

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

RIN 0563-AB95

**General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans**

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

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations to include provisions regarding the requests by approved insurance providers to implement the premium reduction plan authorized under section 508(e)(3) of the Federal Crop Insurance Act (Act) and the approval of the amount of a premium discount to be provided to farmers under the premium reduction plan.

**DATES:** Effective June 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Lee Ziegler, Economist, Reinsurance Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, Room 6739-S, Washington, DC 20250; telephone number (202) 720-0191, e-mail address: [lee.ziegler@rma.usda.gov](mailto:lee.ziegler@rma.usda.gov).

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

This rule has been determined to be not significant for the purposes of Executive Order 12866.

**Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), RMA's request for emergency approval on a new information collection, Premium Reduction Plan, was approved under OMB control number 0563-0079.

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

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

**Unfunded Mandates Reform Act of 1995**

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

**Executive Order 13132**

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

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because it merely clarifies the process to submit premium reduction plans to the FCIC Board of Directors for approval. The current requirements of the Standard Reinsurance Agreement (SRA) and procedures for premium reduction plans approved by the Board contain provisions to ensure that small entities have access to policies and plans of insurance, including premium reduction plans. The requirement to apply for a premium reduction plan is the same for small entities as it is for large entities. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

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

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

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

**Environmental Evaluation**

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

**Background**

On February 24, 2005, FCIC published a notice of proposed rulemaking in the **Federal Register** at 70 FR 9001-9013 to revise 7 CFR part 400, subpart V, Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. Approximately 1,900 comments were received from approved insurance providers, farmers, agents and other interested parties.

After consideration of all the comments and the concerns expressed, FCIC realizes it needs to proceed cautiously to ensure the continued access of farmers to crop insurance and stability of the delivery system for the federal crop insurance program. Not publishing a rule is not an option because section 508(e)(3) of the Act states that FCIC shall consider all applications of the approved insurance providers to participate in the premium reduction plan. To allow such application without ensuring that premium reduction plans are fair and equitable and do not endanger the delivery system would jeopardize the program far more than implementing a rule intended to protect these principles.

However, to allow itself the maximum flexibility in quickly making changes to the rule, should they become necessary, FCIC has elected to publish this rule as an interim rule. All the comments provided in response to the proposed rule were considered when developing

the interim rule. The Risk Management Agency (RMA), on behalf of FCIC, intends to operate the premium reduction plan program for the 2006 reinsurance year under the interim rule. This will allow time to determine how effectively the premium reduction plan program is operating. After sufficient time to experience the operation of the program, RMA will publish a separate notice soliciting comments. Such comments will then be considered when making the rule final.

When FCIC published the proposed rule, it specifically sought comments on certain provisions and proposals and sought comments on the proposed rule in general. The comments and responses have been categorized in accordance with the specific and general requests for comment. Further, RMA has used the term "few" to mean two commenters, "several" to mean three to nineteen commenters, and "many" to mean 20 or more commenters. These terms do not reflect the number of commenters in each category listed but the total for all categories.

#### A. Preamble

##### 1. Alternative Proposal

In the preamble to the proposed rule, RMA suggested an alternative proposal that would require the approved insurance providers to base any premium discount on actual cost savings for the reinsurance year instead of projected savings. The proposal would operate similar to a dividend program with premium discounts provided after the costs savings were determined, which would be after the end of the crop year. This meant farmers would be required to pay the full premium when due and receive the premium discount at a later time. RMA was particularly interested in comments that addressed the benefits of using actual versus projected costs, impacts on the workload of the approved insurance providers and RMA, market conduct oversight requirements that may be required, impacts on competition, the delay in the reimbursements to farmers, whether such reimbursements create any income tax issues, or any other substantial adverse or positive effect of this approach in contrast to the approach included in the proposed rule. The comments received and FCIC's responses are as follows:

*Comment:* An agent commented that in a state that has a significant number of rebate laws, the alternate approach offered by RMA may raise issues about rebating. The commenter asks how this would affect implementation and

assume RMA would resolve any rebate issue before implementation.

*Response:* Whether the premium reduction plan may be a form of rebating that is prohibited under most state laws is not material. Under section 506(l) of the Act, any state law that is in conflict with the Act or any regulation promulgated by FCIC is preempted. Section 508(e)(3) of the Act expressly authorizes approved insurance providers to pay premium discounts to farmers without reference to state law. This is in contrast to section 508(b)(5)(B) of the Act that authorizes cooperative and trade associations to pay all or a portion of the administrative fee on behalf of the farmer or provide a rebate as long as such rebate is permitted by the laws of the state. Since section 508(e)(3) of the Act does not waive federal preemption, the fact that such discounts may be considered a prohibited rebate under state law or provided to farmers in a manner similar to dividends that are regulated by the state does not override the express authority in section 508(e)(3) of the Act. The application of Federal preemption is consistent with section II.A.4. of the 2005 SRA and the approved procedures, which make it clear that state law only applies to rebating issues involving section 508(b)(5)(B) of the Act and that Federal preemption applies to all other aspects of rebating, including section 508(e)(3) of the Act.

*Comment:* Several agents, farmers, approved insurance providers and interested parties commented that any discount should be guaranteed up front and should be available to farmers whether or not the crop year is a good one or a bad one. Commenters state that if the discount is not guaranteed, farmers will not enter the program and farmers will not take the opportunity to increase coverage.

*Response:* RMA understands the position of the commenters and took that position in the proposed rule. However, as expressed more fully below, it has considered the other comments and its own concerns regarding the complexity and burdens on approved insurance providers and RMA of having to establish and evaluate projected savings, and the impact on the program if such savings are not realized and determined that the difficulties in administering the program outweigh the effect on farmers of not having the premium discount guaranteed up front and, therefore, has elected to adopt the alternative proposal in the interim rule. In adopting the alternative proposal, RMA understands that the premium reduction plan will likely lose some of

its attraction to farmers if it is not guaranteed up front. However, at least farmers will be guaranteed a stable delivery system with the possibility of a premium discount, which if not available to purchase additional coverage for the current year, could be used to increase coverage in subsequent crop years. Under the proposed system, if the commenters are correct, there could be instability introduced into the delivery system. RMA does agree that the premium discount should be available regardless of whether the farmer suffers a loss and this is included in the interim rule.

*Comment:* Several agents, farmers, approved insurance providers and interested parties commented that farmers take enough risk with planting crops and hoping for a good crop year, so why should approved insurance providers who are experts at risk management, not be able to offer savings to farmers guaranteed upfront if they have the ability and option to do so. A commenter also stated that providing only the chance for discounts based on profitability will only confuse the farmers and open approved insurance providers to potential accounting irregularities to limit profits in order to avoid paying dividends.

*Response:* RMA disagrees with the commenter that approved insurance providers are more likely to engage in accounting irregularities under the alternative. First, the payment of a premium discount is not conditioned upon profitability of the approved insurance provider. It is conditioned upon the approved insurance provider reducing its cost to deliver the program to an amount below the amount of administrative and operating (A&O) subsidy paid by RMA. Second, the requirement that the approved insurance provider must have an independent professional audit and certify actual cost efficiencies provides less opportunity for accounting irregularities than the use of projected cost efficiencies, as established under the proposed rule. RMA also understands there may be concerns that the alternative may lead to confusion for some farmers regarding whether they will receive a premium discount. To prevent such confusion, the interim rule places specific restrictions on the advertising or promotion of the premium reduction plan to prevent approved insurance providers or agents from making promises regarding the payment of premium discounts that the approved insurance provider may not be able to keep. While recognizing that the alternative approach does not have the guaranteed benefits that the proposed

approach had, RMA had to weigh the potential problems with basing premium discounts on projected costs instead of actual costs.

