and preventing unintended effects on the business practices of the approved insurance providers.* One of the major principles of the crop insurance program is that approved insurance providers must provide insurance to all eligible producers and agents are required to perform certain services for each producer regardless of the producer's size or loss history. By introducing state variability in savings and premium reductions, there is a concern that it will result in variability of service to producers. For example, based on a review of the 2005 premium reduction plans submitted by approved insurance providers, it was apparent that reductions in agent compensation was the easiest way to establish efficiencies that support state variable premium reductions. RMA is concerned that variable reductions in agent compensation may result in reduced service to some producers below the

standards set by RMA in the SRA. The burden on RMA and the approved insurance providers to monitor agents' conduct to ensure that no such reduction in service occurs could be considerable and could reduce a significant portion of the savings generated by the efficiencies.

Further, there are numerous approved insurance providers and each has a unique operational structure and manner of doing of business. RMA wants to avoid implementing any rule that unnecessarily dictates the business practices of the approved insurance providers. As stated above, efficiencies based on the reduction of independent contractor compensation, such as agent commissions, are easy to verify and allocate on a state-by-state basis. Therefore, state variability provides an economic incentive to approved insurance providers to achieve their efficiencies through reductions in agent commissions. This conclusion was confirmed by the independent reviewers. This incentive could result in all approved insurance providers being driven to use commission to compensate their agents in order to be competitive.

In addition, as stated above, some approved insurance providers use salaried agents instead of independent contractor agents, likely increasing the difficulty for such approved insurance providers to allocate the salaried agents' compensation among states. RMA believes that the economic incentive created by state variability and the need for easily verifiable and allocable compensation may drive these approved insurance providers to change the way they deliver the program or could result in competitive disadvantages. The intent of the premium reduction plan is not to dictate the manner in which the approved insurance provider does business. Decisions on the use of independent versus salaried agents should be based on competitive market forces and service considerations, not a government regulation intended to provide a benefit to producers.

## 2. Revisions of Definitions

Most of the definitions from the current procedures have been included in this proposed rule, although some have been modified to conform to the SRA. RMA has also revised the definition of "compensation" to clarify that compensation includes any benefits, including those from third parties, that are guaranteed, even though the amount may differ year to year, regardless of the existence of an underwriting gain for the approved insurance provider, and to clarify when

profit sharing arrangements will not be included as compensation. The definition of "efficiency" is revised to clarify that cost savings must be attributable to operational efficiencies or a reduction in expenses but such savings cannot solely result from reductions in compensation, and that economies of scale from increased sales due to the offering of a premium reduction plan of insurance or projected reductions in loss adjustment expenses, unless authorized by RMA, are not considered an efficiency. A definition of "procedures" is added for clarification. A definition of "profit sharing" is added to clarify the difference between guaranteed benefits, which are considered compensation, and contingent benefits based on underwriting gains. A definition of "underwriting gain" is added to clarify that such gains include the net gain payment made to the approved insurance provider on its whole book of business under the SRA, less any costs it pays from such gains, including any costs related to the delivery of the program in excess of the amount of administrative and operating subsidy received from RMA. The definition of "unfair discrimination" has been modified to clarify that approved providers cannot exclude producers based on the loss history or the size of the policy.

## 3. Timing of the Submission of Revised Plans of Operations

The current procedures require revised Plans of Operations be filed not later than 150 days prior to the first sales closing date where the premium reduction will be applicable. In this proposed rule, for the 2006 reinsurance year, revised Plans of Operations must be received by RMA not later than 15 days after publication of the final rule to allow RMA time to consider such revised Plans of Operations before the fall sales closing dates. For subsequent reinsurance years, all revised Plans of Operations must be received by RMA not later than April 1 before the start of the reinsurance year. RMA has elected to have a single submission window each reinsurance year to ensure that all producers have access to the benefits under any premium reduction plan and that the timing of the submission of the revised Plans of Operations does not create an unfair competitive advantage. Revised Plans of Operations that are not timely submitted will be rejected. Approved insurance providers will have 15 days after the date a revised Plan of Operation is received by RMA to withdraw it. If not timely withdrawn, any approved premium reduction plan

must be implemented for the reinsurance year.

