

# Proposed Rules

Federal Register

Vol. 72, No. 96

Friday, May 18, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

RIN 0563-AB73

#### General Administrative Regulations; Administrative Remedies for Non-Compliance

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend 7 CFR part 400, subpart R to clarify existing administrative remedies, add additional administrative remedies that are available as a result of enactment of section 515(h) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1515(h)), and make such other changes as are necessary to implement the provisions of section 515(h) of the Act.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business on June 18, 2007 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled "Administrative Remedies for Non-Compliance", by any of the following methods:

- *By Mail to:* Deputy Administrator for Compliance, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Stop 0806, Washington, DC 20250-0806.
- *E-mail:* [cynthia.simpson@rma.usda.gov](mailto:cynthia.simpson@rma.usda.gov).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• A copy of each response will be available for public inspection and copying from 8 a.m. to 4:30 p.m., EST, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Michael Hand, Deputy Administrator

for Compliance, at the address listed above, telephone (202) 720-0642.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, 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, 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. All similarly situated participants are required to comply with the same standard of conduct contained

in the Act, the regulations published at 7 CFR chapter IV, the crop policies, and the applicable procedures. For example, any producer, whether growing 10 acres or 10,000 acres, submits the same documentation for insurance and for a claim. All agents, whether selling and servicing five policies or a hundred and five policies, are required to perform the same tasks for each. The consequences for failure to comply with the standards of conduct are also the same for all participants and other persons regardless of the size of their business. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of 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 proposed 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.

##### 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

Prior to the enactment of the Agricultural Risk Protection Act of 2000 (ARPA), pursuant to section 506(n) of the Act (7 U.S.C. 1506(n)), FCIC had the election of disqualifying or imposing a \$10,000 civil fine on a person who willfully and intentionally made a false

statement. With respect to the disqualification, the person was only disqualified from purchasing crop insurance or receiving noninsured crop disaster assistance (NAP) benefits. This meant the disqualification was only effective against producers and it would not apply to other program participants such as agents, loss adjusters, approved insurance providers or their employees or contractors or other persons who may provide information to a program participant. With respect to the imposition of civil fines, either the fine was insignificant in relation to the wrongful conduct or in many cases the person did not have the assets or resources to pay the fine so its imposition was meaningless.

Through the enactment of section 515(h) of the Act in ARPA, Congress significantly strengthened FCIC's ability to combat fraud, waste and abuse by establishing a strong system of administrative actions that are now applicable to all participants in the Federal crop insurance program. Now, producers, agents, loss adjusters, approved insurance providers and their employees and contractors, and any other persons who willfully and intentionally provide any false or inaccurate information to FCIC or to an approved insurance provider with respect to a policy or plan of insurance are subject to remedial administrative remedies.

If disqualified, participants in the Federal crop insurance program will be precluded from such participation. This means producers will not be able to insure their crops, agents and loss adjusters will no longer be able sell, service or adjust crop insurance policies, approved insurance providers would be precluded from holding reinsurance agreements related to insurance offered under the authority of the Act, and other persons, employees or contractors of approved insurance providers will not be able to purchase crop insurance or be affiliated with any entity participating in the crop insurance program for the period of disqualification.

In addition to disqualification from participating in the Federal crop insurance program, producers will be disqualified from receiving benefits under the Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including NAP; the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*); the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*); Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*); the Consolidated Farm

and Rural Development Act (7 U.S.C. 1921 *et seq.*); and any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities. This will allow greater protection of the interests of the government by preventing persons that commit wrongful acts in one governmental program from receiving program benefits from other governmental programs.

Section 515(h) of the Act also authorizes disqualification of producers, agents, loss adjusters, approved insurance providers and their employees and contractors, and other persons if such person willfully and intentionally fails to comply with a requirement of FCIC. One purpose of this proposed rule is to define what constitutes a "requirement of FCIC."

In addition, civil fines have been increased. Previously only a civil fine of \$10,000 could be imposed, regardless of how many times the person willfully and intentionally submits false or inaccurate information or fails to comply with a requirement of FCIC. Now a civil fine can be imposed for each violation and the civil fine is the greater of \$10,000 or the amount of pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of the Act. For example, a producer that submits a false claim for indemnity and collects \$50,000 can be required to repay the \$50,000 overpayment and an additional \$50,000 in a civil fine, for a total of \$100,000 owed, or an agent that submitted 20 false production reports that increased the amount of indemnities producers collected by \$8,000 per producer can be required to pay a civil fine of \$200,000. Like the previous administrative sanction provisions, the gravity of the violation must be taken into consideration when determining the appropriate term of disqualification or civil fine.

