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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

RIN 0563-AB15

7 CFR Part 400

General Administrative Regulations; Submission of Policies and Provisions of Policies, and Rates of Premium

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific General Administrative Regulations. The effect of this action is to prescribe the guidelines necessary to implement and administer sections 506 and 508 of the Federal Crop Insurance Act, as amended (Act), with respect to the submission of policies and provisions of policies and rates of premium to FCIC's Board of Directors (Board) for review, approval or disapproval, publication, and implementation.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-3707.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant for the purposes of Executive Order 12866 and, therefore, this rule has been reviewed by OMB.

Impact Analysis

An Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the guidelines contained in this regulation are administrative in

nature. They are intended to facilitate the review for approval of policy terms and conditions, endorsements, actuarial documents, underwriting rules, administrative procedures, and rates of premium for new insurance products submitted to FCIC under section 508(h) of the Act for Board approval/disapproval. They contain very little in the way of program policy. While some comments on the proposed rule were received that new products were being held to a "higher standard" than FCIC's traditional products, there is nothing in the regulation that differs from standard operating procedure for the existing crop insurance program. In most cases, the provisions of the regulation are dictated by statutory requirements, for example, the requirement for an actuarially appropriate premium rate structure.

Paperwork Reduction Act of 1995

It has been determined by OMB that this rule is exempt from the information collection requirement contained under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of 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 the UMRA.

Executive Order 12612

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

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities.

The rule provides the guidelines to be used by all approved insurance providers, or any other applicant, FCIC, and the Board for the submission, review, and approval of policies, provisions of policies, or rates of premium which, if approved by the Board, will be sold to producers through approved insurance providers and reinsured by FCIC or incorporated into policies reinsured by FCIC. Any submission is entirely voluntary. This regulation will not impose more stringent requirements on small entities than on large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR 400.169 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, September 11, 1997, FCIC published a notice of proposed rule making in the **Federal Register** at 62 FR 47772 to make available guidelines necessary to carry out the requirements of the Act with respect to the submission of policies and materials to the Board. FCIC makes available standard policies and forms for use by insurance providers in insuring certain crops against various agricultural production risks and perils. Under section 508(h) of the Act, any person may submit or propose other crop insurance policies, provisions of policies, or rates of premium for insuring wheat, soybeans, field corn, and any other crop determined by the Secretary of Agriculture. The Act states that these policies may be submitted without regard to limitations contained in the Act. The Act also requires that FCIC issue regulations to establish guidelines for the submission and FCIC Board review of policies or other materials submitted to the Board. This regulation provides such guidelines.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 53 comments were received from an insurance service organization and from several reinsured companies. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization asked if under section 400.700(c)(3) which states that: "rates of premiums for multiple peril crop insurance" may be submitted for consideration, means that insurance companies may submit rates for "regular" multiple peril crop insurance coverage other than those published in FCIC's actuarial documents.

Response: Section 508(h)(1)(B) of the Act allows a person to submit rates of premiums to the Board for the multiple peril crop insurance program for those wheat, soybeans, field corn, or any other crops determined by the Secretary, if the provisions for insurance are materially different from FCIC's provisions of insurance as published at 7 CFR chapter IV.

Comment: An insurance service organization questioned the difference between the definition of "MPCI" contained in section 400.701 and the term "multiple peril crop insurance" as referenced in section 400.700(c)(3). The commenter suggested adding a definition of multiple peril crop insurance to distinguish the difference between the two terms.

Response: There is no distinction between the term "multiple peril crop insurance" in section 400.700(c)(3) and the definition of MPCI in section 400.701. However, FCIC has amended the definition of MPCI to mean FCIC multiple peril crop insurance policies codified in 7 CFR chapter IV.

Comment: An insurance service organization suggested changing the definition of "policy" contained in section 400.701 as new crop insurance provisions submitted for approval may not always need all of the provisions and endorsements listed in the definition. They suggested using "the appropriate policy provisions and endorsements" in lieu of listing all the provisions and endorsements.

Response: FCIC has amended the definition of "policy."

Comment: An insurance service organization and a reinsured company recommended clarifying the term "all information" contained in section 400.702(b) by specifying "all information submitted by the reinsured company, including statistical modeling and data * * *"

Response: FCIC has amended section 400.702(b) accordingly although FCIC has substituted the term "applicant" in place of "reinsured company" since any person can provide a submission or proposal to the Board.

Comment: An insurance service organization and three reinsured companies expressed concern with the provisions of section 400.703(a) in the proposed rule (redesignated 400.703) which state: "Since policies vary in complexity and availability of required data, neither FCIC nor RMA make any assurance that approval will be given in time for sales in any crop year." One commenter stated the provision is unnecessary as there is no guarantee a submission will be approved at all.

Three of the commenters indicated the provision conflicts with the minimum requirement for submissions to be received no later than 240 days prior to the first sales closing date. The commenters stated that since this provision sets rigorous time requirements for reinsured companies yet does not set such requirements for FCIC, a deadline for response from FCIC should be imposed. One reinsured company stated the deadline precludes the alteration or expansion of an existing program from one year to the next or from one planting season (e.g., spring planted crops) to the next (e.g., fall planted crops) and questioned when the clock starts and restarts. One reinsured company suggested adding language to allow an accelerated time

frame to accommodate unusual circumstances.

Response: There is no guarantee that a submission will be approved. However, FCIC has determined that the 240 day period is the minimum time needed for FCIC to review and evaluate a submission, determine actuarial appropriateness, obtain an opinion of legal sufficiency, obtain Board approval, and to make a Board approved submission available to all insurance providers for the upcoming crop year. The time period is intended to provide sufficient time for review and approval of most submissions. However, there may be instances where program complexities, data availability or dispute between FCIC and the applicant delay the review and approval process. FCIC has revised the section to clarify the priority that will be used to review submissions. Unusual circumstances will be addressed on a case-by-case basis.