*Comment:* An approved insurance provider commented that using appropriate business tools, approved insurance providers can accurately forecast (and demonstrate to the RMA) the amount of savings necessary to offer a premium reduction plan, and should be required to pass those savings—up-front—on to farmers. A commenter states that under the current structure, another core benefit to farmers is that competing approved insurance providers will market their various programs with specific discount information, thereby permitting farmers to make informed insurance purchasing decisions. The commenter states that the alternative approach eliminates this benefit.

*Response:* RMA agrees that the alternative approach does not have the full benefit of allowing farmers know what their premium discount will be up front. However, RMA is not as confident as the commenter that approved insurance providers can accurately forecast their savings each year. Certain costs are fixed but other costs, such as loss adjustment expense, are not. In order to qualify to pay a premium discount, the approved insurance provider has to be operating below A&O subsidy. In unusually bad loss years, it is possible that some or all projected savings could be spent on additional loss adjustment expenses. To require approved insurance providers to pay premium discounts in such years could financially weaken the crop insurance delivery system.

*Comment:* An interested party commented that there are problems with the alternative approach. The commenter states that farmers face too many other uncertainties and not knowing the savings until after the end of the end of the crop year just poses another one. The commenter also suggests that approved insurance providers would be reluctant to participate in the premium reduction plan because it could not use a specific discount when competing in the marketplace. The commenter suggested that RMA not publish the rule rather than risk the premium reduction plan undermining the delivery of the crop insurance program and fundamental principle of universal access.

*Response:* RMA shares the concerns of these commenters with respect to the alternative proposal—that farmers will face yet another uncertainty and that an uncertain discount will reduce marketing opportunities. However, the

premium discount program is totally voluntary based on whether the approved insurance provider determines it makes sound business sense. RMA cannot structure the program to provide an incentive for approved insurance providers to participate if there is a possibility that such incentive would prove detrimental in the long run. Further, as stated above, farmers will still be receiving a benefit if the approved insurance provider attains the necessary savings, which can still provide an inducement to purchase insurance with a specific approved insurance provider so approved insurance providers still have an incentive to participate in the premium reduction plan. In addition, approved insurance providers will be able to advertise premium discounts paid in the previous reinsurance year to give farmers an indication of what premium discount they may be able to expect, although such advertising will be accompanied by appropriate disclaimers. RMA believes that the advantages of the alternative proposal outweigh the disadvantages.

With respect to not publishing the interim rule, section 508(e)(3) of the Act requires RMA to accept any request by an approved insurance provider to participate in the premium reduction plan. Not publishing the interim rule would mean that the premium reduction plan would continue under the existing RMA procedures—procedures that the FCIC Board of Directors (Board) has determined to be unsatisfactory—or revised procedures. RMA disagrees with the commenter that the interim rule would undermine the delivery of crop insurance and universal access. As outlined in RMA's responses to the other comments, the interim rule includes provisions that ensure universal access and protect the delivery of crop insurance.

*Comment:* An approved insurance provider commented that a core benefit to the current structure is that it requires participating approved insurance providers to focus on administrative costs up front, to demonstrate savings that can be achieved, and to impose the necessary mechanisms to achieve them. The commenter states that the alternative structure eliminates this incentive and discourages providers from identifying, designing and implementing necessary cost-saving mechanisms and practices before the savings can be realized.

*Response:* While it may have been beneficial for RMA to know how approved insurance providers were cutting their costs when the premium discounts were based on projected costs,

the same need does not exist under the alternative proposal. RMA will be looking at the cost savings after they have been realized. Further, it is up to the approved insurance provider with respect to whether its operation will support cost cutting measures sufficient to allow the payment of a premium discount. However, approved insurance providers that offer a premium discount plan but fail to deliver any premium discounts would likely find themselves losing business to approved insurance providers who do pay premium discounts. Therefore, there is still an incentive to implement the cost-saving measures.

*Comment:* An agent commented that agents and approved insurance providers should not be given discretion over discounts. The commenter stated that other lines of insurance allow agents and approved insurance providers to price business based on the “merits” of the business. The commenter stated that pricing flexibility is not based on the merit of an account but used as a marketing tool. Once consumers make this discovery, then agents are pitted against each other from year to year when delivering proposals. The commenter stated this is not something likely to happen as it does not provide a documentable reason for the discount.

*Response:* RMA agrees that the ability of an agent to use a projected premium discount, rather than a premium discount based on actual cost savings, raises a cause for concern with respect to the marketing of the agent's services. Under the alternative proposal adopted in the interim rule, agents would not be able to promise a premium discount. The agent could provide policyholders with a history of actual premium discount payments that have been documented by the approved insurance provider, but would be strictly prohibited from inferring that policyholders would, in fact, receive a premium discount in the future.

*Comment:* An approved insurance provider commented that the alternative proposal was conceptually interesting, but inconsistent with prospective rating methods used for virtually all other insurance products. It would only be modestly easier to validate and assign a dollar value to efficiencies post-policy period as opposed to prior to it. The commenter stated that the plan would probably invite intimations during sales process of anticipated efficiencies at least as great as any other approved insurance provider—and if so would cause confusion to the farmer.

*Response:* As an initial matter, the premium reduction plan has nothing to

do with the rating methodology. The dollar amount of premium to cover the risk of loss and a reasonable reserve remains unchanged. The only thing that may change is that portion of the premium paid by the farmer. Under the alternative adopted in the interim rule, the farmer would pay the entire amount of the farmer paid portion and later receive a discount from the approved insurance provider. Further, it would be much simpler to validate the savings after they have been achieved. First, the total A&O costs reported on the Expense Exhibits to the SRA is compared with the amount of A&O subsidy received to determine whether the approved insurance provider is eligible to pay a premium discount. This would permit approved insurance providers whose current A&O costs exceed the A&O subsidy to still request to participate in the premium reduction plan because the payment of a premium discount is contingent upon the approved insurance provider sufficiently reducing its costs. This cost accounting is simple and avoids the need to demonstrate up front that the approved insurance provider will reduce costs sufficiently to be able to pay a premium discount.

Second, the interim rule contains mechanisms to place all costs into one of three categories. Based on the category, the costs are allocated proportionally to the net book premium in the state or are reported in the Expense Exhibits by state. This process provides a simple transparent means to allocate costs and determine the amount of premium discount that can be paid in each state.

Third, as stated above, the interim rule contains restrictions on the manner in which the premium reduction plan can be promoted or advertised. Approved insurance providers will only be able to advertise actual premium discounts paid in the past reinsurance year and even those must be accompanied by a disclaimer that there is no guarantee such premium discount will be paid in the future.

*Comment:* Several interested parties commented that the alternative had too many loopholes, there were no controls over false promises or deceptive marketing practices, and there were no penalties for such conduct.

*Response:* RMA disagrees with the comment that the alternative has too many loopholes. By requiring that premium discounts come from realized and certified cost efficiencies, the alternative in the interim rule is less subject to loopholes than the program outlined in the proposed rule, which permits premium discounts based on forecasts that might not be realized.

RMA agrees with the comments that false promises and potentially deceptive marketing practices are more likely to emerge from the alternative structure outlined in the interim rule than from the structure outlined in the proposed rule. As stated above, to address this, the interim rule incorporates specific marketing prohibitions. The interim rule also indicates that state insurance departments will be enlisted to play a role in the enforcement of market conduct. These departments currently have structured market conduct standards and enforcement arms, and can ensure that deceptive practices are identified, investigated, and penalties assessed to those who engage in them.

*Comment:* An agent asked if RMA is going to require all approved insurance providers to form into a mutual approved insurance provider so the insureds can receive the dividend. Minnesota has this requirement that for an insurance customer to qualify for a dividend they must be part of a mutual approved insurance provider. The commenter stated that most approved insurance providers in the MPCII market place now are private approved insurance providers and it is unlikely they would want to change to a mutual approved insurance provider.