The proposed changes to subpart R are as follows:

#### 1. Heading

FCIC is proposing to replace the heading "Subpart R—Sanctions" with "Administrative Remedies for Non-Compliance". FCIC's policy underlying administrative actions is the protection of the public interest from potential harm from persons who have abused the program, maintaining program integrity, and fostering public confidence in the program. Therefore, "Administrative Remedies for Non-Compliance" is a more accurate title for this subpart.

#### 2. Section 400.451—General

FCIC is proposing to revise paragraph (a) to add a reference to section 515(h) of the Act, which authorizes disqualifications and civil fines.

FCIC is proposing to revise paragraph (b) to add the other program participants and other persons now covered under section 515(h) of the Act, including producers, agents, loss adjusters, approved insurance providers and their employees and contractors, and other persons who may submit information related to the Federal crop insurance program. In the past, administrative remedies for the most part targeted a limited segment of wrongdoers in the crop insurance industry, the producer, and there were often inadequate administrative remedies applicable to other persons who committed fraud, waste, and abuse in the Federal crop insurance program. As a result of the enactment of section 515(h) of the Act, administrative sanctions are now applicable to all program participants and persons who may provide information related to the crop insurance program.

FCIC is proposing to revise paragraph (c) to make minor editorial changes for clarity.

FCIC is proposing to revise paragraph (d) to clarify that with respect to the submission of false or inaccurate statement, this rule is applicable to such conduct occurring after June 20, 2000, and with respect to failure to comply with a requirement of FCIC, this rule is applicable to such conduct occurring on and after the date this rule becomes effective.

FCIC is proposing to add a new paragraph (e) to clarify that the purpose of the remedial actions authorized in this subpart are for the protection of the public interest from potential harm from persons who have abused the Federal crop insurance program, maintaining program integrity, and fostering public confidence in the program. The Government does not want to do business with persons who abuse its programs.

#### 3. Section 400.452—Definitions

FCIC is proposing to add definitions for terms used in subpart R. Specifically, definitions have been added for the terms "Act," "agency," "agent," "approved insurance provider," "affiliate," "agricultural commodity," "FCIC," "managing general agent," "participant," "person," "policy," "preponderance of the evidence," "principal," "producer," "requirement of FCIC," "Standard Reinsurance Agreement," "violation,"

and “willful and intentional.” Given that the remedial actions apply to all participants in the Federal crop insurance program, it is necessary to identify who qualifies as participants, such as producers, agencies, agents, approved insurance providers, and managing general agents since such persons or entities are now subject to the remedial actions in this subpart. The remedial actions can also apply to persons who are not participating in the Federal crop insurance program, but provide information that constitutes a willful and intentional violation so such persons must also be identified. In addition, it is necessary to define a “requirement of FCIC” to distinguish requirements of FCIC that may be contained in policy, the Standard Reinsurance Agreement or procedure, for which there are generally adequate remedies available for the breach, from violations of requirements, such as cease and desist letters, letters or memoranda requiring that specific action be taken, or violations of policy, the Standard Reinsurance Agreement or procedure so egregious that remedial action is appropriate. Further, disqualification and civil fines are imposed upon a showing of a willful and intentional violation. Therefore, it is necessary to specify what constitutes willful and intentional conduct. It is also important that the standard of proof be identified for disqualifications and civil fines. Preponderance of the evidence was determined to be appropriate because this is the standard most commonly used by the government for imposition of similar administrative remedies. Most of the definitions will refer to terms and definitions contained in other regulations, such as the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) to ensure consistency and eliminate the need to revise multiple regulations when the definition is changed.

#### *4. Section 400.454—Disqualification and Civil Fines*

FCIC is proposing to change the title of section 400.454 “Civil penalties” and to replace it with “Disqualification and Civil Fines”. The procedures related to disqualifications have now been added to the section, which should be reflected in the title. Further, the Act now refers to civil fines, not civil penalties.

FCIC is proposing to revise paragraph (a) to clarify that before any disqualification or civil fine is imposed, the participant or other person will have the opportunity for a hearing on the record. Proceedings will still be initiated by a complaint filed by the Manager of FCIC and the hearing will be

before the Department’s Administrative Law Judges in accordance with 7 CFR part 1, subpart H.

In paragraph (a), FCIC is also proposing to clarify the effective date of disqualification. FCIC is proposing the effective date of disqualification will be the date specified in the order issued by the Administrative Law Judge, Judicial Officer, or settlement agreement. If no date is specified in such documents, the effective date will be the date the disqualification order or settlement agreement was issued or executed.