Comment: An insurance service organization states that the requirement in section 400.703(b) of the proposed rule (redesignated as section 400.705(d)) for six copies suggests a submission must be provided in hard copy format. The service organization requested clarification as to acceptability of submitting electronically, or on computer diskette as is indicated in section 400.707(d)(6)(ii) (redesignated as 400.707(d)(5)).

Response: Sections 400.705(d) and 400.707(d)(5) have been revised to allow for electronic submission or on computer diskettes.

Comment: A reinsured company suggested that the language in the introductory text of section 400.705 of the proposed rule which states: "at a minimum, it must include the following identified material * * *", could be deleted as that language is also repeated in section 400.705(a).

Response: FCIC has deleted the introductory text of section 400.705 of the proposed rule.

Comment: A reinsured company stated the minimum submission requirements contained in section 400.705(a) of the proposed rule constitutes a list of information, statements and product documentation that will require a thorough development process and review. This will require that the submitting company invest an enormous amount of capital but provides no commercial incentive or ownership of the product if the submission is approved and all supplementary information becomes available to the public under the provisions of section 400.708(a) and (b) of the proposed rule (redesignated as

400.708(b) and (c)). The reinsured company suggested that FCIC, which does not release such complete information for FCIC products and programs, should follow the same guidelines required of the submitting company, including public disclosure.

Response: When applicants voluntarily submit proposals, development and review of such proposals may require a large expenditure of resources. However, it is Congress that has determined that the information to be released to the public once the proposal has been approved by the Board. Congress has imposed no such requirement on FCIC. Further, unless specifically exempted, much of the information compiled by FCIC in the development of its products is available to the public under the Freedom of Information Act. Therefore, no change has been made.

Comment: An insurance service organization requested clarification in the language contained in section 400.705(a)(10). An insurance service organization asked what "circumstances" might change and how would the applicant know in order to develop procedures to accommodate such changes.

Response: FCIC has revised this section to specify that any subsidy paid will be limited to an amount authorized by law.

Comment: An insurance service organization recommended combining the provisions contained in section 400.705(a)(11) with those contained in section 400.705(a)(11)(i) because there is no section 400.705(a)(11)(ii).

Response: FCIC has deleted section 400.705(a)(11)(i)(A) through (H) of the proposed rule and reformatted section 400.705(a). These provisions that were duplicative with other provisions were removed. The remainder were incorporated into other more appropriate areas of the section.

Comment: A reinsured company expressed concern in the proposed language contained in section 400.705(a)(11)(i)(J)(1) of the proposed rule (redesignated as section 400.705(a)(12)(i)) that requires the submission to identify the parties and responsibilities for addressing the policy and procedural issues and questions that arise in administering the approved program. The commenter stated that once the program is approved, FCIC becomes the responsible party for those areas. FCIC assumes that responsibility with the approval of the program, and it becomes an FCIC program the same as MPCIC or GRP or any other FCIC approved or designed crop insurance program.

Response: Section 508(h) of the Act only requires FCIC to provide reinsurance and risk subsidy, if appropriate, and publish the policy in the **Federal Register** once it is approved. None of these activities results in FCIC, as the reinsurer, assuming liability or ownership for the approved policy or being solely responsible for addressing policy and procedural issues and questions that arise in administering the approved program. This responsibility resides with the party who assumes the obligation. However, FCIC will assist in resolving such issues and then provide the information to other insurance providers. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended deleting the provisions contained in section 400.705(a)(11)(i)(J)(2) of the proposed rule (redesignated as section 400.705(a)(12)(ii)). Two of the commenters stated the reason for an approval process is for FCIC to assess the liability of a new product and that if FCIC intends to avoid any product or legal liability, there seems to be no reason for such an approval process. One commenter stated the party responsible for product liability including flaws in product design must be FCIC; otherwise the FCIC approval process is meaningless. Upon the approval of the program, the program becomes an FCIC program.

Response: Before FCIC can approve a private submission under section 508(h) of the Act, it must determine that the interests of producers are adequately protected and that premiums charged to the producers are actuarially appropriate. However, this submission usually involves new and innovative products for which FCIC has no experience and, therefore, FCIC must rely on the information provided by the applicant. FCIC uses its best judgment in evaluating and approving these products but the ultimate responsibility for product design, rating, and development of procedures remains with the submitter. FCIC's role is only as a reinsurer of these submissions. Therefore, since designed by the applicant, the liability for flaws in the design remain with the applicant. Approval for reinsurance does not convert a submission to an FCIC program. Therefore, no change has been made.

Comment: A reinsured company suggested that the annual reviews required by section 400.705(a)(11)(i)(K) of the proposed rule (redesignated as section 400.705(a)(13)) should be conducted by FCIC since after approval

of the submission, it is an FCIC program.

Response: As stated in the previous response, FCIC, as a reinsurer, does not assume responsibility or ownership for private crop insurance policies submitted and approved for FCIC reinsurance under section 508(h) of the Act. The applicant submitting the policy is responsible for establishing performance goals for the policy and to conduct annual reviews to determine if such goals are being met. Based on these reviews, the applicant is responsible for making changes to the policy to meet the established goals. As a reinsurer for these types of crop insurance policies, FCIC will monitor their performance to revise reinsurance terms or to withdraw approval if necessary. In addition, if assistance is requested, FCIC will assist the applicant in correcting identified problems. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company recommended that dates be established in section 400.705(a)(11)(i)(K)(3) of the proposed rule (redesignated as section 400.705(a)(13)(iii)). Both commenters suggested that the dates and language established in the Memorandum of Understanding be utilized. The commenters indicated the Memorandum of Understanding states that the insurance provider shall submit annual rate evaluations and any suggested program improvements for the following crop year to FCIC by July 1 of each year for spring-planted crops and by March 1 for fall-planted crops. In the event of unforeseen circumstances, the commenters recommended that changes may be submitted to FCIC after the July 1 and March 1 deadlines, so long as they are submitted not later than 30 days prior to the contract change date.