*Response:* Neither the interim rule nor any other provision in section 508(e)(3) of the Act requires that approved insurance providers become mutual insurance companies to qualify for the premium reduction plan. Although state law may require insurance companies to be mutual insurance companies to be able to distribute dividends, the premium discount plan authorizes the payment of premium discounts, not dividends, even though they may be paid at a similar time as a dividend. Further, section 508(e)(3) of the Act provides RMA with the authority to allow approved insurance providers to offer premium discounts without being a mutual insurance company and such authority will preempt state law in accordance with section 506(l) of the Act.

*Comment:* An interested party commented that dividend plans may have an adverse impact on approved insurance provider participation if the procedures established by RMA enable one or more approved insurance providers to obtain a competitive advantage over the other approved insurance providers. Dividend plans may also adversely affect customer service if the efficiencies are achieved through reductions in training or other service related functions.

*Response:* Although similar to a dividend plan in other lines of

insurance, the premium reduction plan is not a dividend plan. The premium reduction plan is a plan that offers a premium discount to farmers based on the efficiencies attained by the approved insurance provider. Further, under the alternative approach, approved insurance providers are placed in a more equal position because they will not have to prove up front that they can deliver the program for less than their A&O subsidy. This means that all approved insurance providers can request to participate in the premium reduction plan although only those approved insurance providers that attain sufficient savings can provide a premium discount under such a plan. In addition, under either approach, service and training cannot be reduced below what is necessary to meet the requirements in the SRA regarding service, which are generally contained in procedures such as the Crop Insurance Handbook and the Loss Adjustment Manual, and training requirements that are generally contained in Appendix IV to the SRA. This is the minimum level of service that RMA determines is necessary to properly deliver the crop insurance program. To the extent that service currently exceeds these standards, RMA cannot take any action against any approved insurance providers who do not participate in the premium reduction plan and who reduce such service to the level required to comply with the SRA and approved procedures. There is no difference under the premium reduction plan. RMA will be looking at whether approved insurance providers are violating the standards of service required by the SRA. If such a violation occurs, RMA can withdraw its determination that an approved insurance provider is eligible to participate in the premium reduction plan or approval of a premium discount, or take such other action as authorized under the SRA.

*Comment:* Several interested parties commented that while the dividend plan approach is more workable than the up-front premium discount approach, both approaches suffer from some of the same difficulties. A commenter states that the same issues with recordkeeping, accounting practices, and monitoring issues still exist with the alternative. A commenter stated that after further review, the dividend plan approach should not be pursued at this time, and that RMA should conduct additional study to more carefully evaluate whether these difficulties can be resolved through careful design of any procedures used to

implement the premium reduction language in the Act.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. Further, the interim rule simplifies many of the recordkeeping and accounting practices that would have been required under the approach included in the proposed rule. Savings and the amount of any premium discount will be determined using the Expense Exhibits provided with the SRA each reinsurance year. Further, the procedures accompanying the interim rule contains specific allocation requirements for certain costs that will simplify the determination of whether a premium discount can be paid. There still will be monitoring requirements but the accounting and recordkeeping burdens are greatly reduced. RMA intends to test this concept out through the interim rule and then seek additional comments to determine if further refinement is required.

*Comment:* Several agents, approved insurance providers and interested parties commented that an approach using "projected savings" should not be implemented. Approved insurance providers that want to participate in a premium reduction plan should be required to "show" rather than "project" they can achieve cost savings while maintaining necessary service levels. A commenter stated that a dividend plan approach would have no effect on data collection, reporting, or reinsurance payments. Commenters stated that using actual costs evens the playing field, simplifies the program, eliminates unfair discrimination and stabilizes the program. A commenter stated that it is unlikely any approved insurance provider can accurately project costs. A commenter stated the alternative proposal will reduce the chance that approved insurance providers will not meet their projections and cause market disruption. A commenter stated that by delaying the payment until the full year results for the approved insurance provider were known, RMA could evaluate a proposal to pay dividends based on the financial condition of the approved insurance provider. For instance, RMA could elect to deny all dividend payments unless the approved insurance provider was profitable on an aggregate basis. A commenter stated that use of projected costs will open RMA up to the overestimation of savings that can be used to cherry pick farmers.

*Response:* As stated above, while similar to a dividend plan, the premium

reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA believes that a rule based on actual cost efficiencies has both advantages and disadvantages over the current premium reduction plan based on projected savings that must be later confirmed with actual costs. As stated more fully above, RMA agrees with the commenters that the interim rule should be based on actual rather than, as it is currently operating, projected savings. RMA also agrees that the alternative will reduce the chance that approved insurance providers will not meet their projections and cause market disruption and that the delay in approving the premium discount would give RMA time to determine that all requirements in the rule were satisfied and to evaluate the financial condition of the approved insurance provider. RMA agrees that by using actual rather than the projected costs, the verification burden placed on RMA would be reduced; that the potential for accounting manipulations would be reduced; and that the program would be simplified and more stable. However, RMA is uncertain whether using actual rather than projected costs would necessarily even the playing field or eliminate unfair discrimination. Under either approach RMA would have to monitor the performance of approved insurance providers to ensure that all farmers in the states in which the premium reduction plan will be made available have access to the plan.

*Comment:* Several interested parties and approved insurance providers suggested that the alternative approach is similar to a dividend plan, which is common in the insurance industry. A commenter stated that distributing costs savings at the beginning of the policy year adds elements of uncertainty into the rate setting process because it is impossible for an approved insurance provider to know in advance what its actual costs savings will be and the alternative eliminates the uncertainty. A commenter stated this should not be allowed because farmers could not plan or budget for the discount. A commenter stated that any pre-advertised premium reduction plan which is based upon projected cost savings will lead to unfair discrimination by approved insurance providers, agencies, and agents.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. Further, RMA does not agree that basing the premium reduction plan on projected costs would unsettle rate setting because rates are based on expected losses and

a reasonable reserve and premium discounts allowed under the Act are based on the reduction in costs below the amount of A&O subsidy paid by RMA. RMA understands the concerns of the commenter that the alternative proposal would not allow the farmer to plan or budget for the premium discount. However, as stated above, RMA believes that the advantages of using the projected cost approach are more than offset by the disadvantages. RMA also agrees that the alternative proposal will reduce the ability of approved insurance providers and agents to discriminate against small, limited resource, women or minority farmers because they cannot offer a guaranteed premium discount as an inducement to large farmers to purchase insurance. Further, the interim rule specifically requires that the approved insurance provider develop a separate marketing plan demonstrating how it will reach such farmers in addition to the efforts of its agents.

*Comment:* Several interested parties and approved insurance providers commented that dividends would not need changes to accounting rules. A commenter stated that marketing of historical performance of efficiency efforts would also be more straightforward and provide an incentive for approved insurance providers to maintain the efficiencies over time, instead of focusing on marketing efficiencies it may expect to achieve in the future. A commenter stated this also encourages farmer interest in using and supporting the automation approved insurance providers will need to implement for further savings in the costs of signup and claim settlement processes. A commenter asks if purchasing a policy under such a plan gives part ownership.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. While the alternative proposal would not require complex accounting rules, some rules will still need to be developed in order to allocate actual costs reported on a national basis to a state basis. RMA has elected to base such allocation on the percentage of net book premium for the state. For example, if the total net book premium for the approved insurance provider is \$100 million and the net book premium in state A is \$15 million, 15 percent of the total costs reported on a national basis would be allocated to State A. The same allocation will be used to determine the amount of premium discounts allowed in the state in order to ensure compliance with the

corresponding requirement in section 508(e)(3) of the Act. RMA agrees that marketing should be limited to the historical premium discount payments made, with appropriate disclaimers, to ensure that there is no impression provided that premium discounts are guaranteed. RMA agrees that the alternative proposal may provide a greater incentive for approved insurance providers to institutionalize the cost saving measures to achieve the cost savings each year instead of projecting costs up front and then trying to implement cost saving measures to meet the projections each year. Although it is unclear how the alternative proposal might encourage farmer interest in supporting information technology, RMA would agree that such a result would be desirable.