In paragraph (a), FCIC is also proposing to use a standard of proof of preponderance of the evidence for disqualification and civil fines this is the standard most commonly used by the government for imposition of similar administrative remedies. FCIC is also proposing that disqualification and civil fines may be imposed even if FCIC or the approved insurance provider has not sustained a financial loss. There may be situations where the false statement or other misconduct has the potential to create losses or increase payments but the act was discovered before the payment could be made. There may also be situations where the misconduct can be used to collect a future indemnity, such as falsely reporting high yields to increase the guarantee and a possibility of a future loss. The fact that any information is falsely or inaccurately reported adversely affects program integrity and has the potential to create a situation where the public loses confidence in the program.

FCIC is proposing to revise paragraph (b) to include the situations in section 515(h) of the Act where disqualification and civil fines may be imposed. Disqualification and civil fines may be imposed on a person based on either willfully and intentionally: (1) Providing false or inaccurate information; or (2) failing to comply with a requirement of FCIC. FCIC is proposing to clarify that the false or inaccurate information can be provided either through action (for example, falsely reporting the number of acres planted) or omission to act when there is knowledge that false or inaccurate information has or will be provided and no action is taken to prevent it (for example, the agent knows the planted acreage has been falsely reported and still submits the acreage reports with the false information). FCIC has determined that persons who knowingly allow false or inaccurate statements to be provided by others affect the program just as adversely as those who made the false or inaccurate statement in the first place.

FCIC is proposing to revise paragraph (c) to specify the standards that will be applied when FCIC considers imposing a disqualification or civil fine. The gravity of the violation will be considered when determining whether to impose a disqualification or civil fine, the length of the disqualification or the amount, if any, of any civil fine. FCIC is also proposing that the maximum be imposed where there have been multiple violations in the same crop year or over several crop years, or a single violation that results in an overpayment of at least \$100,000 or multiple acts of wrongdoings resulting in an overpayment in excess of \$100,000. FCIC has determined that such conduct is so harmful to the program that the maximum remedial action is appropriate. However, these criteria are not all-inclusive and there may be other circumstances where the maximum actions are appropriate.

FCIC is proposing to revise paragraph (d) to allow FCIC to impute the improper conduct of a person to another person, if such other person knew or should have known of the improper conduct, has the power to direct, manage, control or influence the activities of the person, participated in the improper conduct, or the improper conduct occurred in the connection with the person’s duties on behalf of the person to whom the conduct is imputed or with such persons approval or acquiescence. There are situations where the person who provided the false or inaccurate information has been directed to do so by another person, a person participates in providing false or inaccurate information, such as obtaining the false information and passing it on to the person to provide to an approved insurance provider, or a person knows that false or inaccurate information is being provided and does nothing to stop it. The conduct of the person who directed the conduct, participated in providing it, or allowed it to be provided is just as detrimental to the crop insurance program. Therefore, to protect the public interest, such persons should also be disqualified or have civil fines imposed. This is the same as the imputing of conduct permitted with respect to suspensions and debarments under 7 CFR 3017.

#### *Disqualifications*

FCIC proposes to revise paragraph (e) to incorporate the expanded range of administrative remedies made available under section 515(h) of the Act to include those that are applicable to: (1) Producers, which precludes many of the benefits provided to producers under other farm programs offered by the

Department; and (2) to other participants in the Federal crop insurance program and any other person who may provide information regarding the insured agricultural commodity, which precludes such participants or persons from participating in the Federal crop insurance program and receiving any benefit under the Act. This means such participants or persons could no longer hold a reinsurance agreement or be involved in any way in the sale, service or loss adjustment of a crop insurance policy and would also be precluded from purchasing a crop insurance policy or receiving any subsidy authorized under the Act.

In paragraph (e), FCIC is also proposing to specify that disqualifications are for a period of not less than one year and not greater than five years from the date the disqualification is effective. Disqualifications of less than one year could be meaningless because existing policies can only be terminated at the next termination date. Disqualifications of less than one year could begin and end within the insurance period thereby making the disqualifications meaningless. Therefore, FCIC has determined that one year is the least period that could be effective.

In addition, in paragraph (e) FCIC is proposing that disqualifications be imposed in one-year increments up to the maximum of five years. Most of the crop insurance policies and reinsurance agreements are in effect for one year. Disqualifications of different periods, such as 18 months, would be burdensome and create additional complexities in determining when persons are eligible again to participate in the program.