Response: The Memorandum of Understanding provides the responsibilities of FCIC and the submitter and does establish the dates by which certain materials must be provided to FCIC. However, not every submission will require a Memorandum of Understanding and not all will require the same dates so flexibility must be maintained. Notwithstanding the dates in the Memorandum of Understanding or provided by the submitter under this rule, if there is a flaw in the policy that requires a change, such change may be submitted to FCIC at any time prior to the contract change date. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company recommended that the provisions in

section 400.705(a)(12)(i) of the proposed rule (redesignated as section 400.705(a)(14)(i)) be deleted. Both commenters expressed concern that if RMA enforces the requirement of "sample survey results from producers, producer groups, agents, lending institutions, and other interested parties," approval will be impossible. One commenter questioned who will define "sample survey" and if the definition would be changed "from day to day." In addition, both commenters recommended deleting the provision because an unofficial survey may not be credible and a professional survey would be cost-prohibitive.

Response: Before FCIC can dedicate resources to a submitted product, FCIC must be assured there is adequate need and interest for the product submitted. FCIC has changed "sample survey" to "market research" for clarification. This does not require a professional market research but one that provides a summary of the groups or persons contacted, the number of persons or groups responding, and the results of the research so that the demand for the submitted product can be verified.

Comment: An insurance service organization and a reinsured company stated the language contained in section 400.705(a)(14) of the proposed rule (redesignated as section 400.705(a)(16)) that requires an "explanation of those provisions not authorized under the Act and the premium apportioned to those provisions" substantiates the concern that the same submission standards should apply to public and private products. The commenters stated the private sector should not be held to higher standards than the government and that sales of the MPCPI program would not have been approved if FCIC had to meet those same requirements.

Response: This is not an issue of the private sector being held to a higher standard than those imposed on the MPCPI program. Programs offered by FCIC must be in compliance with all provisions of the Act. Congress has relaxed the requirement for section 508(h) submissions, and allows the private sector to offer products not otherwise authorized under the Act. FCIC is only requiring the applicant to explain any provision contained in the submission that are not authorized under the Act. Further, since Congress has limited the amount of risk subsidy to an amount authorized under the MPCPI program, FCIC needs an explanation of the premium apportioned to any aspect of the submission not authorized under the Act. An example could be a provision that provides a daily rate for rental of

equipment in the event the producers equipment is inoperable. Therefore, no change has been made.

Comment: An insurance service organization questioned if the word "stochastic" contained in section 400.705(b)(3)(ii) meets the readability guidelines. The commenter suggested that it may be helpful to add a parenthetical definition or replace the term with "statistical" or "probability."

Response: FCIC has added a definition of stochastic.

Comment: An insurance service organization and two reinsured companies stated the language contained in section 400.705(b)(5) created standards that are too high to attain. Two commenters indicated certification need only meet current industry standards and suggested the language should read: "A certification that the submission is consistent with sound insurance principles, practices, and requirements of the Act." Both reinsured companies stated it is difficult, if not impossible, to find uninterested third parties who are qualified to review crop insurance. One reinsured company stated that FCIC does not require its employees who develop rates and policies to hold an associate or fellow of the Casualty Actuarial Society (CAS) designation and should not require it of a private submission. This commenter also indicated that paid certifications by CAS designees or a graduate degree economist does not demonstrate much more than an extra expenditure of time and money. All commenters expressed concerns that RMA should not require submissions to provide more certification or review than RMA does on its current product inventory.

Response: FCIC does not believe more stringent requirements are being placed on private submissions. FCIC's premium rating methodology has been evaluated by a private actuarial firm. This firm has determined that FCIC's rating methodologies are consistent with sound insurance principles, practices, and requirements of the Act. Given the problems that have arisen between FCIC and applicants with respect to the submission of rates, FCIC determined that it is prudent to have the methodology review by trained, disinterested parties. Especially since the terms of reinsurance must be based, in part, on the quality of the evidence submitted. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended deleting section 400.705(c)(4) of the proposed rule (redesignated as section

400.705(c)(2)) that requires statements from at least three commercial reinsurers or reinsurance brokers regarding the availability of commercial reinsurance. Each of the commenters stated there is no purpose in going through the formalities of acquiring statements from reinsurance brokers regarding the availability of commercial reinsurance because if a proposed product was insurable in the commercial sector, a company would not submit it to FCIC. One reinsured company suggested that if FCIC is concerned whether the submitting company has the capacity to write the proposed amount of policies, a reinsurance plan utilizing the company's own capacity and reinsurance would be reasonable.

Response: There may be cases where a commercial reinsurance market may exist but the applicant merely is attempting to obtain better terms from the Government. FCIC has revised section 400.705(c) so that this requirement is not mandatory but FCIC may require such information if it suspects that a commercial market exists. The clause " * * * and, if applicable, any past insurance experience of the submission or similar crop program" has been deleted because it is contained in section 400.705(a)(15).

Comment: A reinsured company recommended that the rules proposed in section 400.706 contain provisions that RMA will provide the submitting applicant an acknowledgment within 30 days of receipt, an inventory of minimum requirements, a time line of its review process, a list of the responsible parties, and a contact person who is knowledgeable of the submission.

Response: Since this rule contains the minimum requirements for a submission and the documents are submitted by the applicant, an inventory is not necessary. Acknowledgment is not needed since the submitter retains a proof of submission. The contact person is the submission addressee until FCIC notifies the submitter of other responsible parties. Since the information contained in the documents may need corrections or clarifications before FCIC can complete its review, a time line cannot be included at this date.