#### 4. Confidentiality Requirements

The confidentiality requirements remain the same but have been incorporated into a different section.

#### 5. Contents of Revised Plans of Operations

The current procedures require five copies and both a hard copy and electronic version. The provision has been revised to require an electronic copy. Both the current and proposed procedures require the approved insurance provider to provide the name of the person responsible for the administration of the premium reduction plan, the reinsurance year the plan will be in effect; a statement of the amount of the premium reduction to be offered to producers, how it is calculated, and reported to RMA; a list of any and all terms and conditions that affect its availability; and the projected total dollar amount of the premium reduction to be provided to the producers. The requirements in the existing procedures to list the proposed crops and states where the efficiency is being gained and the estimated number of producers have been removed from the proposed rule because such provisions were rendered moot by the requirement that the premium reduction plan be offered in all states for all crops where the approved insurance provider does business. The procedures have been revised to more clearly specify that existing Expense Exhibits provided with the Plan of Operations will be used in determining costs projections to ensure such reporting is standard among approved insurance providers and to ensure that such standards are tied to the information reported in the SRA. The procedures are also revised to only require the approved insurance provider to certify to the reasonableness, accuracy, and completeness of the projected costs relating to the claimed efficiencies and calculating the dollar amount of premium reduction provided since this information is not reported in the SRA. Revisions have also been made to the procedures to require the revised Plan of Operations to include a marketing plan for small, minority and limited resource farmers to address concerns that such producers will not receive the benefit of the premium reduction plans. The existing procedures are further revised to require the approved insurance provider include a proposal of how it intends to deliver the premium reduction plan for all producers in its revised Plan of Operations. This plan should include

whether the approved insurance provider will use the Internet, captive agents, affiliates, etc. Further, the approved insurance provider must certify that a copy of such strategy is sent to all State Departments of Insurance where it does business for a determination of whether the premium reduction plan is in conformance with state laws with respect to the licensing and conduct of agents and provide all responses from the states to RMA. The proposed rule further clarifies the existing procedures by requiring approved insurance providers to demonstrate how the premium reduction will correspond to the efficiencies, as required by section 508(e)(3) of the Act. This means the premium reduction must be provided in the same state from which the efficiency is implemented. Further, the amount of the premium reduction in a state must be commensurate with the amount of savings obtained from the efficiencies in that state. For example, an efficiency derived in Iowa cannot be used to fund a premium reduction in Texas. Further, the approved insurance provider cannot reduce costs in some states by 5 percent and in other states by 2.5 percent and give all producers the same premium discount. Such proposals would violate the Act. Further, revisions have been made to the procedures to require approved insurance providers to provide a summary of all profit sharing arrangements so that RMA can determine whether such profits should be considered as compensation and included as an expense or is solely based on the underwriting gains of the approved insurance provider and excluded. The procedures have also been revised to require the premium reduction plan contain a financial reserve plan that would contain additional actions to be implemented in the event that actual cost savings are insufficient to cover the amount of the premium reduction, which would generate additional administrative and operating savings or provide access to additional funds equal to 25 percent of the premium reduction. For example, if the dollar amount of the proposed premium reduction is \$10 million, the approved insurance provider must implement the efficiencies to attain such dollar amount of premium reduction as applicable during the reinsurance year. However, prior to submitting a revised Plan of Operation, the approved insurance provider must also determine what other actions are necessary to guarantee that it will have access to an additional \$2.5 million (25 percent of \$10 million) to cover the

premium reductions. While the implementation of such other actions would not be necessary unless the cost savings from the original efficiencies were insufficient to cover the premium reduction, the ability to obtain the additional funding must be demonstrated in the revised Plan of Operations. Such other actions could include additional cost cutting measures, access to additional lines of credit, guaranteed loans, etc. However, these other actions, if implemented, will not be considered when determining the amount of premium reduction authorized for subsequent years. The purpose of such financial reserve plans is to ensure that any error in projections does not affect the financial solvency of the approved insurance provider or prevent the producer from receiving the premium reduction specified in the premium reduction plan.

