

additional opportunity at the administrative level to resolve adverse decisions. If the participant disagrees with an administrative review and/or mediation determination, the participant can appeal that determination to NAD. The provisions have been modified to allow these changes to the appeal procedure.

The rule is also being revised to add the provisions regarding matters of general applicability and their appealability to NAD that were erroneously removed from this subpart when it was last revised. Congress, in 7 U.S.C. 6992(d) expressly states that decisions must be adverse to the individual to be appealable to NAD and that matters of general applicability are not subject to appeal.

Good cause is shown to make this rule effective upon publication at the Office of the Federal Register. Good cause exists when notice and comment and 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

FCIC is merely making ministerial changes to the policy that are mandated by the 2008 Farm Bill. There is no discretion given to FCIC in the terms contained in this rule or their implementation.

For the reasons stated above, good cause exists to make these policy changes effective upon publication at the Office of the Federal Register.

#### List of Subject in 7 CFR Part 400

General Administrative Regulations.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400 subpart J as follows:

#### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

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

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

■ 2. Amend § 400.90 as follows:

■ A. Amend the definition of “Agency” by removing “RSO” and adding in its place “RO” and by removing “FOSD” and adding in its place “FAOB”;

■ B. In the definition of “Appellant” revise the first sentence;

■ C. Remove the definition of “FOSD”;

■ D. Add a definition of the term “FAOB”;

■ E. Remove the definition of “RSO”; and

■ F. Add a definition of “RO”.

The additions and revisions read as follows:

#### § 400.90 Definitions.

\* \* \* \* \*

*Appellant.* Any participant who requests an administrative review or mediation, or both, of an adverse decision of the Agency in accordance with this subpart. \* \* \*

\* \* \* \* \*

*FAOB.* Financial and Accounting Operations Branch.

\* \* \* \* \*

*RO.* The Regional Office established by the agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

\* \* \* \* \*

■ 3. Amend § 400.91 as follows:

■ A. Amend paragraph (c) introductory text by adding the phrase “or both,” after “mediation,”;

■ B. Amend paragraph (d) by removing the word “or” and adding in its place the word “and”;

■ C. Add new paragraph (e) to read as follows:

#### § 400.91 Applicability.

\* \* \* \* \*

(e) Notwithstanding any other provision, this subpart does not apply to any decision made by the Agency that is generally applicable to all similarly situated program participants. Such decisions are also not appealable to NAD. If the Agency determines that a decision is not appealable because it is a matter of general applicability, the participant must obtain a review by the Director of NAD in accordance with 7 CFR 11.6(a) of the Agency’s determination that the decision is not appealable before the participant may file suit against the Agency.

#### § 400.93 [Amended]

■ 4. Amend paragraph (a) in § 400.93 by removing the phrase “, but not both”.

#### § 400.94 [Amended]

■ 5. Amend paragraph (a) of § 400.94 by removing the phrase “instead of” and adding in its place the phrase “in addition to”.

Signed in Washington, DC on February 19, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

RIN 0563–AC20

#### General Administrative Regulations; Submissions of Policies, Provisions of Policies, Rates of Premium and Premium Reduction Plans

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium and Premium Reduction Plans to remove provisions that allow approved insurance providers (AIP) to offer premium reduction plans. The authority for such premium reductions has been eliminated in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

**DATES:** *Effective Date:* This rule is effective February 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Leiann Nelson, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0064.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

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

### Executive Order 13132

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

### Regulatory Flexibility Act

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. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 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, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

On May 22, 2008, the 2008 Farm Bill was enacted. Section 12010 of the 2008 Farm Bill amended section 508(e) of the Federal Crop Insurance Act (Act) by removing paragraph (3), which has authorized AIPs to provide a premium discount to their insureds if they were able to deliver the crop insurance program for less money than they were paid in an administrative and operating expense reimbursement under section 508(k) of the (Act) and the Standard Reinsurance Agreement. The provisions of the 2008 Farm Bill are very specific and do not allow FCIC any discretion regarding interpretation of the provisions or their implementation. Therefore, elimination of the provisions authorizing the payment of the premium discount necessitates the removal of the relevant provisions in 7 CFR part 400, subpart V related to the premium reduction plan.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause exists when notice and comment and the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. FCIC is merely making ministerial changes to the regulation that are mandated by the 2008 Farm Bill. There is no discretion given to FCIC in the terms contained in this rule or their implementation. Therefore, good cause exists to make this change effective upon filing for public inspection at the Office of the Federal Register.

### List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR Part 400 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(l), 1506(o).

### Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

- 2. Revise the heading for subpart V to read as set forth above.
- 3. Revise section § 400.700 to read as follows:

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

This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board as authorized under section 508(h) of the Act and for nonreinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development costs, and maintenance costs for products and the approval process.

#### § 400.701 [Amended]

- 4. Revise section § 400.701 by removing the definitions for “Administrative and operating (A&O) costs,” “Agent,” “Approved procedures,” “Compensation,” “Efficiency,” “Eligible crop insurance contract,” “Eligible producer,” “Managing General Agent (MGA),” “Plan of Operations,” “Premium discount,” “Profit sharing arrangement,” “Reduction in service,” “Standard Reinsurance Agreement (SRA),” “Third Party Administrator (TPA),” “Underwriting gain,” and “Unfair discrimination”.

#### §§ 400.714–400.722 [Removed]

- 5. Remove sections §§ 400.714 through 400.722.

Signed in Washington, DC, on February 19, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563–AB99

### Common Crop Insurance Regulations; Cabbage Crop Insurance Provisions

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