Comment: A reinsured company and an insurance service organization suggested that the provisions of section 400.707(b) include language to ensure that the Manager convenes the Board in time to meet all deadlines contained in the proposed regulation. Both commenters suggested Board meetings

be scheduled one year in advance to assure that a submission would not fail to gain approval because the Board did not meet in time to meet FCIC's deadlines.

Response: Since FCIC cannot predict when a submission will be received and the time required to prepare the submission for the Board, it cannot set a Board meeting date. If the submission is submitted timely and contains all information required by this rule, there should be no problem in scheduling a Board meeting to approve or disapprove the submission. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company stated the language contained in section 400.707(d)(3) of the proposed rule (redesignated as 400.708(a)(1)) that requires a Memorandum of Understanding to be in place at least 60 days before the earliest crop sales closing date was in reverse order. Each of the commenters indicated that FCIC will not sign a Memorandum of Understanding before the Board has approved the product, thus the Memorandum of Understanding will follow the approval, not precede it.

Response: The Memorandum of Understanding should follow Board approval and the provisions have been revised accordingly. Within 30 days of Board approval, the Memorandum of Understanding should be completed, which will provide approximately 60 days for marketing the product. These provisions have been modified and moved to section 400.708(a)(1) for clarification.

Comment: Two reinsured companies and an insurance service organization expressed concerns about the provisions of section 400.707(d)(4) of the proposed rule (redesignated as 400.707(d)(3)). The commenters stated the provision gives FCIC the authority to make changes at the last minute, despite the requirements for timeliness imposed on the company. The commenters indicated that when FCIC requires an adjustment, it should follow the deadlines set out elsewhere in the proposed rule. The insurance service organization questioned if FCIC's Board will only approve the submission if the applicant "agrees to make any adjustment FCIC may suggest," and whether these suggestions will be separated into "substantive" and "non-substantive" categories, with the applicant not having to accept the non-substantive suggestions in order to get approval. One reinsured company suggested this statement would be more accurate if it stated the Board will not approve any submission unless the

policy, procedures or other related material meet FCIC's approval. The reinsured company stated this would reinforce that FCIC's approval is conditioned on its approval of all aspects of the program, further defining that any approved program is an FCIC program.

Response: Section 400.707(d)(3) does not give FCIC the right to make last minute or untimely changes or adjustments to the submission and is not intended to force the applicant to make all changes FCIC may suggest. Before the Board can approve a submission for reinsurance under section 508(h) of the Act, the Board is required to determine that the rights of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate. Any recommended changes to make the submission conform with these requirements will be considered as substantive changes and must be incorporated into the submission before it can be approved. FCIC will inform the applicant of any such change as soon as possible during FCIC's review of the submission. Suggested changes to the submission should be separated into "substantive" and "non-substantive" categories and FCIC has revised section 400.707(d)(3). Failure of the applicant to incorporate non-substantive changes will not serve as a basis for the Board to disapprove the submission. However, FCIC will work with the applicant to resolve all issues during FCIC's review of the submission. As stated in a previous response, although the Board may approve a submission, FCIC as a reinsurer, does not assume sole responsibility or ownership for private crop insurance policies submitted.

Comment: An insurance service organization questioned if the time frame provided in section 400.707(d)(6)(i) of the proposed rule is sufficient for the applicant to market the new program, since policies and related forms must be available to producers at least 30 days before the earliest sales closing date.

Response: The 30 days before the sales closing date cited by the commenter refers to carry-over insureds, of which there are none for a new product. FCIC realizes the importance of having sufficient sales time for the product. If the review is completed, FCIC will forward the recommendation to the Board at least 90 days before the first crop sales closing date. Within 30 days of Board approval, the reinsurance agreement should be completed which will provide approximately 60 days for marketing the product. These provisions

have been modified and moved to section 400.708(a)(2) for clarification.

Comment: An insurance service organization and a reinsured company suggested the references to rates and rating procedures contained in section 400.707(d)(6)(ii) of the proposed rule (redesignated as 400.707(d)(5)) need clarification and suggested adding language to require definitions for the determination of each variable used in rating.

Response: FCIC has added the phrase "defining each variable used in any rating formulae" after rates.

Comment: A reinsured company commented that the provisions of section 400.707(e) indicates the Board may disapprove submissions if all specified requirements are not met. The commenter questioned the purpose of a submission being provided to Research and Development staff if the Board will be presented and charged with determining if a submission does or does not meet all requirements. The commenter stated the Board should not be tasked with review of all minute details, it should only receive for consideration submissions that fulfill all requirements.

Response: FCIC staff do not have the authority to approve or disapprove a submission. Staff will make a recommendation to the Board, but the Board ultimately decides whether producers are adequately protected and rates are actuarially appropriate. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company suggested that the language in section 400.707(e)(1) be changed to state: "Such notice will contain the basis for approval, and will include recommended changes necessary for Board approval." The insurance service organization also questioned how provisions that state the Board will notify the applicant of disapproval "not later than 30 days prior to taking such action will fit into the overall time frame when section 400.703(a) (redesignated as 400.703) states a minimum of 240 days before the first sales closing date is to be used for marketing as well as for review and approval. The commenter ask if the language "not later than 30 days prior" means more than 30 days before official disapproval, or within that 30 day period and suggested the language be revised to "at least 30 days prior."

Response: FCIC may not know what changes may be required to obtain Board approval. Therefore, the provision must provide FCIC with the discretion to provide recommendations when known. FCIC has revised the

provision to state "at least 30 days prior."

Comment: A reinsured company suggested that the provisions of section 400.708(b) be clarified to indicate that any solicitation, sales, marketing or advertising before FCIC has made the material available to all interested parties through its official issuance system will result in denial of reinsurance, risk subsidy, and administrative and operating (A&O) subsidy for the first approved crop year for the party which solicited, sold, marketed or advertised early.