#### 6. New Approved Insurance Providers

The existing procedures allow certain costs associated with new approved insurance providers and with respect to expansions by existing approved insurance providers be included in the A&O costs for the purposes of determining the efficiency. RMA has elected to remove the provisions regarding existing approved insurance providers because it is impractical to track those costs associated with normal expansion and those attributable to the premium reduction plan. Further, the Act does not make any distinction between the types of costs against which to measure the efficiencies. However, it is only the new entrants into the crop insurance business that have the exceptional costs associated with such entrance. Existing approved insurance providers may incur some additional costs but not nearly to the extent that new entrants would. Further, some of these costs associated with expansion may be captured if the approved insurance provider can establish a higher expected premium volume for the year. RMA has clarified that new entrants are limited to those that have not participated in the program previously or are not affiliated with a managing general agent, another approved insurance provider, or other such entity that already has the infrastructure necessary to deliver crop insurance. The existing procedures have also been revised to no longer allow the new entrant to exclude the startup costs from its expenses reported under the premium reduction plan. In the proposed rule, such startup costs must be included as expenses but the approved insurance provider will be

permitted to spread such costs equally for up to three reinsurance years.

#### *7. RMA Review Process*

The current procedures require RMA to evaluate the completeness of a revised Plan of Operations and notify the approved insurance provider within 30 days. This provision has been removed because of the administrative burden it places on RMA to review the revised Plan of Operations twice and provide two separate responses. In the proposed rule, for the 2006 reinsurance year, RMA will notify approved insurance providers not later than September 1, 2005. For all subsequent reinsurance years, RMA has retained the provision that requires it to provide a response to the revised Plan of Operations not later than 60 days prior to the first sales closing date but added a provision that this requirement applies only if the revised Plan of Operations was timely submitted and if the 60 day requirement is not waived by the approved insurance provider.

#### *8. Standards for Approval*

The current procedures require that the premium reduction plan not result in the reduction of service to producers or be harmful to the interest of producers, not place a financial or operational hardship on the approved insurance provider or undermine the integrity of the crop insurance program. Further, such procedures require the approved insurance provider have the financial and operational capacity and expertise to deliver the crop insurance program after implementation of the premium reduction plan, there be adequate internal controls, and the premium reduction plan meet all other requirements of the Act and the SRA. These requirements have been retained in this proposed rule. RMA has added a provision that clarifies that approved insurance providers must be able to demonstrate they are operating under the A&O subsidy they receive from RMA, and if such information is based on projected costs and subsidy, such amount must be reasonable, before any revised Plans of Operation can be approved. RMA has also added provisions requiring that the efficiencies come from reductions in A&O costs and not underwriting gains and that they be verifiable; that the amount and location of the premium reductions correspond to the efficiencies; that there be enough efficiencies to cover all the premium reductions; and that training and oversight not be compromised to ensure the proper administration of the premium reduction plan program. RMA added provisions that the financial

reserve plan provide a guarantee of funding. RMA has also modified the procedures relating to unfair discrimination to ensure that there is no such discrimination based on the size of the farm or premium, the risk of loss, or against small, minority or limited resource farmers and that the marketing plan and delivery system for the premium reduction be reasonable and, with respect to the delivery system, in accordance with state law. RMA has also added provisions regarding the process of notification of approval and the requirement that if approved, the premium discount plan must be implemented for the next applicable sales closing date for the reinsurance year, unless otherwise determined by RMA. This requirement is to ensure that all producers receive equal access to approved premium reduction plans and that expectations created by the submission of a revised Plan of Operations for a premium reduction are realized.

#### *9. Disapproval*

RMA has revised the existing procedures, and combined them with the approval process, to provide the approved insurance provider with the right to seek reconsideration of a disapproval and specify that if a revised Plan of Operations is disapproved, the insurance provider cannot submit another revised Plan of Operations until the following reinsurance year.