In response to the question on part ownership, the alternative proposal provided for in the interim rule would not include legal ownership rights in the approved insurance provider. The premium reduction plan is not creating mutual insurance companies and the approved insurance providers are paying premium discounts, not dividends. The premium discount is simply a benefit provided by the approved insurance provider in the event it can deliver the crop insurance program for less than the A&O subsidy.

*Comment:* Several approved insurance providers, interested parties and agents commented that to allow approved insurance providers under the alternative proposal to refer to historical reimbursements in their marketing is also problematic. Commenters asked how RMA and approved insurance providers could be assured that farmers would not be misled into the perception that a dividend or a return in premium was likely to occur if they transferred their coverage to approved insurance provider X, when in fact, it was very unlikely. Commenters stated that if an approved insurance provider has historically been unable to operate within the expense reimbursement, there should be no rational expectation the approved insurance provider will be able to operate below the expense reimbursement level into the future. A commenter states that historical reimbursement levels are not necessarily a strong indication of what a farmer will receive in the form of a discount in the upcoming year. Market conditions change from year to year, and an approved insurance provider that achieves savings in one year might not achieve them in the next year. It would also allow an approved insurance provider who achieves savings one year to market based on those savings the

following year, even though it has no intention of implementing the necessary measures to achieve them in that year.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA shares the concerns of the commenters that under the interim rule, farmers might be misled by the promise of a premium discount that might not be realized and that complaints of misconduct might increase. To address these concerns, the interim rule incorporates specific marketing prohibitions that limit advertising or promotions to actual premium discounts paid in the past reinsurance year, and requires a clear disclaimer, the wording of which contained in the interim rule or must be approved by RMA in advance, that past results do not guarantee a future payment. As stated above, states will also be involved in the enforcement of market conduct.

The commenter is correct that some approved insurance providers may elect to eligible to participate in the premium reduction plan even though it is unlikely that they will achieve the necessary savings to provide a premium discount or they do not intend to take any costs saving measures. RMA cannot prevent such conduct. However, the market itself should eliminate such behavior because farmers are not likely to remain with an approved insurance provider that claims it is eligible to offer a premium discount plan but never pays a premium discount.

*Comment:* Several approved insurance providers, interested parties and agents commented that the subsequent failure of the approved insurance provider to deliver upon promises made will bring about financial hardship for the approved insurance provider itself, a market disruption due to an unfair trade practice, and a black-eye for the entire crop insurance delivery system including RMA. A commenter stated that this approach reduces the likelihood of reduced services to the farmer because if that is the approach used to secure the premium reimbursement then the farmer will not select that insurer in the future. A commenter stated that capping the approved insurance provider for the following year or perhaps even the next three years as a penalty would help to discourage this practice, but it would not necessarily remedy in the meantime the harm caused to reputable competitors. A commenter also expressed concerns about whether the

audits by RMA would be performed a long time after the fact.

*Response:* RMA agrees that making false promises of a premium discount would be detrimental to the crop insurance program so, as stated above, it has placed limitations on any advertising or promotion of the premium reduction plan. RMA also agrees that there is unlikely to be a reduction in service because RMA would be in a position to discover an infraction of FCIC service requirements before approving any premium discount and it is unlikely that approved insurance providers would jeopardize their SRAs by failing to comply with the service requirements contained in the SRA and approved procedures.

With respect to RMA audits, RMA does not anticipate conducting audits under the alternative proposal. Audits of the approved insurance providers and their cost efficiencies would be conducted and certified by independent certified public accountants with experience in the insurance accounting at the expense of the approved insurance provider. RMA would verify that these audits met the standards established under the interim rule. Clearly RMA could not evaluate the Expense Exhibits, audit and proposed premium discount until such information is provided after the annual settlement, as required in the interim rule. RMA will review the documents and approve or disapprove any premium discount as expeditiously as possible after receiving these documents.

*Comment:* A few agents and interested parties commented that RMA should adopt a dividend program because: farmers will benefit by increased competition because approved insurance providers and the agent force will seek out cost savings on their own in order to stay profitable and also seek to provide the best dividend track record to farmers. A commenter also stated that: (1) Farmers will benefit by added value because farmers will benefit directly by dividends proportionate to their size and also from their ability to select from a variety of benefits; (2) there will emerge a broad range of approved insurance provider-agent combinations offering various mixes of service and dividends to farmers; (3) the crop insurance delivery system will not be damaged because approved insurance providers and the agent force will not be directly penalized for providing highly skilled and personal service to the insured farmer; (4) benefits that are of no value to the insured farmers will be purged in order to maintain profitability and also

maximize potential dividends (The most capable of attaining the proper benefits mix to insured farmers will benefit from added business); and (5) competition could be further fostered because by moderately increasing the A&O levels to approximately 23–24%, new entrants into the shrinking list of approved insurance providers would be promoted (If approved insurance provider innovators are allowed into the crop insurance delivery system, eventual cost cutting spurred by dividend competition will again benefit farmers with added dividends).

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees with the commenter that the alternative proposal has significant potential advantages. The potential advantages listed by this commenter, as well as other advantages identified by other commenters, have prompted RMA to incorporate that alternative proposal into the interim rule.

*Comment:* Several approved insurance providers, agents and interested parties commented that the burdens placed on RMA would be reduced by a system that is based on actual cost savings because RMA would not be compelled to evaluate the credibility of projections and predictions which, as the proposed rule acknowledges, “may not be realized.” Commenters stated that a mechanism that is predicated on the existence of actual cost savings enables RMA to analyze concrete and “easily verifiable” figures to determine whether an approved insurance provider realized an expected efficiency and diminishes the likelihood of creative accounting and similar chicanery. A commenter stated that the alternative proposal is easier to administer, monitor and regulate. A commenter stated that evaluation of the efficiencies at a more detailed level such as by state, crop, plan, and coverage level would be possible, but not with the same degree of reliability.

*Response:* RMA agrees that the burdens placed on it to determine an approved insurance provider eligible to participate in the premium reduction plan are greatly reduced from the burdens under the proposed rule. RMA also agrees that it will be easier to analyze the actual costs and that it reduces the possibility of creative accounting, especially since RMA will be using the actual Expense Exhibits provided with the SRA to approve or disapprove any premium discount. Having such Expense Exhibits audited and certified by an independent

certified accountant will also reduce the burden on RMA. RMA has determined that it is possible to evaluate such costs on a state basis and will provide simple allocation procedures to accompany the interim rule. Evaluation of the efficiencies at a crop, plan, and coverage level would require relatively more complex accounting and cost allocation rules.

*Comment:* Several approved insurance providers, agents and interested parties commented that a dividend plan approach would also have the advantage of eliminating the need for the financial reserve plan as described in the proposed rule.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees that basing a premium discount on the actual cost savings achieved by the approved insurance provider eliminates the need for a financial reserve plan and this requirement has been removed from the rule.

*Comment:* An approved insurance provider commented that RMA has also stated that the approved insurance providers would not be able to market the premium reduction plan “based on a guaranteed amount of premium reimbursement.” It is unclear whether the RMA is contemplating a prohibition against any marketing, even of potential savings, or only guaranteed savings. The commenter stated that if approved insurance providers are allowed to market potential savings, it could allow or even encourage such providers to make unrealistic or exaggerated projections about their anticipated savings in order to attract or keep their customers in a price competitive market. Not only will this cause competitive injury to providers attempting to compete fairly based on real cost savings and reasonable projections of such savings, but it will inevitably harm farmers who are lured by the potential of large cost savings that prove to be illusory in the end. The commenter stated that even if RMA’s intent is to prohibit marketing of even potential savings, how could such a prohibition be enforced and whether the RMA has or is willing to commit the kind of resources necessary to enforce this market conduct requirement. In the absence of strict enforcement, unscrupulous approved insurance providers will inevitably boast exaggerated, illusory savings in order to attract market share.