In paragraph (e) FCIC is also proposing to specify that the names of all persons who are disqualified will be placed into FCIC's Ineligible Tracking System (ITS) and reported to the U.S. General Services Administration (GSA) in accordance with 7 CFR part 3017. GSA publishes a list of all persons who are determined ineligible in its Excluded Parties List System (EPLS). FCIC is also proposing to specify that if a person is doing business with a disqualified person, such person may also be subject to disqualification. FCIC does not want to allow persons who have been disqualified to still participate in the program through the association with another person. FCIC also proposes to make it the responsibility of a person who participates in the Federal crop insurance program to routinely review ITS and EPLS to ensure that the person

is not doing business with a disqualified person.

#### Civil Fines

FCIC is proposing to revise paragraph (f) to specify that, in accordance with section 515(h) of the Act, the amount of civil fines will not exceed the greater of the amount of monetary gain or \$10,000. In addition, in accordance with section 515(h) of the Act, FCIC is proposing that the civil fine will be imposed for each violation. FCIC is also proposing to clarify that a civil fine is a debt owed to FCIC and that the civil fine must be paid by the due date specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or the settlement agreement, or, if no due date is specified, it shall be 30 days after the date the order was issued or the settlement agreement signed by FCIC. This is to clarify that even though the amount of monetary gain may be owed to another person, for example, overpaid indemnity is owed to the approved insurance provider, the civil fine is always owed to FCIC. Further, there must be a due date because FCIC is proposing that failure to pay by the due date can subject the person to ineligibility to participate in the program. This is to provide a meaningful consequence for failure to comply with their responsibility to timely pay their civil fine. Without such consequences, persons may delay forever the payment of such fines.

In paragraph (f), FCIC also proposes to specify that a civil fine imposed under this section is in addition to any debt that may be owed to FCIC or to any approved insurance provider, such as an overpaid indemnity, underpaid premium, or other amounts owed. This is necessary to distinguish between the civil fine, which could equal the amount owed, and the other amount owed. For example, if the producer was overpaid \$12,000 and a civil fine of \$12,000 is imposed, the producer owes a total of \$24,000. FCIC is also proposing to specify that, in its sole discretion, FCIC may settle any civil fine imposed if it considers it appropriate or in the best interest of the USDA.

In paragraph (f), FCIC is also proposing to specify that the ineligibility procedures established in subpart U are not applicable to ineligibility determinations for nonpayment of civil fines. This is necessary because subpart U applies to producers and there could be confusion regarding which procedures apply. FCIC is also proposing to specify that failure to timely pay a civil fine will make a person ineligible for further benefits

under the Act until the civil fine is paid in full.

FCIC proposed to add a new paragraph (g) that specifies the consequences of disqualification or if a person fails to timely pay the civil fines. FCIC is proposing that with respect to producers, all existing policies will automatically terminate as of the next termination date and that new application cannot be made until the next sales closing date after the period of disqualification has ended and the civil fine is paid in full. This is consistent with the requirements of other types of ineligibility and is necessary under the terms of the policy. With respect to all other persons, FCIC is proposing that such persons cannot be involved in any way with the crop insurance program. Further, if the person is an agent or agency, FCIC is proposing to require that the approved insurance provider assign the book to another agent or agency during the period of disqualification or ineligibility. This will ensure the continued, uninterrupted service of the policy. If the person is an approved insurance provider, FCIC is proposing that the approved insurance provider be precluded from selling any new policies or renewing any existing policies during the period of disqualification or ineligibility. FCIC has made this similar to a suspension under its reinsurance agreements because FCIC wants to make sure that there is uninterrupted service for all existing policies during the crop year, but that such policies be cancelled and transferred for subsequent crop years if the period of disqualification or ineligibility is still ongoing.

FCIC is proposing to add a new paragraph (h) that specifies that the imposition of disqualification or a civil fine under this section is in addition to any other administrative or legal remedies available under this section or other applicable law including, but not limited to, debarment and suspension. Other remedies may serve a different purpose or have different consequences and may be equally appropriate for the wrongful conduct.

#### *5. Section 400.455—Governmentwide Debarment and Suspension (Procurement)*

FCIC is proposing to delete paragraph (a) because it does not add to the content or clarity of the provision.

FCIC is proposing to redesignate paragraph (b) as paragraph (a) and revise it to correct the cross references and better specify that the Federal Acquisition Regulation will be applied in debarment and suspension proceedings involving procurement

transactions and that the FCIC's Manager will have the authority to suspend or debar any person under this provision.