#### *10. Requirements After Approval of a Premium Reduction Plan*

The current procedures specify that all procedural issues, problems, etc. will be addressed by the approved insurance provider; premium reductions must be implemented in accordance with the premium reduction plan, the approved insurance provider is liable for all mistakes, errors, etc. The current procedures also required the approved insurance provider to assist RMA in any reviews conducted to determine whether the efficiency is generated and there is compliance with the premium reduction plan and to make any changes required by RMA. These provisions have been basically retained in the proposed rule. RMA has added a requirement that the approved insurance provider immediately report in writing all operational and financial changes that could cause a material impact upon an approved premium reduction plan. RMA has revised the procedures regarding reporting to make them more detailed to ensure the information provided is adequate to review and assess the impact on program participants, including small

producers, limited resource farmers, women and minority producers and on the crop insurance program. RMA has also revised the procedures to clarify that producers will automatically receive the premium reduction. RMA has added a requirement that the approved insurance provider have an independent certified accountant certify as to the reasonableness, accuracy, and completeness of all actual costs relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered, in a format approved by RMA, not later than April 1 after the close of the reinsurance year. RMA has also added provisions requiring that the cost of such certification be included in the projected costs used to determine whether an efficiency has been attained. RMA has also added provisions making it clear that approval of a premium reduction plan is only for one year and new revised Plan of Operations must be made for subsequent years. RMA has also added provisions clarifying that if RMA discovers that the efficiencies were insufficient to cover the premium discount, the efficiencies are not attained or the premium reduction is not corresponding to the efficiency, the amount of premium reduction that can be approved for the next applicable reinsurance year will be limited to the actual amount of savings attained, excluding any actions taken under the financial reserve plan. Further, RMA added provisions specifying that it will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resources farmers, women and minority producers to ensure that no unfair discrimination takes place and that if it is discovered, RMA may withdraw approval of the premium reduction plan. RMA has also clarified its provisions regarding when it can modify or withdraw approval, how such modification or withdrawal will be communicated and the effect of such action for ease of use.

#### *11. New Provisions*

Unlike the procedures, RMA has added provisions that expressly state the limitations and prohibitions on the premium reduction plan program in order to simplify and clarify the program. Such limitations include a cap on the amount of premium reduction for the first two years the premium reduction plan is offered to allow RMA to evaluate the effect such plan may have on the crop insurance program and ensure that approved insurance providers are not leaving themselves

financially vulnerable by cutting their costs too much.

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 revising subpart V, effective for the 2006 and succeeding reinsurance years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

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

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

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

2. Revise the heading for Subpart V to read as set forth above.

3. Amend § 400.700 by adding two sentences to the end of the section to read as follows:

§ 400.700 Basis, purpose, applicability.

This subpart also provides procedures that are applicable to revised Plan of Operations submitted by approved insurance providers for the purpose of obtaining approval for a premium reduction plan in accordance with section 508(e)(3) of the Act. The offering of such premium reduction plans without RMA's prior written approval is prohibited.

§ 400.701 [Amended]

4. Amend § 400.701 by revising the definition of "Administrative and operating (A&O) subsidy" and by adding the definitions of "Administrative and operating (A&O) costs", "Agent", "Compensation", "Cost accounting", "Efficiency", "Managing general agent", "Premium reduction", "Profit sharing arrangements", "Standard reinsurance agreement", "Third party administrator", "Underwriting gain", and "Unfair discrimination" in alphabetical order to read as follows:

§ 400.701 Definitions.

Administrative and operating (A&O) costs. Costs of the approved insurance provider and any MGA and TPA that are related to the delivery, loss adjustment

and administration of the Federal crop insurance program.

Administrative and operating (A&O) subsidy. The subsidy for the administrative and operating expenses authorized by the Act (including the catastrophic risk protection loss adjustment expense reimbursement) and paid by FCIC on behalf of the producer to the Company.

Agent. An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is under contract with the Company, or its designee, to sell and service such eligible crop insurance contracts.