Response: FCIC has clarified that any solicitation, sales, marketing, or advertising of the program before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for such policies.

Comment: A reinsured company and an insurance service organization recommended changing the wording "full subsidy" contained in section 400.710 to "subsidy."

Response: The term full subsidy meant the maximum risk subsidy and A&O subsidy allowed under the Act. An applicant may request less than the maximum allowable subsidies. FCIC has revised the provision to specifically refer to risk and A&O subsidy.

Comment: An insurance service organization and a reinsured company questioned the applicability of the provisions contained in section 400.711 that allow the Board at any time after approval to request additional information, require appropriate amendments, revisions or program changes for the purpose of actuarial soundness or program integrity. Both commenters stated those changes should be made by FCIC because the program is an FCIC program after approval. The insurance service organization recommended clarification of the provision because the approval process should be thorough enough that such cases are rare and there is nothing that indicates whether such reviews, requests and requirements would be effective for the subsequent crop year or whether approval could be revoked retroactively. The service organization recommended the Board's approval be effective for at least the first year.

Response: As stated above, approval of a submission does not convert it to an FCIC program. Further, if problems arise during the crop year, FCIC may need to take corrective action immediately for the purpose of maintaining actuarial soundness of the program, program integrity, or

protection of the interests of producers. If this situation arises, FCIC will work closely with the applicant to determine the appropriate corrective actions to be taken. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization expressed concern about the standards set forth in the proposed regulation. All commenters stated that FCIC appears to have approval authority over submissions but takes no responsibility for those programs approved by the Board. The commenters suggested that if FCIC approves a submission, then FCIC must be the regulator, manager, maintainer and administrator of that program. In this role, FCIC will accomplish what was intended by the Act by providing a process and mechanism under which organizations, in addition to FCIC, can design programs that are needed in the marketplace and make them available to producers under the FCIC product umbrella. All commenters stated that if FCIC is not willing to assume that role, then submissions should not be approved.

Response: Section 508(h) of the Act was enacted for the sole purpose to allow private insurance companies to create and manage their own crop insurance policies. FCIC's only role in these private programs is to provide financial assistance if FCIC determines that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate. There is nothing in the Act which states that the submission must be made available "under the FCIC product umbrella." FCIC need only publish the policy and disseminate information produced by the applicant. This is fully in keeping with the intent of the Act. As stated in a previous response, FCIC does assume the responsibility of a regulator because the submission is approved by FCIC for financial assistance with taxpayers' funds. The approval process is necessary to assure that taxpayers' dollars are supporting a sound crop insurance product. Therefore, no change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following:

1. Section 400.700(d) has been clarified to specify those provisions of the Act that are not applicable under section 508(h).

2. Section 400.701—Amended the definitions of "person," "replacement program," "submission," and "supplemental program" for clarification.

3. Section 707(d)(5) has been redesignated as section 707(d)(4).

4. Section 400.708(a) has been redesignated as section 400.708(c).

5. Section 400.709(b) has been revised to clarify the changes that are considered material.

List of Subjects in 7 CFR Part 400

Administrative practice and procedures, Claims, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by adding subpart V as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

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

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Authority: 7 U.S.C. 1506(1), 1506(p).

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

§ 400.700 Basis, purpose, and applicability.

(a) The Act requires FCIC to issue regulations that establish guidelines for the submission of policies or other material to the FCIC Board under section 508(h) of the Act. These guidelines prescribe the timing, submission and approval process so that the Board may timely consider any submission for approval and, if approved, make it available for sale to producers by any approved insurance provider in the first crop year that the submission is authorized for reinsurance, subsidy, or other financial support that may be available under the Act. These guidelines also authorize FCIC and the Board to monitor the submission to ensure continued compliance with the requirements of the

Act, this subpart, and changes required by the Board.

(b) These regulations apply to all applicants.

(c) An applicant may submit for consideration by the Board:

(1) Crop insurance policies that are not currently reinsured or subsidized by FCIC;

(2) Provisions of policies that may amend existing crop insurance policies that are approved by FCIC; or

(3) Rates of premiums for MPC I policies pertaining to wheat, soybeans, field corn, or any other crop authorized by the Secretary of Agriculture.

(d) A policy or other material submitted to the Board under section 508(h) of the Act may be prepared without regard to the limitations contained in the Act. Only the provisions in the Act directly relating to the terms of the insurance policy, such as coverage, premium rates, or price elections, are considered as the limitations referenced in section 508(h) of the Act.

(e) Any FCIC payment of a portion of the premium may not exceed the amount authorized under section 508(e) of the Act, and payment of administrative and operating expense subsidy may not exceed the amount authorized under section 508(d).

§ 400.701 Definitions.

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

A&O subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the insurance provider.

Applicant. Any person who submits a policy, provisions of a policy, or premium rates to the Board for approval under section 508(h) of the Act.

Board. The Board of Directors of FCIC.

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

Insurance provider. A private insurance company that has been approved by FCIC to provide crop insurance coverage under the Act.

Manager. The Manager of FCIC.

MPCI. The FCIC multiple peril crop insurance policies authorized under the Act and codified in 7 CFR chapter IV.

NASS. National Agricultural Statistics Service, an agency of the United States Department of Agriculture, or a successor agency.

Person. Any individual or legal entity possessing the capacity to contract.

Policy. A crop insurance contract between a person and an insurance

provider, consisting of the accepted application, the applicable policy provisions and endorsements, if applicable, and the applicable actuarial material for the insured crop.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay expected losses and provide for a reasonable reserve.

Replacement program. A crop insurance program that provides coverage at least equal to that provided under the MPC I program with similar terms, conditions, and covered causes of loss approved by the Board under the authority of section 508(h) of the Act.