*Response:* RMA is not precluding any marketing of the premium reduction plan. Approved insurance providers

will be able to advertise that they are participating in the premium reduction plan and the amount of any premium discount paid by the approved insurance provider in previous reinsurance years, accompanied by the appropriate disclaimers. However, approved insurance providers and agents will be prohibited from stating that any premium discount will be provided or promising any amount of premium discount. RMA agrees that enforcement is important and it will monitor the conduct of the approved insurance providers and agents and will collaborate with states that also regulate such market conduct issues.

*Comment:* An approved insurance provider commented that, in response to the RMA’s specific question as to provider workload, the workload to demonstrate savings up front is not materially greater than the workload to demonstrate savings after the fact. A commenter stated that dividend plans would still need to be reviewed for reasonableness, and approved insurance provider requests to make dividend payments would need to be carefully scrutinized prior to approval. RMA would also need to develop extensive procedures to evaluate the proposals and to establish standards for acceptability. Concerns regarding adverse market behavior would still exist under a dividend approach. A commenter stated that these should not be considered to be insignificant issues.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA disagrees that the workload to demonstrate savings up front is not materially greater than the workload to demonstrate savings after the fact. RMA has revised the provisions to eliminate much of the up front reporting requirements. RMA’s evaluation of the request to participate in the premium reduction plan will be based on the evaluation of the marketing plan to ensure that all farmers in the states in which the premium reduction plan will be offered have equal access to the plan. Since premium discounts are based on actual savings, RMA does need to know the specifics of how the approved insurance provider intends to achieve the savings. RMA agrees that there needs to be careful scrutiny of the cost accounting by the approved insurance providers on their Expense Exhibits. However, cost allocation procedures will be included in procedures to accompany the interim rule and are simple. Further, a certification by an independent certified public accountant

will add credibility to the amounts reported. As stated more fully above, RMA has added provisions regarding market conduct and will enlist the assistance of the states to ensure proper conduct by agents and approved insurance providers.

*Comment:* An approved insurance provider commented that market conduct oversight may be required, especially with respect to monitoring competitor assertions of projected savings, impacts on competition, and income tax issues, which presumably would simply reduce "insurance expense" on farmer's income statement.

*Response:* RMA agrees that market conduct oversight is required and will enlist the assistance of the states to ensure proper conduct by agents and approved insurance providers. Further, since premium discounts are now based on actual savings and the type of assertions that can be made are so limited, the burden on such monitoring should be reduced.

*Comment:* A few interested parties and approved insurance providers recommend that if RMA chooses to implement the premium reduction plan using a dividend concept, it should prohibit insurers or insurance producers from marketing dividends by guaranteeing them in advance. RMA should also prohibit insurers from using policy renewal as a condition for receiving a dividend for a prior policy year. A commenter stated it does not object to an approved insurance provider notifying insureds (and potential insureds) that it has applied for a premium reduction plan. A commenter stated that any approved insurance provider that violates the restrictions on advertising should be barred from submitting a premium reduction plan for a period of two reinsurance years.

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees that approved insurance providers and their agents should be prohibited from marketing practices such as guaranteeing or projecting an amount of the premium discount to farmers in advance of the determination of the actual premium discount. As stated above, provisions have been added that regulate such market conduct. RMA also agrees that premium discounts should not be tied to policy renewals because they are based on the cost savings attained for the current reinsurance year in which the farmer is a policyholder, not the subsequent reinsurance year when the farmer may

not. RMA has added provisions to the interim rule to prevent such conduct. RMA agrees with, and the interim rule allows, an approved insurance provider to notify existing and prospective policyholders that it is participating in the premium reduction plan. RMA agrees that sanctions should accompany violations of advertising prohibitions. One potential sanction is to disqualify an approved insurance provider or agent from participating in the premium reduction plan for a duration commensurate with the offense.

*Comment:* An agent suggests dividend restrictions include: (1) Requiring approved insurance providers to post March 15 business accounting and analysis for the prior crop year netting total actual A&O costs versus annual revenue, which would be approved annually by RMA for each approved insurance provider; (2) requiring each approved insurance provider to be responsible for their annual audit; (3) RMA setting an annual industry cap on percentage of dividends payable; and (4) not having the dividends contingent on a farmer continuing a policy into the next crop year (as in policy loss payments).

*Response:* As stated above, while similar to a dividend plan, the premium reduction plan is not a dividend plan. Approved insurance providers will be offering premium discounts. RMA agrees that approved insurance providers should be responsible for the annual audit, there should be a cap on the percentage of premium discounts that can be paid by any approved insurance provider, and that premium discounts must not be contingent upon renewal of the policy and has revised the rule accordingly. However, with respect to the accounting used to determine a premium discount, RMA will be using the Expense Exhibits provided with the Plan of Operations, including an estimate of outstanding costs.

*Comment:* A few approved insurance providers commented that although the determination of whether an approved insurance provider realized any cost savings will not occur until after the end of the reinsurance year and may take several months to occur, a deadline must be imposed on RMA for rendering such determination. Unlike the compliance process, the period afforded RMA to evaluate the premium reduction plan submissions cannot be limitless. A commenter stated that even if RMA was timely, it takes months and even years after the crop season to close controversial or disputed claims to determine year-end results. The commenter also stated that if the audit

showed discrimination of some type, it seems likely that RMA would be very vulnerable to negative reactions.

*Response:* RMA agrees that specific deadlines be imposed on RMA for determining whether an approved insurance provider is eligible to participate in the premium reduction plan. However, a deadline cannot be imposed on the evaluation of the Expense Exhibits to determine whether to approve a premium discount. RMA must have the time to properly evaluate such Exhibits and it is impossible at this time to determine the requisite amount of time. When finalizing the rule, RMA will determine whether such a deadline is appropriate. However, RMA will expedite its review of the Expense Exhibits. Disputed claims should not require adjusting the approval of a premium discount since they involve the cost of delivery not the amount of claims, unless the resolution of such claims will increase the cost of delivery. To avoid having to adjust a premium discount, approved insurance providers could hold back some savings achieved to cover such contingent costs.

Assuming that the commenter is referring to the cost efficiency audit in the alternative proposal, it is unclear to RMA how such a purely financial audit would reveal discrimination. RMA agrees, however, that routine reviews or specific investigations of an approved insurance provider by RMA may reveal discrimination which would require action by RMA and may produce negative reactions from some quarters.

*Comment:* An approved insurance provider commented that although an alternative delivery mechanism would be a departure from the proposed rule, FCIC does not have to publish a proposed rule describing this mechanism. In this regard, the proposed rule provides notice that a change is possible, and the public "reasonably should have filed their comments on the subject during the notice-and-comment period."

*Response:* RMA agrees with the commenter.

*Comment:* An approved insurance provider commented that the alternative proposal warrants further consideration but requires an indefinite extension of the comment period and rulemaking procedure since no rules have been proposed.

*Response:* RMA disagrees that an indefinite extension of the comment period is warranted. RMA specifically sought comments on the alternative proposal and informed the public it was considering including the alternative in the final rule. Therefore, RMA has complied with the notice and comment



rulemaking requirements. However, RMA acknowledges that the alternative presents a significant change and it would like an opportunity to test this proposal and give the public another opportunity to comment before finalizing the rule. That is one reason RMA has elected to make this rule an interim rule.