Compensation. Any guaranteed salary, commission, or any other guaranteed payment or anything of value or benefit that has a quantifiable value that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider either directly or indirectly through a third party. Profit sharing arrangements will not be considered compensation, when:

- (1) The payments under such arrangements are contractually obligated;
(2) The total amount paid under the aggregate of all profit sharing arrangements exceeds the total amount of the underwriting gain for the applicable reinsurance year; or
(3) The profit sharing payment is triggered by anything other than whether the approved insurance provider receives an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

Efficiency. Monetary savings realized when an approved insurance provider sells and services its Federal crop insurance policies for less than the amount of the A&O subsidy paid by FCIC, which must result from changes to the administrative and operating procedures and expenses that the approved insurance provider employs in delivering Federally-reinsured policies in accordance with the Act, the SRA, and all applicable regulations, directives, bulletins and procedures. Only a portion of the approved insurance provider's monetary savings

can come from a reduction in compensation, the rest must come from changes in administrative and operating procedures. Efficiency does not include any actual or projected underwriting gain earned from the SRA, reinsurance revenues, or the investment returns on the approved insurance provider's reserves. Cost savings attributed to projected increased sales due to the offering of a premium reduction plan of insurance are not considered an efficiency, nor are proposed reductions in loss adjustment expenses, unless such reductions in loss adjustment expense are a result of implementing loss adjustment procedures authorized by RMA.

Managing general agent (MGA). An entity that meets the definition of managing general agent under the laws of the State in which such entity is incorporated and in every other state in which it operates, or in the absence of such State law or regulation, meets the definition of a managing general agent or agency in the National Association of Insurance Commissioners Managing General Agents Act, or successor Act.

Premium reduction. Reduction of the insured's premium by the approved insurance provider in an amount approved by RMA in accordance with section 508(e)(3) of the Act, all applicable regulations, and these procedures.

Procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board.

Profit sharing arrangements. An arrangement to make a payment based on whether the approved insurance provider receives an underwriting gain on the total book of crop insurance business, except payments made to commercial reinsurers, or reinsurance revenues paid to the approved insurance provider for the reinsurance year.

Standard reinsurance agreement (SRA). The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and reinsure the policies for which the premium reduction is proposed.

Third party administrator (TPA). A person or entity that processes claims or performs other administrative services and holds licenses, as applicable, in states in which the approved insurance provider does business for services

related to the delivery, loss adjustment and administration of the Federal crop insurance program in accordance with a service contract or an affiliate or any other type of relationship.

*Underwriting gain.* For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, such as payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, loss adjustment and administration of the Federal crop insurance program

*Unfair discrimination.* A premium reduction plan will be considered unfairly discriminatory to a producer if the availability of such premium reduction plan, or the amount of the premium reduction, is based on the loss history of the producer, the amount of premium earned under the policy, or precludes in any manner producers in an approved State from participating in the program.

\* \* \* \* \*

5. Add § 400.714 to read as follows:

**§ 400.714 Revised Plans of Operations for premium reduction plans.**

(a) For the 2006 reinsurance year, revised Plans of Operations must be received by RMA not later than [date 15 days after the date of publication of the final rule].

(b) For all subsequent reinsurance years, revised Plans of Operations must be received by RMA not later than April 1 before the reinsurance year, or the date RMA otherwise determines the Plan of Operations is due.

(c) Any revised Plans of Operations that is not timely submitted will not be considered by RMA and any other revised Plans of Operations submitted by the approved insurance provider during the reinsurance year will not be considered until the next reinsurance year.

(d) A revised Plan of Operations may be withdrawn no later than 15 days after the revised Plan of Operations has been received by RMA. If a revised Plan of Operations has not been timely withdrawn, the approved insurance provider will be required to implement an approved premium reduction plan.

(e) Any confidential commercial or financial information submitted with a revised Plan of Operations will be protected from disclosure to the extent permitted by, and in accordance with, 5 U.S.C. 552(b)(4).

(f) The revised Plans of Operations under this subsection must be sent to

the Director, Reinsurance Services Division (or designee) at an address to be announced by RMA.

6. Add § 400.715 to read as follows:

**§ 400.715 Limitations and prohibitions.**

(a) For the first two reinsurance years after [effective date of the final rule], the premium reduction plan may not offer a premium reduction based on an efficiency less than 1.0 percent nor greater than 4.0 percent of the net book premium. For subsequent reinsurance years, RMA will announce the minimum and maximum limitation on the premium reduction, if applicable. Premium reductions must be offered in .5 percent increments.

(b) If a premium reduction plan is offered it must be offered in all states where the approved insurance provider is doing business and for all crops, coverage levels, policies.