FCIC is proposing to redesignate paragraph (c) as paragraph (b) and revise it to clarify that if suspended or debarred, the person may not contract with FCIC or the Risk Management Agency. This change is necessary because the Risk Management Agency administers the crop insurance program on behalf of FCIC. FCIC has also made other minor editorial changes for clarity and consistency.

**6. Section 400.456—Governmentwide Debarment and Suspension (Nonprocurement)**

FCIC is proposing to delete paragraph (a) because it does not add to the content or clarity of the provision.

FCIC is proposing to redesignate paragraph (b) as paragraph (a) and revise it to clarify that suspensions and debarments will be done in accordance with 7 CFR part 3017.

FCIC is proposing to revise paragraph (b) to specify the effects of suspension and debarment involving non-procurement transactions. FCIC is proposing that if suspended or debarred, the person may not contract with FCIC or the Risk Management Agency. FCIC is also proposing that if the person is suspended or debarred, the person cannot contract with an approved insurance provider or its contractors. This is consistent with the provisions in 7 CFR 3017 that participants in the crop insurance program cannot do business with debarred or disqualified persons. FCIC is proposing that FCIC have the discretion to waive the provisions if the approved insurance provider has taken sufficient action to ensure that the suspended or debarred person will not be involved in any way with the crop insurance program or receive any benefits from any program under the Act.

**7. Section 400.457—Program Fraud Civil Remedies Act**

FCIC is proposing to add new paragraph (d) to specify that civil fines and assessments imposed under this provision are in addition to any other remedies provided by law or imposed under this subpart. This paragraph was added to for clarification of how this statute interacts with other laws and regulations.

**8. Section 400.458—Scheme or Device**

FCIC is proposing to delete paragraph (b)(2) because the nonstandard classification system is no longer used

by FCIC and redesignate paragraph (b)(3) as paragraph (b)(2).

**9. Section 400.459—Indebtedness**

FCIC is proposing to remove this section from subpart R. The consequences for failure to pay a civil fine have been included in section 400.454. With respect to any other debt, the provisions in the policy and 7 CFR part 400, subpart U apply. Therefore, this provision is no longer needed.

**List of Subjects in 7 CFR Part 400**

Administrative practice and procedure, Penalties.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 as follows:

**PART 400—GENERAL ADMINISTRATIVE REGULATIONS**

1. Revise the authority citation for 7 CFR 400, subpart R to read as follows:

**Authority:** 7 U.S.C. 1506(l) and 7 U.S.C. 1515(h).

**Subpart R—Administrative Remedies for Non-Compliance**

2. Revise the heading for subpart R to read as set forth above.

3. Revise § 400.451 to read as follows:

**§ 400.451 General.**

(a) FCIC has implemented a system of administrative remedies to ensure program compliance and prevention of fraud, waste, and abuse within the Federal crop insurance program. Such remedies include civil fines and disqualifications under the authority of section 515(h) of the Act (7 U.S.C. 1515(h)); government-wide suspension and debarment under the authority of 48 CFR part 9, 48 CFR part 409, and 7 CFR part 3017; and civil fines and assessments under the authority of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812).

(b) The provisions of this subpart apply to all participants in the Federal crop insurance program, including but not limited to producers, agents, loss adjusters, approved insurance providers and their employees or contractors, as well as any other persons who may provide information to a program participant and meet the elements for imposition of one or more administrative remedies contained in this subpart.

(c) Any remedial action taken pursuant to this subpart is in addition to any other actions specifically provided in applicable crop insurance

policies, contracts, reinsurance agreements, or other applicable statutes and regulations.

(d) With respect to the submission of a false or inaccurate statement, this rule is applicable to any act or omission occurring after June 20, 2000, and with respect to failure to comply with a requirement of FCIC, this rule is applicable to any act or omission occurring on and after the date this rule becomes effective.

(e) The purpose of the remedial actions authorized in this subpart are for the protection of the public interest from potential harm from persons who have abused the Federal crop insurance program, maintaining program integrity, and fostering public confidence in the program.

4. Revise § 400.452 to read as follows:

**§ 400.452 Definitions.**

**Act.** Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

**Affiliate.** Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the disqualified, suspended, debarred, ineligible, or voluntarily excluded person.

**Agency.** The person authorized by an approved insurance provider, or its designee, to sell and service a crop insurance policy under the Federal crop insurance program.

**Agent.** Has the same meaning as the term in 7 CFR 400.701.

**Agricultural commodity.** Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

**Approved insurance provider.** Has the same meaning as the term in 7 CFR 400.701.

**FCIC.** Has the same meaning as the term in 7 CFR 400.701.

**Managing General Agent.** Has the same meaning as the term in 7 CFR 400.701.

**Participant.** Any person who obtains any benefit that is derived in whole or in part from funds paid by FCIC to the approved insurance provider or premium paid by the producer.