## 2. State Variability

In the preamble to the proposed rule, RMA stated that the majority of approved insurance providers that had submitted premium reduction plans for 2005 had planned to offer the premium reduction plan only in certain states and had included variability in the amount of premium discount between states as prominent features. RMA further indicated that it had several major concerns regarding these proposals. Specifically, RMA identified the potential for competitive harm; difficulty in administration; and the potential for variability in service and treatment of farmers as potential problems if approved insurance providers were permitted to select states in which to offer the premium reduction plan and to vary the amount of discounts by state.

Consequently, the proposed rule required that the same premium discount be offered in all states in which the approved insurance provider did business. However, RMA also indicated that it was seeking comments on its analysis of the above stated potential problems and whether procedures could be developed that would be consistent with the principles that allowing approved insurance providers to select states and vary the premium discount between states, would not cause competitive harm, would be relatively simple to administer, and would ensure that service would not be reduced.

RMA received comments that supported the proposed rule and its requirements to offer the same premium discount to all farmers and in all states in which the approved insurance provider does business. However, comments were also provided in favor of allowing the selection of states and variability of premium discounts between states. The key reason most often cited for allowing approved insurance providers to select states was that not allowing such selection could cause some approved insurance providers to leave certain high-risk or low volume states rather than being required to provide a premium discount in such states. The reason given was that it would no longer be economically

feasible for the approved insurance provider to operate in such states.

Another concern of these commenters was that there was significant variability in program delivery costs between states and that a one size premium discount would not fit all. Commenters were concerned that service in certain states could be jeopardized if the approved insurance provider was required to reduce costs in those states in order to qualify for offering a premium discount.

RMA has carefully reviewed these comments, especially within the context of other changes made to the proposed rule as a result of comments being sought. From this review, RMA has determined that the concerns identified in its original analysis can be adequately addressed and that both the selection of and variability of premium discounts between states can be incorporated into the interim rule without jeopardizing the integrity of the crop insurance program.

The most important factor contributing to this determination is, as explained more fully above, that RMA has elected to adopt the alternative proposal in the interim rule. Compared to the operation of the premium reduction plan described in the proposed rule, which required that specific premium discounts be guaranteed up front and approved insurance providers would make adjustments to their operation in an attempt to achieve the necessary cost savings, the alternative proposal requires that premium discounts be provided to farmers only after actual cost savings have been achieved and verified.

This alternative method of operating the premium reduction plan significantly reduces the administrative requirements of both the approved insurance provider and RMA and the likely impact on service and business practices of approved insurance providers. These changes, in turn, significantly reduce the potential for problems that might arise from either state selection or variation of premium discounts, as outlined below:

a. The concern that state variability might cause competitive harm in the marketplace. In the proposed rule, RMA was concerned that any procedure it devised to accommodate state selection or variability of premium discounts might inadvertently give certain approved insurance providers unfair marketing advantages in certain states. Therefore, it would be difficult to establish a "level playing field" for all approved insurance providers. This is mostly because, under the proposed rule, RMA would approve the premium

discount that an approved insurance provider would be able to offer in a state before the start of the reinsurance year. The approved discount would be based on projected cost savings that may be unreasonable or unattainable. Even slight differences in the approved premium discount for different approved insurance providers in a state could result in significant marketing advantages or disadvantages possibly create conditions that would be harmful to market competition. Since approval was based on projections, it would be impossible for RMA to know the actual savings that could be realistically achieved and it might encourage some approved insurance providers to project more drastic cost saving measures than their operations could handle in an attempt to gain a marketing advantage.

However, this problem is eliminated under the interim rule. Because premium discounts are based on actual cost savings in a state, approved insurance providers would not be allowed to offer a guaranteed premium discount at the time of sale. Further, the interim rule severely limits the promotion or advertising of a premium discount to prevent approved insurance providers or agents from making any representations about the payment or amount of a premium discount. Under the interim rule, approved insurance providers can only state the actual amount of the premium discounts that have been paid in all previous reinsurance years. However, these statements must be accompanied by a prominent disclaimer that past results do not guarantee future payments.

This means that any marketing advantage that an approved insurance provider might gain in a state through premium discounts would occur only after a performance record of premium discounts based on actual savings has been established over several years. Furthermore, even when an approved insurance provider has an established premium discount performance record, it cannot promise or guarantee that premium discounts will continue in the future. As compared to the proposed rule, this marketing feature of the interim rule significantly diminishes the possibility that allowing approved insurance providers to select states or vary the percentage of premium discount between states will lead to competitively harmful situations.

b. The concern that state variability in premium discounts would be difficult to administer by the approved insurance provider and to be verified by RMA. The proposed rule required that approved insurance providers submit rather detailed expense projections when they

applied for approval to offer premium discounts. RMA was to have verified these projections as being reasonable before granting approval. In the past several years, approved insurance providers have submitted actual costs on the Expense Exhibits provided with their Plan of Operations that significantly exceeded the amount of A&O subsidy paid by RMA. This means that approved insurance providers would likely face some difficulty in demonstrating the reasonableness of projected savings, even if approved insurance providers were not permitted to vary the percentage of premium discounts between states.

Under the proposed rule, if RMA allowed approved insurance providers to vary the percentage of premium discount between states, the A&O costs and projected savings would have to be determined on a state basis. The task of demonstrating the reasonableness of state-level expense projections would have been even more formidable than doing so at the approved insurance provider level. RMA was highly concerned that some approved insurance providers, if permitted to vary premium discounts by state, would inflate cost efficiency projections in certain states to qualify to offer a large premium discount in that state and, thereby, gain a significant marketing advantage over those competitors that submitted more realistic projections to RMA.

RMA was also concerned because certain costs can only be verified on a whole book basis, not a state basis. This means that approved insurance providers would have had to allocate these costs between states. RMA was concerned because this could have provided a means to shift costs and artificially create savings in certain states.

However, adoption of the alternative proposal and other changes to the interim rule eliminates these problems. Under the alternative proposal, the approved insurance provider is not required to submit any expense information before the reinsurance year to be eligible for the opportunity to offer a premium discount. Only the actual costs reported at the end of the reinsurance year will be used. Therefore, the burden on RMA and the approved insurance provider is greatly reduced and there is no opportunity for approved insurance providers to overestimate projected savings in certain states.

Further, under the proposed rule, the approved insurance provider was required to file revised Expense Exhibits to the Plan of Operations that contained

the cost and savings projections and at the end of the year, RMA would compare the projected savings with the actual savings achieved for the reinsurance year using the actual costs contained on the Expense Exhibits filed for the next reinsurance year. In the interim rule, RMA will only need to review the actual costs obtained from the Expense Exhibits provided with the Plan of Operations. This will also reduce the burden on RMA and the approved insurance providers.

In addition, in the preparation of these Exhibits, RMA has previously provided instructions on how to allocate costs from the statutory accounting statements, which are reported on a calendar year basis, to a reinsurance year basis. Therefore, these statutory accounting statements provide a basis to verify the reported actual costs. Further, RMA is requiring that the Expense Exhibits be audited and certified by a public accountant experienced in insurance as to the accuracy and completeness of the costs reported and compliance with the SRA. Therefore, there is a sound basis to verify that the actual costs reported are accurate and complete.

To solve the problem with the potential to shift costs between states, RMA has developed a formula that will be provided to approved insurance providers through procedures that RMA will provide to the approved insurance providers, and publish on its Web site at <http://www.rma.usda.gov>, not later than 5 days after publication of the interim rule. The formula takes the information reported on the Expense Exhibits and allows RMA and the approved insurance provider to determine the amount of efficiency, and corresponding premium discount, which can be paid in any state. The formula allocates certain costs to each state based on the premium volume for that state. While the actual costs may vary slightly, this formula approach allows flexibility within any approved insurance providers operation but it also sets a single standard that will be applicable to all approved insurance providers. This eliminates the concerns regarding the different cost accounting methods that can be used by approved insurance providers or the shifting of such costs.