(c) The amount of the premium reduction offered based on the percentage of the net book premium may not vary between states, crops, coverage levels, policies or plans of insurance, or on any other basis (For example, if the approved insurance provider can reduce costs by 2.5 percent, such reduction must be provided to all policyholders in all states where the approved insurance provider is doing business).

7. Add § 400.716 to read as follows:

**§ 400.716 Contents of the revised Plans of Operations for a premium reduction plan.**

A revised Plan of Operations must be submitted electronically, in a manner determined by RMA. Each revised Plan of Operations must include the following:

(a) The name of the approved insurance provider, the person who may be contacted for further information regarding the revised Plan of Operations, and the person who will be responsible for administration of the premium reduction plan;

(b) A detailed description of any and all terms and conditions that affect its availability;

(c) A detailed statement as to the amount of the premium reduction that is proposed to be offered to each eligible producer, how it will be calculated, and how it will be reported to RMA;

(d) A detailed proposal of how the approved insurance provider intends to deliver the premium reduction plan to producers;

(e) A detailed marketing plan focused solely on how the premium reduction will be promoted to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers;

(f) A detailed statement explaining how the approved insurance provider proposes to revise its procedures for the delivery, operation or administration of the Federal crop insurance program in order to achieve the specified efficiency and how the premium reduction will correspond to the efficiency;

(g) Applicable Expense Exhibits required by the SRA, or the applicable regulations if required by RMA, that are revived to reflect the implementation of the premium reduction plan and any documentation necessary to support the revisions;

(h) Based on the applicable Expense Exhibits, a statement that summarizes the A&O costs before implementation of the efficiency, the cost savings associated with the efficiency, the A&O costs after implementation of the efficiency (which includes the budgeted cost of all reports and certifications required in §§ 400.714–720), the expected A&O subsidy, and the projected total dollar amount of premium reduction to be provided to producers (This statement must demonstrate that after the implementation of the premium reduction plan, the approved insurance provider's A&O costs, including the budgeted cost of all such reports and certifications, plus the amount of any premium reductions will not be greater than the provider's A&O subsidy);

(i) A financial reserve plan that:

(1) Is triggered immediately upon discovery by the approved insurance provider or RMA that the total dollar amount of the actual efficiency is not sufficient to cover the total dollar amount of the premium reduction provided to producers;

(2) Consists of actions to be taken by the approved insurance provider that would produce cost savings or income that is at least 25 percent of the projected total dollar of premium reduction to be provided to producers immediately upon discovery under paragraph (i)(1) of this section;

(j) A detailed description of all profit sharing arrangements paid by the approved insurance provider;

(k) A certification, in a format approved by RMA, by the person designated by the approved insurance provider to execute the SRA, of the reasonableness, accuracy, and completeness of all cost projections relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered;

(l) A certification from the approved insurance provider, by the person designated by the approved insurance provider to execute the SRA, that it has

provided a copy of its marketing strategy under paragraph (d) of this section to the State Department of Insurance for all states where the premium reduction plan will be offered for its review to determine whether the licensing of agents and the conduct of agents in the solicitation and sale of insurance under the proposed premium reduction plan is in accordance with applicable state insurance laws (All responses from the states must be provided to RMA not later than 10 days after receipt of the response by the approved insurance provider); and

(m) Such other information as deemed necessary by RMA.

8. Add § 400.717 to read as follows:

**§ 400.717 New approved insurance providers.**

There may be instances where a new approved insurance provider is entering into the crop insurance program for the first time and such approved insurance provider is not affiliated with a MGA, another approved insurance provider, or any other entity that possesses the infrastructure necessary to deliver the crop insurance program, that is currently or has previously participated in the crop insurance program. In such instances, the one time start-up costs that are associated with entering the crop insurance business (*e.g.*, creation of a claims system, interface with RMA's data acceptance system, initial marketing costs, set up charges) must be included in the Expense Exhibits required by the SRA, or the applicable regulations if required by RMA, but the costs may be amortized in equal annual amounts for a period of up to three years for the purpose of determining the efficiency on the documents described in § 400.716, in a manner determined by RMA.