Participants include but are not limited to producers, agents, loss adjusters, agencies, managing general agencies, approved insurance providers, and any person associated with the approved insurance provider through employment, contract, or agreement.

**Person.** An individual, partnership, association, corporation, estate, trust or other legal entity, any affiliate or principal thereof, and whenever applicable, a State or political subdivision or agency of a State. "Person" does not include the United States Government or any of its agencies.

**Policy.** Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

**Preponderance of the evidence.** Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

**Principal.** A person who is an officer, director, owner, partner, key employee, or other person within an entity with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over the activities of the entity.

**Producer.** A person engaged in producing an agricultural commodity for a share of the insured crop, or the proceeds thereof.

**Reinsurance agreement.** Has the same meaning as the term in 7 CFR 400.161, except that such agreement is only between FCIC and the approved insurance provider.

**Requirement of FCIC.** Includes, but is not limited to, any regulation, procedure, policy provision, reinsurance agreement, or other written communication from FCIC that requires a particular program participant or group of program participants to take a specific action or to cease and desist from a taking a specific action. General regulations procedures, policy provisions, or reinsurance agreements for which there is a remedy provided in such document for the breach will not be considered a requirement of FCIC unless such breach arises to the level where remedial action is appropriate (For example, multiple breaches of the same provision in separate policies or the procedures or multiple breaches of different provisions in the same policy or procedure).

**Violation.** Each act or omission by a person that satisfies all required elements for the imposition of a disqualification or a civil fine under this subpart.

**Willful and intentional.** To make a false or inaccurate statement with the knowledge that the statement is false or inaccurate at the time the statement was made; the failure to correct the false or inaccurate statement when its nature becomes known to the person who made it; or to commit an act or omission with the knowledge that the act or omission is not in compliance with a "requirement of FCIC" at the time the act or omission occurred. No showing of malicious intent is necessary.

5. Revise § 400.454 to read as follows:

**§ 400.454 Disqualification and civil fines.**

(a) Before any disqualification or civil fine is imposed, FCIC will provide the affected participants and other persons with notice and an opportunity for a hearing on the record in accordance with 7 CFR part 1, subpart H.

(1) Proceedings will be initiated when the Manager of FCIC files a complaint with the Hearing Clerk, United States Department of Agriculture.

(2) Disqualifications become effective:

(i) On the date specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or if no date is specified in the order, the date that the order was issued.

(ii) With respect to a settlement agreement with FCIC, the date contained in the settlement agreement or, if no date is specified, the date that such agreement is executed by FCIC.

(3) Disqualification and civil fines may only be imposed if a preponderance of the evidence shows that the participant or other person has met the standards contained in § 400.454(b).

(4) Disqualification and civil fines may be imposed regardless of whether FCIC or the approved insurance provider has suffered any monetary losses.

(b) Disqualification and civil fines may be imposed on any participant or person who willfully and intentionally:

(1) Provides any false or inaccurate information to FCIC or to any approved insurance provider with respect to a policy or plan of insurance authorized under the Act either through action or omission to act when there is knowledge that false or inaccurate information is or will be provided; or

(2) Fails to comply with a requirement of FCIC.

(c) When imposing any disqualification or civil fine,

(1) The gravity of the violation must be considered when determining:

(i) Whether to disqualify a participant or other person;

(ii) The amount of time that a participant or other person should be disqualified;

(iii) Whether to impose a civil fine; and

(iv) The amount of a civil fine that should be imposed.

(2) The maximum term of disqualification and civil fines will be imposed against participants and other persons who:

(i) Commit multiple violations in the same crop year or over several crop years; or

(ii) Commit a single violation but such violation results in an overpayment of more than \$100,000 or multiple acts of wrongdoings resulting in an overpayment in excess of \$100,000.

(iii) Commit such other action or omission of so serious a nature that imposition of the maximum is appropriate.

(d) With respect to the imputing of conduct:

(1) The conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, in violation of § 400.454(b) may be imputed to that organization when such conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the violation is evidence of knowledge, approval or acquiescence.

(2) The conduct of any organization in violation of § 400.454(b) may be imputed to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of such conduct.

(3) The conduct of one organization in violation of § 400.454(b) may be imputed to another organization when such conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(4) If such conduct is imputed, the person to whom the conduct is imputed to may be subject to the same disqualification and civil fines as the person from whom the conduct is imputed.