This means the interim rule is much simpler for RMA and the approved insurance provider to administer and contains specific cost accounting requirements that are easily verified. Therefore, there is no longer any basis to preclude approved insurance providers from selecting states or allowing variation between the

percentage of premium discount paid between states.

c. The concern that state variability would disrupt service in certain states and have unintended effects on business practices of approved insurance providers. Under the proposed rule, RMA was concerned that if variability of the premium discount was allowed then an approved insurance provider might look exclusively to agent's commissions for its cost efficiencies and make drastic cuts in order to allow it to pay higher premium discounts. The fear was that this could result in agents going out of business in certain states where the commissions were already lower than other states, or failure to comply with the service requirements of the SRA and approved procedures because the commission paid for such policy was so much less than the costs to service the policy. RMA was also concerned that state variability in premium discounts would have unintentionally favored one type of approved insurance provider over another depending on whether the provider employed its own full time agents or contracted with independent agents.

However, the alternative proposal adopted in the interim rule can accommodate state variability of premium discounts with much less risk of potential problems. For instance, the immediate competitive pressures of an approved insurance provider to reduce expenses in a certain state through agent commission reductions would not be nearly as intense under the interim rule as under the proposed rule because approved insurance providers and agents will not be allowed to promote, advertise or guarantee a specific premium discount in advance.

Further, the ability to select states also reduces the financial burden on agents and decreases the likelihood of reduced service because approved insurance providers can elect not to participate in the premium reduction plan in those states where the profit margins of agents could not withstand a cut in agent commissions. While RMA has numerous means at its disposal to enforce the service requirements of the SRA and the approved procedures, the goal is to reduce the incentives that could result in non-compliance with such requirements. RMA believes the interim rule attains this goal.

Selection of states and variability of premium discounts between states under the alternative proposal can also accommodate the business practices of the full range of approved insurance providers. Under the proposed rule, because cost savings had to be reasonable and verifiable, RMA was

concerned that approved insurance providers would focus on agent commissions because approved insurance providers provided their commission schedules by state, which would make costs savings more easily determined and verified. RMA was concerned that this would not easily permit approved insurance providers with captive agents to participate, because such agents may be salaried or receive lower commissions than contracted agents, or would discourage cost savings from other parts of the approved insurance provider's operation.

The interim rule solves this issue because all costs used in the formula, to be provided in the approved procedures and issued not later than 5 days after publication of the interim rule, are placed in one of three categories: agent compensation, loss adjustment expense, or overhead. Agent compensation and loss adjustment expense are both reported on the Expense Exhibit and overhead is determined by subtracting agent compensation and loss adjustment expense from the total costs. Since agent compensation and loss adjustment expense are reported on a state basis, no additional allocation rules are necessary. Further, because the formula to be published in the procedure provides a set means to allocate overhead between the states, approved insurance providers can reduce their costs from any aspect of their delivery of the crop insurance program. In addition, the formula to be published in the procedure can calculate savings that were previously achieved. This procedure was developed to accommodate a range of approved insurance provider business structures without favoring any particular structure.

With respect to the issue variability of premium discounts by state, the comments received and FCIC's responses are as follows:

a. Competitive Harm in the Marketplace  
i. Competitive Disadvantage

*Comment:* Many agents, farmers, approved insurance providers and interested parties commented that the whole premise of the crop insurance program is that all farmers pay the same price, regardless of the farm size. Price competition is not a factor. Commenters stated that at a time when the USDA is trying to encourage more participation in the crop insurance program and get away from the yearly disaster programs, it is important that all good agents and approved insurance providers be able to compete for business on a level playing

field. Commenters state that price competition will lead to an un-level playing field confusion, erode farmer's confidence in the product, and reduce the perceived value of the protection to a "cheapest price" commodity." Several commenters stated that the only competition should come through "service" to the farmer not who can pay the best commission to the agent. Farmers can then choose which agent offers the best level and quality of personal service. A commenter states that value is something other than price. It's having agents that can help in the needs analysis, and then matching up products offered at a reasonable cost to provide the proper risk management tool for the farmer.

*Response:* While the premise of the crop insurance program is that all farmers pay the same premium, legislative history shows that section 508(e)(3) of the Act was included for the specific purpose of fostering price competition. There is no way to implement section 508(e)(3) of the Act without creating price competition because participation in the program is voluntary and the amount of any premium discount is based on the amount of savings an individual approved insurance provider can attain. RMA has no choice but to implement section 508(e)(3) as enacted.

RMA would agree that the value perceived by some farmers is something other than, or at least something in addition to, price. Many farmers will likely consider a range of factors, including the examples of extra service offered by the commenters, in making a choice of agent and approved insurance provider. For those farmers that place more value on service, approved insurance providers or agents that do not offer premium discount plans, and those that do, can still compete by offering superior service. It is up to the farmer to determine which it values the most. This is the foundation of competition—the market determines the value of the product or service.

*Comment:* Several agents, approved insurance providers, and interested parties commented that the federal crop insurance program should NOT be a competitive program. The commenter states that the premium reduction plan discount gives the qualifying approved insurance provider an advantage over the approved insurance providers that do not qualify. This advantage filters down to the agents and no approved insurance provider or agent should have a price advantage.

*Response:* Although the commenters clearly do not wish for Federal crop insurance to be a competitive program,

the reality is that section 508(e)(3) of the Act clearly mandates that crop insurance be allowed to be competitive with respect to price and that RMA is to establish the limits and procedures needed to facilitate this price competition. RMA agrees that approved insurance providers that are eligible to participate in the premium reduction plan have a competitive price advantage to those that do not. The whole premise of price competition is to be able to provide the same product or service for less money.

However, the interim rule allows any approved insurance provider, and its affiliated agents, to be able to participate in the premium reduction plan if the approved insurance provider's marketing plan is adequate. Whether a premium discount can be paid depends on whether the approved insurance provider can deliver the crop insurance program more efficiently than the A&O subsidy. Further, as some commenters have discussed, farmers also value service and even if agents and approved insurance providers do participate in the premium reduction plan, they can still compete by offering superior service, which some farmers may find to be more valuable than a potential premium discount.

*Comment:* An interested party commented that the premium reduction plan is expected to exacerbate competition in the low-risk states while in and of itself providing no direct incentive for approved insurance providers to consider nationwide expansion.

*Response:* RMA disagrees with the assumption that the premium reduction plan is expected to exacerbate competition in low-risk states while not encouraging approved insurance providers to consider expanding to high-risk states. Evidence from the operation of the premium reduction plan to date, though limited, suggests that approved insurance providers that offer the premium reduction plan are not fearful to enter high-risk states; the approved insurance provider that is currently authorized expanded significantly into Texas in 2004, a state that has one of the worst historical loss ratios. Further, it is clear that all states have some potential for profit or approved insurance providers would not be doing business in such states.

However, some commenters and expert reviews suggested that not requiring approved insurance providers to offer their premium reduction plan in all states in which they do business, as required in the proposed rule would adversely affect national approved insurance providers. RMA has

reconsidered this issue and now allows approved insurance providers to select the states in which to participate in the premium reduction plan.

*Comment:* Several agents and interested parties commented that the impact of the premium reduction plan combined with the proposed budget reductions to the crop delivery system will reduce margins and in the long run lead to less competition, fewer agents, and diminished service to the farmer. Competition is a great means to reduce fraud. A commenter stated that the premium reduction plan will drive premiums lower. A commenter states that the premium reduction plan issue should not be about agents or agent commissions but about maintaining a crop insurance program that is working and providing stability in our nation's rural economy and America's farmers. The farmers are to be focusing on producing good crops and managing their business and not worrying about their crop insurance and the rules and regulations of the policy.