Revenue insurance. Plans of insurance providing protection against loss of income, which are designated as such by FCIC.

Risk subsidy. That portion of the FCIC approved insurance premium for the risk of loss paid by FCIC on behalf of the policyholders to the insurance provider.

Secretary. The Secretary of the United States Department of Agriculture.

Stochastic. A randomly determined sequence of observations, each of which is considered as a sample of one element for a probability distribution.

Submission. Any policy provisions, rates of premium, and related material submitted to FCIC that differs from the present MPC I program or replacement programs or that request a material change in an existing insurance program.

Supplemental program. A submission requesting reinsurance only that provides coverage in addition to, and is written concurrently with, an MPC I policy or a replacement program.

§ 400.702 Confidentiality of submission.

(a) A submission made to the Board under section 508(h) of the Act will be considered as confidential, commercial, or financial information for purposes of 5 U.S.C. 552(b)(4) until approved by the Board. An applicant may waive such confidentiality by advising FCIC in writing, or by releasing such information to a person or entity other than FCIC.

(b) Once a submission is approved, all information provided by the applicant to the Board, including statistical modeling and data, will be made public.

(c) Any submission disapproved by the Board will remain confidential, commercial, or financial information in accordance with 5 U.S.C. 552(b)(4).

§ 400.703 Timing of submission.

Any submission for Board review must be received not later than 240 days prior to the first sales closing date for which sales are requested for a crop to

provide adequate time for review, approval, and marketing of the program. If the submission applies to more than one crop, the earliest applicable crop sales closing date controls. However, any submission received by FCIC less than 240 days prior to the first sales closing date may be considered if all parties agree the submission can be reviewed, approved, and information disseminated to insurance providers in a timely manner without creating excessive risk and exposure to the crop insurance program or disruptions in the market place. Such a submission must meet all statutory requirements, specifically that the approved submission can be made available to all persons reinsured by FCIC in a manner permitting the persons to participate in the sales of the product in the first crop year for which it is approved by the Board for reinsurance, premium subsidy, or other support offered by the Act. Otherwise, the submission will be considered for the subsequent crop year. Since submissions vary in complexity and availability of required data, FCIC makes no assurances that approval will be given in time for sales in any crop year. In the event FCIC receives more submissions than it can process for an upcoming crop year, the date received, complexity, and completeness of the submission will determine when FCIC's review of the submission will be initiated and the crop year for which the submission is approved.

§ 400.704 Type of submission.

An applicant may submit to the Board:

(a) Policies and related material identified as one of the following types:

- (1) A supplemental program;
- (2) A replacement program; or
- (3) Any other submission authorized under section 508(h) of the Act but not classified by paragraphs (a) and (b) of this section.

(b) One or more proposed revisions of any MPC I policy, revenue insurance policy, or any other policy approved by the Board; and

(c) Premium or rates of premiums for MPC I policies.

§ 400.705 Contents of submission.

(a) Each submission may contain any information that the applicant wishes to provide but, at a minimum, must include the following material:

- (1) Applicant's name;
- (2) Type of submission;
- (3) Proposed crops, types, varieties, or practices, as applicable, to be covered by the submission;
- (4) Geographical areas in which the submission will be applicable;

(5) Potential crop acreage, production, and liability that could be written (estimated by crop and state);

(6) Percentage of the crop acreage, production, and liability that is expected to be written (estimated by crop and state);

(7) Crop year in which the submission is proposed to be effective;

(8) Proposed duration of the approval, if applicable;

(9) A statement of the applicant's intent to expand the program in future crop years to different geographical areas or crops, types, varieties, or practices, as applicable;

(10) A statement of whether the applicant is requesting reinsurance, risk subsidy, or A&O subsidy for the submission, and if so, the proposed methods of calculating the risk subsidy or A&O subsidy (The allowable subsidies cannot exceed the amount authorized by law);

(11) A determination whether:

(i) The submission will be filed with the applicable Commissioner of Insurance for each state proposed for sales, and if not, the reasons such submission will not be forwarded for review by the Commissioner; and

(ii) The submission complies in all material respects with the standards established by FCIC for processing and acceptance of data as specified in its Manual 13 "Data Acceptance System Handbook," unless FCIC has agreed otherwise as part of the development process (This handbook is available from the Actuarial Division, P.O. Box 419293, Kansas City, MO 64141);

(12) Identification of:

(i) Parties responsible for addressing the policy and procedural issues and questions that may arise in administering the approved program; and

(ii) Parties responsible for the product liability and the basis for such responsibility including liability for flaws in product design if such results in litigation against the applicant or FCIC;

(13) Procedures for annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC:

(i) The title of the person responsible for completing each task;

(ii) The date by which each task will be completed; and

(iii) The date by which the information or documents will be made available to FCIC, the policyholder, other insurance providers, or the Commissioner of Insurance, if applicable (Policy information, forms and other related documents must be

made available to the producer at least 30 days prior to the earliest crop sales closing date for the crops to which the submission applies.);

(14) A description of the benefits of the submission:

(i) To producers that demonstrate how the submission offers coverages or costs that differ significantly from existing programs and that such coverage is generally not available from the private sector (Such descriptions should be supported by market research results from producers, producer groups, agents, lending institutions, and other interested parties, which should also include a summary of those persons or organizations contacted and the number of persons or organizations responding) that provides verifiable evidence of the demand for the submitted product; and

(ii) To taxpayers that demonstrate how the submission meets the public policy goals and objectives as stated in the Act, the statements of the Secretary, or similar officials and laws (This must include the rationale and data supporting the request for FCIC's financial commitment to the submission);

(15) Any accumulated insurance experience from all years and in all states in which the submission has been offered for sale and a comparison of the submission's performance with other crop insurance programs; and

(16) An explanation of those provisions not authorized under the Act and the premium apportioned to those provisions.