9. Add § 400.718 to read as follows:

**§ 400.718 RMA review.**

(a) For the 2006 reinsurance year, RMA will notify the approved insurance provider by September 1, 2005, of its approval or disapproval of the revised Plan of Operations for a premium reduction plan; and

(b) For all subsequent reinsurance years, RMA will notify the approved insurance provider at least 60 days before the applicable sales closing date of its approval or disapproval of the submitted premium reduction plan, unless the approved insurance provider waives this 60 day prior notification requirement in writing.

10. Add § 400.719 to read as follows:

**§ 400.719 Standards for approval.**

(a) RMA may approve the revised Plan of Operations if, in the sole

determination of RMA, the revised Plan of Operations demonstrates that the following criteria are met:

(1) All information required in § 400.716 is included in the revised Plan of Operations, in the format required, and is reasonable and supported by documentation;

(2) The approved insurance provider can demonstrate that its A&O costs, or projected A&O costs, are less than the A&O subsidy received, or projected to be received, from RMA and if based on projections, such projections are reasonable;

(3) The approved insurance provider can reduce A&O costs by a specific amount through identified efficiencies in the delivery of the Federal crop insurance program;

(4) The identified efficiencies must be measurable in dollar terms and supported by documentary evidence;

(5) RMA is able to verify the source and amount of the identified efficiencies as provided by the approved insurance provider and all applicable costs and savings before and after implementation of the premium reduction plan;

(6) The efficiencies must be sufficient to cover the dollar amount of the premium reduction, and correspond to the location where the premium reduction is offered;

(7) The efficiency must:

(i) Be derived from activities for which the A&O subsidy is provided and not from any expected underwriting gain; and

(ii) Not be derived from any marketing or underwriting practices that are unfairly discriminatory;

(8) The financial reserve plan is reasonable and provides the necessary guarantee of funding, as required by § 400.716(i);

(9) The marketing plan must be reasonable and effectively reach small producers, limited resource farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers;

(10) The proposal of how the approved insurance provider intends to deliver the premium reduction plan must be reasonable and not violate applicable state laws regarding the licensing and the conduct of agents in the solicitation and sale of insurance;

(11) The premium reduction plan must not result in a reduction in the service to policyholders required by RMA approved procedures;

(12) The premium reduction plan must not result in a reduction of training and supervising of agents, loss adjusters, or underwriting and quality assurance personnel required by the procedures, law, regulation or the SRA;

(13) 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, women and minority producers, and producers located in areas with small volumes of crop insurance business;

(14) The premium reduction plan must not adversely impact the financial and operational capacity and expertise of the approved insurance provider to properly deliver the Federal crop insurance program;

(15) The approved insurance provider's resources, procedures, and internal controls are adequate to make the premium reduction plan available to producers in a timely manner and to protect the integrity of the Federal crop insurance program, including the prevention of fraud, waste and abuse; and

(16) The premium reduction plan meets all other relevant requirements of the Act and the SRA.

(b) If the revised Plan of Operations is approved, the approved insurance provider:

(1) Will be notified in writing by the Director of the Reinsurance Services Division, or a designee or successor; and

(2) Must implement the premium reduction plan beginning with the next applicable sales closing date for the reinsurance year, unless otherwise determined by RMA, in accordance with § 400.720.

(c) If the revised Plan of Operations is disapproved, the approved insurance provider:

(1) Will be notified in writing of the basis for disapproval by the Director of the Reinsurance Services Division, or a designee or successor.

(2) May request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days of disapproval and such request must provide a detailed narrative of the basis for reconsideration.

(3) May not submit any additional revised Plans of Operations for a premium discount plan for the reinsurance year.

11. Add § 400.720 to read as follows:

**§ 400.720 Terms and conditions for approved premium reduction plans.**

The following terms and conditions apply to all approved insurance providers whose revised Plans of Operations are approved:

(a) Approved revised Plans of Operations for premium reduction will only be effective for one reinsurance year.

(b) The approved insurance provider must immediately report in writing all operational and financial changes that could cause a material adverse impact upon its approved premium reduction plan to the Director of the Reinsurance Services Division, or a designee or successor.