(e) With respect to disqualifications:

(1) If a person is disqualified and that person is a:

(i) Producer, the producer will be precluded from receiving any monetary or non-monetary benefit provided under all of the following authorities, or their successors:

- (A) The Act;
- (B) The Agricultural Market Transition Act (7 U.S.C. 7201, *et seq.*);
- (C) The noninsured crop disaster assistance program (7 U.S.C. 7333);
- (D) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*);
- (E) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*);
- (F) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*);
- (G) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*);
- (H) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*); and
- (I) Any law that provides assistance to the producer of an agricultural commodity affected by a crop loss or decline in the prices of agricultural commodities.

(ii) Participant or other person, other than a producer, such participant or person will be precluded from participating in any way in the Federal crop insurance program and receiving any monetary or non-monetary benefit under the Act.

(2) With respect to the term of disqualification:

- (i) The minimum term will be not less than one year from the effective date determined in § 400.454(a)(2);
- (ii) The maximum term will be not more than five years from the effective date determined in § 400.454(a)(2); and
- (iii) Disqualification is to be imposed only in one-year increments, up to the maximum five years.

(3) Once a disqualification becomes final, the name, address, and other identifying information of the participant or other person shall be entered into the Ineligible Tracking System (ITS) maintained by FCIC in accordance with 7 CFR part 400, subpart U, and this information along with a list of the programs that the person is disqualified from shall be promptly reported to the General Services Administration for listing in the Excluded Parties List System (EPLS) in accordance with 7 CFR part 3017, subpart E.

(i) It is a participant's responsibility to periodically review the ITS and EPLS to determine those participants and other persons who have been disqualified.

(ii) No participant may conduct business with a disqualified participant or other person if such business directly relates to the Federal crop insurance program, or if, through the business

relationship, the disqualified participant or other person will derive any monetary or non-monetary benefit from a program administered under the Act.

(iii) If a participant or other person does business with a disqualified participant or other person, such participant may be subject to disqualification under this section.

(f) With respect to civil fines:

(1) A civil fine may be imposed for each individual action that violates § 400.454(b).

(2) The amount of such civil fine shall not exceed the greater of:

- (i) The amount of monetary gain, or value of the benefit, obtained as a result of the false or inaccurate information provided, or the amount obtained as a result of noncompliance with a requirement of FCIC; or
- (ii) \$10,000.

(3) Civil fines are debts owed to FCIC.

(i) A civil fine that is either imposed under with this subpart, or agreed to through an executed settlement agreement with FCIC, must be paid by the specified due date (If the due date is not specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or the settlement agreement, it shall be 30 days after the date the order was issued or the settlement agreement signed by FCIC).

(ii) Any civil fine imposed under this section is in addition to any debt that may be owed to FCIC or to any approved insurance provider, such an overpaid indemnity, underpaid premium, or other amounts owed.

(iii) FCIC, in its sole discretion, may reduce or otherwise settle any civil fine imposed under this section whenever it considers it appropriate or in the best interest of the USDA.

(4) The ineligibility procedures established in 7 CFR part 400, subpart U are not applicable to ineligibility determinations made under this section for nonpayment of civil fines.

(5) If a civil fine has been imposed and the person has not made timely payment for the total amount due, the person is ineligible to participate in the Federal crop insurance program until the amount due is paid in full.

(g) With respect to any person that has been disqualified or is otherwise ineligible due to non-payment of civil fines in accordance with § 400.454(f):

(1) With respect to producers:

(i) All existing insurance policies will automatically terminate as of the next termination date that occurs during the period of disqualification and while the civil fine remains unpaid;

(ii) No new policies can be purchased, and no current policies can be renewed, between the date that the producer is

disqualified and the date that the disqualification ends; and

(iii) New application for insurance cannot be made for any agricultural commodity until the next sales closing date after the period of disqualification has ended and the civil fine is paid in full.

(2) With respect to all other persons:

(i) Such person may not be involved in any function related to the Federal crop insurance program during the disqualification or ineligibility period (including the sale, service, adjustment, data transmission or storage, reinsurance, etc. of any crop insurance policy) or receive any monetary or non-monetary benefit from a program administered under the Act.

(ii) If the person is an agent or insurance agency, the approved insurance provider must assume all policies within the agent's or agency's book of business written for the approved insurance provider and assign them to a different agent or agency to service during the period of disqualification or ineligibility;

(iii) If the person is an approved insurance provider, the approved insurance provider shall not sell, or authorize to be sold, any new policies or may not renew, or authorize the renewal of, existing policies, as determined by FCIC, during the period of disqualification or ineligibility. Nothing in this provision affects the approved insurance provider's responsibilities with respect to the service of existing policies.