(b) With respect to any submission that impacts the amount of premium charged to the producer, the applicant must provide with the submission:

(1) A detailed description of the rating methodology, including all mathematical formulae and equations used in determining all unsubsidized and subsidized premiums or rates of premium;

(2) A list of the assumptions used in the formulation of the premiums or rates of premium;

(3) Simulations of the performance of the proposed premiums or rates of premium based on one or more of the following:

(i) By determining the total premiums and anticipated losses that would be paid under the submission and comparing these totals to a comparable insurance plan offered under the authority of the Act (Such simulations must use all experience available to the applicant and must include at least one year in which indemnities for the submission and the comparable crop exceed total premiums);

(ii) By means of a stochastic simulation of the submission that is based on the same assumptions as those used to develop the premiums or rates of premium, including sensitivity tests with regard to each assumption that demonstrates the probable impact of an erroneous assumption; or

(iii) By means of any simulation that can be proven to provide results comparable to those described in paragraphs (b)(3)(i) and (ii) of this section;

(4) Worksheets that provide the calculations in sequential order and in sufficient detail to allow verification that the premiums charged for the coverage are consistent with policy provisions (Any unique premium component must be explained in sufficient detail to determine whether the existence or amount of the premium or premium rate is appropriate); and

(5) A certification that includes, but is not limited to, an evaluation of all supporting documentation and analysis from an accredited associate or fellow of the Casualty Actuarial Society or a similar uninterested third party who did not participate in the primary development, or peer review panel or both. The evaluation must demonstrate that the submission is consistent with sound insurance principles, practices, and requirements of the Act.

(c) With respect to those submissions that involve new crop insurance programs or revision of an existing crop insurance program:

(1) The applicant must provide with the submission:

(i) An application and related policy forms together with the instructions for completing and processing such forms;

(ii) The insurance policy provisions;

(iii) A sample of the actuarial documents;

(iv) The underwriting rules, including but not limited to:

(A) The procedures for accepting the application;

(B) The rules for determining program eligibility, including but not limited to, minimum acreage, premium requirements, sales closing dates, production reporting requirements, and inception or termination dates of the policy;

(C) The application of administrative fees as required by the Act;

(D) A description of available options that are different from any existing crop insurance program;

(E) Any information needed to establish coverage and determine claims, including prices that must be made available during the insurance period (This information must specify how and when such determination is

made and that the process is in compliance with policy provisions);

(F) Any other applicable underwriting requirements that may be required by FCIC; and

(G) The agent training plans;

(2) The applicant may be required to submit statements from at least three commercial reinsurers or reinsurance brokers regarding the availability of commercial reinsurance, the amount of commercial reinsurance available, and the proposed terms of reinsurance;

(3) Loss adjustment procedures and calculations that include, but are not limited to:

(i) Procedures that clearly specify the methods for determining the existence of and the amount of any payable loss under the submission and that demonstrate that such determinations are consistent with policy provisions; and

(ii) Examples and worksheets that provide the steps for calculating the amounts of any payment for indemnity (loss in yield or price), prevented planting payment or replant payment in sequential order and in sufficient detail to allow review and verification that the indemnity calculations are consistent with policy provisions. Any unique component must be explained in sufficient detail to determine whether the existence or amount of the claim is appropriate;

(4) A detailed calculation for determining commodity prices, coverage levels, the amounts of insurance, and production guarantees; and

(5) A detailed description of the causes of loss covered and excluded under the submission.

(d) The submission must be sent to the Deputy Administrator, Research and Development, Federal Crop Insurance Corporation, 9435 Holmes Road, Kansas City, MO 64131. The submission must also include computer disks or other electronic media in a format acceptable to RMA.

§ 400.706 FCIC review.

Each submission will be reviewed by FCIC to determine if all necessary and appropriate documentation is included. The submission may be returned to the applicant if it does not comply in all material respects with these requirements. Any returned submission must be resubmitted in its entirety unless otherwise determined by FCIC.

§ 400.707 Presentation to and review by the Board for approval or disapproval.

(a) Upon completion of staff review, all recommendations will be forwarded to the Board.

(b) After scheduling the submission to be presented to the Board, the Manager will inform the applicant of the date, time, and place of such meeting.

(c) The applicant will be given the opportunity to present the submission to the Board. The applicant must notify FCIC in writing in advance of the Board meeting as to whether the applicant will present the submission to the Board. If the applicant plans to present the submission and fails to appear, or if the applicant requests FCIC to present the submission, an FCIC representative will present the submission to the Board.

(d) The Board may consider for approval the submission for sale to producers as an additional risk management tool if:

(1) Producers interests are adequately protected;

(2) Premiums charged are actuarially appropriate;

(3) The applicant agrees to make any requested FCIC substantive changes in the submission to ensure compliance with the Act and to protect the interests of producers and the integrity of the program. FCIC will categorize recommended changes in a submission into substantive and non-substantive. (Failure of the applicant to incorporate non-substantive changes suggested by FCIC will not serve as a basis for the Board to disapprove the submission);

(4) The insurance provider's resources, procedures, and internal controls are adequate to make the product available to producers in a timely manner in the proposed market areas; and

(5) The applicant provides rates, defining each variable used in any rating formulae, forms, guidelines, standards, actuarial material, rating procedures, indemnity procedures, and related documents.

(e) The Board may disapprove the submission for financial assistance if all the requirements of paragraph (d) of this section are not met. When the Board indicates its intention to disapprove, it will:

(1) Notify the applicant in writing of its intent to disapprove the submission at least 30 days prior to taking such action (Such notice will contain the basis for disapproval, and may include changes necessary for Board approval);

(2) Consider any resubmission as a new proposal and complete the review process at a later time; and

(3) Reserve the right to act upon an applicant's revised submission or defer action to a later time or for a subsequent crop year.