(c) All procedural issues, questions, problems or clarifications with respect to implementation of the premium reduction plan must be timely addressed by the approved insurance provider.

(d) The approved insurance provider must implement the premium reduction plan in accordance with the terms and conditions of approval.

(e) All producers insured by the approved insurance provider will automatically receive the premium reduction contained in the approved premium reduction plan.

(f) An independent certified public accountant must certify to the reasonableness, accuracy, and completeness of all actual costs relating to the efficiencies and the total dollar in premium reduction for the reinsurance year the premium reduction plan will be offered, in a format approved by RMA, not later than April 1 after the annual settlement for the reinsurance year (The costs associated with such certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's projected expenses for the purposes of determining an efficiency);

(g) The approved insurance provider must provide semi-annual reports, or more frequently as determined by RMA, that permit RMA to accurately evaluate the effectiveness of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain:

(1) The number of producers making initial application for insurance by State;

(2) The average number of acres insured under all policies by State before and after implementation of the premium reduction plan;

(3) The number of small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers making application as result of the implementation of the marketing plan;

(4) The average coverage level purchased by producers insured by the approved insurance provider before implementation of the premium reduction plan and after;

(5) The number of agents selling and servicing policies on behalf of the approved insurance provider by State; and

(6) The number, substance, and final or pending resolution of complaints from producers regarding the service received under the premium reduction plan.

(h) If at any time RMA discovers that the cost reduction or efficiencies contained in the premium reduction plan are not attained, are not sufficient to cover the dollar amount of premium reduction, or that the reduction in premium is not corresponding to the efficiency, RMA will require that the amount of efficiency used to determine the premium reduction for the next applicable reinsurance year be limited to the actual cost savings obtained for the reinsurance year, excluding any financial reserve plan measures that may have been used to make up for the effects of the deficiency.

(i) RMA will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority producers to ensure that no unfair discrimination takes place and if it is discovered, RMA may withdraw approval for the premium reduction plan, in accordance with paragraph (n) of this section.

(j) The approved insurance provider is solely liable for all damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(k) The approved insurance provider must fully cooperate with RMA in its periodic review of the operations of the approved insurance provider for the purpose of assuring that the efficiencies are generated, that the projected cost reductions materialize, that the premium reduction plan is administered in the manner presented in the revised Plan of Operations, that the solvency and operational capacity of the approved insurance provider remains unimpaired, and that the interests of producers and taxpayers are protected.

(l) The approved insurance provider may be required by RMA to modify its implementation of an approved premium reduction plan to ensure compliance with 7 CFR 400.714-720, the Act, regulations, the SRA, and any applicable policy provisions and approved procedures, and to protect the interests of producers and taxpayers, and the integrity of the program.

(m) At its sole discretion and upon written notice, RMA may withdraw or modify its approval of any premium reduction plan if RMA determines that:

(1) The approved premium reduction plan, or its implementation, no longer

satisfies all the terms and conditions in 7 CFR 400.714-720;

(2) There have been instances of unfair discrimination;

(3) The stated efficiencies have not been realized or the approved premium reduction is not provided to all existing policyholders and producers as required by subsection (e); or

(4) The integrity of the crop insurance program is jeopardized in any way, as determined by RMA, by the premium reduction plan.

(n) If any condition in paragraph (m) of this section exists, RMA will notify the approved insurance provider in writing:

(1) That approval has been withdrawn or a modification to the premium reduction plan is required;

(2) The date such withdrawal is effective or modifications must be made;

(3) If modified, such modification must be approved by RMA before implementation;

(4) The basis for such withdrawal or modification; and

(5) If approval is withdrawn, the approved insurance provider must cease offering the associated premium reduction effective for the next sales closing date.

Signed in Washington, DC, on February 17, 2005.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 300

[Notice 2005-6]

#### Candidate Solicitation at State, District, and Local Party Fundraising Events

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission seeks comments on proposed changes to its rule regarding appearances by Federal officeholders and candidates at State, district, and local party fundraising events under the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). The current regulation contains an exemption permitting Federal officeholders and candidates to speak at State, district, and local party fundraising events "without restriction or regulation." This regulation was challenged in *Shays v. FEC*. The U.S. District Court for the District of