(h) Imposition of disqualification or a civil fine under this section is in addition to any other administrative or legal remedies available under this section or other applicable law including, but not limited to, debarment and suspension.

6. Revise § 400.455 to read as follows:

**§ 400.455 Governmentwide debarment and suspension (procurement).**

(a) For all transactions undertaken pursuant to the Federal Acquisition Regulation, FCIC will proceed under 48 CFR part 9, subpart 9.4 or 48 CFR part 409 when taking action to suspend or debar persons involved in such transactions, except that the authority to suspend or debar under these provisions will be reserved to the Manager of FCIC, or the Manager's designee.

(b) Any person suspended or debarred under the provisions of 48 CFR part 9, subpart 9.4 or 48 CFR part 409 will not be eligible to contract with FCIC or the Risk Management Agency and will not be eligible to participate in or receive any benefit from any program under the Act during the period of ineligibility.



This includes, but is not limited to, being employed by or contracting with any approved insurance provider that sells, services, or adjusts policies offered under the authority of the Act. FCIC may waive this provision if it is satisfied that the person who employs the suspended or debarred person has taken sufficient action to ensure that the suspended or debarred person will not be involved, in any way, with FCIC or receive any benefit from any program under the Act.

7. Amend § 400.456 as follows:

- A. Remove paragraph (a).
- B. Redesignate paragraphs (b) through (d) as paragraphs (a) through (c).
- C. Revise newly redesignated paragraphs (a) and (b) to read as follows:

**§ 400.456 Governmentwide debarment and suspension (nonprocurement).**

\* \* \* \* \*

(a) FCIC will proceed under 7 CFR part 3017 when taking action to suspend or debar persons involved in non-procurement transactions.

(b) Any person suspended or debarred under the provisions of 7 CFR part 3017, will not be eligible to contract with FCIC or the Risk Management Agency and will not be eligible to participate in or receive any benefit from any program under the Act during the period of ineligibility. This includes, but is not limited to, being employed by or contracting with any approved insurance provider, or its contractors, that sell, service, or adjust policies either insured or reinsured by FCIC. FCIC may waive this provision if it is satisfied that the approved insurance provider or contractors have taken sufficient action to ensure that the suspended or debarred person will not be involved in any way with the Federal crop insurance program or receive any benefit from any program under the Act.

\* \* \* \* \*

8. Amend § 400.457 by adding a new paragraph (d) to read as follows:

**§ 400.457 Program Fraud Civil Remedies Act.**

\* \* \* \* \*

(d) Civil penalties and assessments imposed pursuant to this section are in addition to any other remedies that may be prescribed by law or imposed under this subpart.

**§ 400.458 [Amended]**

9. Amend § 400.458 by removing paragraph (b)(2), adding an “or” at the end of paragraph (b)(1) and redesignating paragraph (b)(3) as paragraph (b)(2).

**§ 400.459 [Removed]**

10. Remove § 400.459 from subpart R.

Signed in Washington, DC, on May 10, 2007.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E7-9418 Filed 5-17-07; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utility Service

### Farm Service Agency

### 7 CFR Part 1944

### Rural Housing Service

### 7 CFR Part 3551

**RIN 0575-AC20**

### Streamlining of the Section 523 Mutual and Self-Help Housing Program

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to replace the Mutual and Self-Help Housing Program’s (MSH) administration under 7 CFR part 1944, Subpart I with 7 CFR part 3551. This rule will apply to grants executed after the effective date of the final rule. The Rural Housing Service (an agency within the Rural Development mission area) proposes to streamline and clarify its regulations for MSH. This action is taken to reduce regulations, improve customer service and enhance efficiency, flexibility, and effectiveness in managing the program.

**DATES:** Written or e-mail comments must be received on or before July 17, 2007. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through July 17, 2007.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Agency Web Site:* <http://www.rurdev.usda.gov/regs>. Follow instructions for submitting comments on the Web Site.
- *E-Mail:* [comments@wdc.usda.gov](mailto:comments@wdc.usda.gov). Include “RIN No. 0575-AC20” in the subject line of the message.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork

Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

### FOR FURTHER INFORMATION CONTACT:

Debra S. Mangrum, Senior Loan Specialist, Special Programs and New Initiatives Branch, Single Family Housing Direct Loan Division, RHS, Stop 0783, Room 2209, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250-0783, telephone (202) 720-1366.

### SUPPLEMENTARY INFORMATION:

#### Classification

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

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) the appeal procedures of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the