§ 400.708 Approved submission.

(a) Within 30 days of Board approval, the following must be completed:

(1) A Memorandum of Understanding or other such agreement between the applicant and FCIC that specifies the responsibilities of each with respect to the implementation, delivery and oversight of the submission, and;

(2) A reinsurance agreement between FCIC and the applicant that specifies the amount of reinsurance coverage, risk subsidy, and A&O subsidy, as applicable.

(b) Any solicitation, sales, marketing, or advertising of the program before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy and A&O subsidy for those policies in violation of this provision.

(c) A submission approved by the Board under this subpart will be published as a notice of availability in the **Federal Register**, and be made available to all persons contracting with or reinsured by FCIC under the same terms and conditions as required of the submitting company.

§ 400.709 Review of an approved program.

(a) Responses to procedural issues, questions, problems or needed clarification regarding an approved submission shall be jointly addressed by the applicant and FCIC. All such resolutions shall be communicated to all insurance providers through FCIC's official issuance system. Any corrected material must be presented to FCIC in a format specified in § 400.705(d).

(b) Any change causing a material impact upon a submission previously approved by the Board must be resubmitted for Board consideration and approval. (A material impact is any one that may affect the premium charged or liability under the policy.)

(c) The approved submission will be administered in accordance with all terms of the reinsurance agreement, any applicable Memorandum of Understanding, or any other requirement deemed appropriate by the Board.

§ 400.710 Preemption and premium taxation.

A policy that is approved by the Board for FCIC reinsurance only, or FCIC reinsurance and risk and A&O subsidies, and published in the **Federal Register** as a notice of availability is preempted from state and local taxation. Any changes to policy provisions requested under state and local laws

and regulations must be submitted to FCIC for review and Board approval.

§ 400.711 Right of review, modification, and amendment.

At any time after approval, if sufficient material, documentation or cause arises, the Board may review any approved program, request additional information, and require appropriate amendments, revisions or program changes for purposes of actuarial soundness, program integrity or protection of the interests of producers.

Signed in Washington, DC, on July 12, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99-18263 Filed 7-16-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 97-018-4]

RIN 0579-AA95

Licensing Requirements for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Decision and policy statement.

SUMMARY: This document announces our response to a petition submitted to us by the Doris Day Animal League. The petition requested that we amend the definition of "retail pet store" to include only nonresidential business establishments and that we regulate dealers of hunting, breeding, and security dogs in the same manner as dealers of other types of dogs.

We have decided to retain our current definition of "retail pet store." Based on our experience enforcing the regulations, we have determined that the current definition is sufficient to ensure the humane handling, care, and treatment of dogs and cats and is consistent with the congressional intent of the Animal Welfare Act.

We have also decided to begin regulating wholesale dealers of dogs intended for hunting, breeding, and security purposes. We will regulate these dealers under the same regulations currently in place for wholesale dealers of other dogs. We believe this action will help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

SUPPLEMENTARY INFORMATION: Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals. Subpart A of part 3 contains the requirements applicable to dogs and cats.

On March 25, 1997, we published in the **Federal Register** (62 FR 14044-14047, Docket No. 97-018-1) a petition for rulemaking, sponsored by the Doris Day Animal League, that requested two changes to the regulations in parts 1 and 3. The requested changes were: (1) To redefine the term "retail pet store" in part 1 as "a nonresidential business establishment used primarily for the sale of pets to the ultimate customer"; and (2) to regulate dealers of dogs intended for hunting, security, and breeding under the provisions applicable to dealers of other types of dogs in part 3.

Based on comments we received from the public on the petition and our review of the issues, on June 24, 1998, we published in the **Federal Register** (63 FR 34333-34335, Docket No. 97-018-2) an advance notice of proposed rulemaking to explain changes to the regulations that we were considering and to solicit public comments on the effect those changes could have on affected persons. Specifically, we were considering:

- Amending the definition of "retail pet store" to include only nonresidential, commercial retail stores;
- Increasing the total number of breeding female dogs and/or cats that a person may maintain on his or her premises and be exempt from licensing and inspection requirements; and

- Regulating dealers of hunting, breeding, and security dogs in the same manner as dealers of other types of dogs.

We solicited comments on the advance notice of proposed rulemaking for 60 days, ending August 24, 1998. However, on August 26, 1998, at the request of several commenters, we published in the **Federal Register** (63 FR 45417, Docket No. 97-018-3) a document to reopen and extend the comment period for 30 days, ending September 23, 1998. By September 23, 1998, we received approximately 11,472 comments. They were from dealers of dogs and cats, representatives of industry, members of animal protectionist organizations, and other interested persons.

After careful consideration of the experience we have gained from more than 30 years of implementing the AWA and careful review of the comments we received from the public, we have decided to:

- Retain our current definition of "retail pet store";
- Retain our current threshold for the total number of breeding female dogs and/or cats a person may maintain on his or her premises and be exempt from licensing and inspection requirements; and
- Require licensing and inspection for wholesale dealers of dogs intended primarily for hunting, breeding, and security purposes.

A discussion of each of these decisions follows.

Definition of Retail Pet Store

In accordance with the AWA, retail pet stores are exempt from the licensing and inspection requirements in part 2. Other retail dealers and wholesale pet dealers must be licensed and inspected in accordance with the regulations. The definition of retail pet store in 9 CFR part 1 was established to ensure that the appropriate retail facilities were exempt from licensing and inspection requirements.

We define "retail pet store" in 9 CFR part 1, § 1.1, as "any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species." The definition of "retail pet store" goes on to describe certain establishments that do not qualify as retail pet stores, even if they sell animals at retail. Those establishments that do not qualify as retail pet stores are: (1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes; (2) establishments or persons exhibiting,