*Response:* Participating in the premium reduction plan is strictly voluntary and approved insurance providers have to make the business decision whether it is in their and their policyholder's best interests to participate. Further, approved insurance providers have to be sure they can participate in the premium reduction plan and still be in compliance with all the FCIC approved policy and procedures pertaining to the delivery of the program. Approved insurance providers are not going to risk violations of their SRA because the consequences could be much greater than simply withdrawing eligibility to participate in the premium reduction plan.

The expert reviewers generally agree with the commenters that the number of agents will decline. However, they generally see the premium reduction plan as improving the overall quality of remaining agents, the financial health and stability of the industry, and at least one reviewer predicted less fraud. But based on the comments received it appears that many believe that the premium reduction plan could stimulate competition.

RMA disagrees that farmers should be concerned only with production and management decisions and not with their crop insurance policies or its rules or regulations. Farmers are legally required and presumed to know the contents and requirements of their policies and agents are required to ensure that they do. Further, risk management is one of the major management issues confronting farmers and crop insurance is a key tool in

developing the overall protection for the farmer. Therefore, farmers need to also focus on crop insurance to ensure that their risks are adequately protected.

RMA also disagrees that the premium reduction plan will drive premiums lower. The total amount of premium remains unchanged regardless of whether the premium reduction plan is offered or not. All that could be reduced is the amount of premium paid by the farmer because the premium discount paid by the approved insurance provider could be viewed as an additional subsidy. However, under the alternative adopted in the interim rule, because the premium discount will not be known until after the premium is due, farmers will still pay the same amount of premium.

*Comment:* A few interested parties commented that the premium reduction plan "concept" does not fit the business model of the crop insurance program. In conventional lines of insurance, carriers independently file premium rates, establish underwriting criteria, and develop policy language subject to state insurance department oversight. In this setting, the existence of a premium discount mechanism is consistent with the approved insurance provider's ability to set its own rates, select its own mix of insurance products, and underwrite against undesirable risks. In contrast, federal crop insurance is a national program intended to provide a financial safety net for American farmers. The commenter stated that the premium reduction plan concept disregards these unique characteristics of the federal crop insurance program and proposes a questionable rationale for downward premium adjustments based on only a single component of the total gain or loss of the approved insurance provider. A commenter stated that by segregating the gains and losses on A&O subsidy component from the gains and losses on the underwriting component of the business, the premium reduction plan can encourage behavior that has an adverse impact on approved insurance providers and on the program as a whole.

*Response:* RMA acknowledges that price competition, as allowed for under 508(e)(3) of the Act, is not directly comparable to price competition for conventional, private insurance products. This is because RMA separates out the risk premium from the A&O subsidy. In other lines of insurance, expenses and profit are usually built into the premium.

However, RMA would disagree with the view that price competition under the premium reduction plan disregards the unique characteristics of the Federal

crop insurance program. On the contrary, one could argue that these characteristics are specifically considered by the requirement that price competition be confined to a single component of an approved insurance providers total revenue and cost stream—delivery costs compared to the A&O subsidy. It is this requirement that prevents price competition from being influenced by the underwriting component of an approved insurance provider and thereby affecting the solvency of that approved insurance provider and jeopardizing the financial stability of the program. Further, since premium discounts are not approved until after the end of the reinsurance year, RMA can now evaluate the financial condition of the approved insurance provider before approving any discount. The interim rule has been revised to allow RMA to disapprove a premium discount if the payment of such discount could jeopardize the financial solvency of the approved insurance provider.

*Comment:* An interested party commented that the entity offering the premium reduction plan is to demonstrate that the "discount to be extended to the farmer comes directly from demonstrated internal cost savings of that entity as directly derived from their developed premium reduction plan model." The commenter stated that in this regard it is the same as an insurer needing to demonstrate that a group discount is developed from the expense and cost-savings of the specific group itself, and not from the insurer offsetting group expenses across other lines to gain a competitive advantage in a select or preferred marketplace.

*Response:* RMA acknowledges that the requirement that premium discounts come from A&O cost savings may be based on a similar principle as that which guides approved insurance providers in determining whether a specific group discount derived from internal cost savings within that group is justified. The commenter is correct that this principle and the requirement that premium discounts correspond to the cost savings allow approved insurance providers to compete on a level playing field and precludes offsetting expenses from other lines of insurance to gain a competitive advantage. This is one of the reasons that the Expense Exhibits to the SRA are used because the costs included on such Exhibits are limited to the costs associated with the crop insurance program and not other lines of insurance. RMA can compare past Expense Exhibits to determine whether there are radical differences and

whether the claimed changes in the operations of the approved insurance provider can account for the changes or there is a likelihood of improper cost allocations.

*Comment:* An approved insurance provider commented that commission reductions distort the original intent of premium reduction plans as they do not represent true operating "efficiencies." The commenter stated that the manner in which sales entities are rewarded is already subject to free market forces. Barriers to entry do not preclude new agents from entering the program. A market exhibiting "excess" agency profits will attract new agents, competition from which tends to shrink agent profit margins. The commenter stated that by creating a system where agent commissions are the most convenient and verifiable efficiency, if marginal agent revenues are artificially driven below marginal agent costs (*i.e.*, premium reduction plans based on commission reductions), customer service will suffer, competitive harm will ensue by repelling new entrants. The commenter stated that the ability and quest for ever-increasing efficiencies is already a natural motive in a market driven to maximize profits. The market already competes vigorously on a non-rate basis and profit-maximization objectives already drive efficient delivery.

*Response:* The commenter makes the economic argument that, in the long run, forces of supply and demand will operate to achieve an equilibrium in agent's commissions in which commissions become, by definition, fully efficient—*i.e.* incorporating no excess profits. The commenter's conclusion appears to be that, because agent commissions demonstrate this tendency, their reduction should not be considered as a possible cost efficiency.

Several economic arguments could be advanced, however, that justify considering reductions in agent commissions as an efficiency. First, the market for agents is dynamic and seldom if ever in long run equilibrium. An approved insurance provider should be able to identify instances where agent commissions (or more broadly for any other cost input) include excess profits and seek to reduce those excess profits for the purpose of achieving cost efficiencies. An approved insurance provider's ability to claim some or all of an agent's possible excess profits would be determined in a free market negotiation between the approved insurance provider and the agent.

Second, without the premium reduction plan, the delivery of Federal crop insurance includes established

A&O subsidies and premium rates that are not subject to free market forces. These non-competitive revenue streams to the approved insurance provider have the potential of creating what economists call "economic rents." Economic rents can persist over long periods and can sometimes not be reduced by the operation of free market forces because they are established by law or decree. Academic research has identified economic rents in Federal crop insurance that stem from these and other aspects of the Federal program and have indicated that portions of these rents have been shared between approved insurance providers and agents through the competition for agents identified by the commenter. If such economic rents exist, as research indicates, the premium reduction plan would foster price competition that would extract at least a portion of these rents for the benefit of farmers.

As to the comment regarding deteriorating service if agent commission reductions are permitted, as stated above, an approved insurance provider seeking cost efficiencies to qualify to pay a premium discount must make sure that it can maintain all requirements for service under the SRA and approved procedures. An approved insurance provider that would allow its service to decline below these requirements would jeopardize its eligibility to participate in the premium reduction plan, pay a premium discount, and operate under the SRA. RMA is confident that such a powerful deterrent, as well as vigilant monitoring by RMA and continued competition among approved insurance providers and agents, will ensure that any potential agent commission reductions will not adversely impact service to policyholders.

*Comment:* An agent commented that perhaps Congress and even the RMA imagined a day where there would be one or two "premium reduction plan players" in the market and other approved insurance providers would run their programs in the traditional manner. Unfortunately, the free market system has a way of encouraging and then eliminating competition. The commenter states that, as the RMA found out last year, current SRA holders are simply not going to set back and let someone take business away from them.

*Response:* RMA has never had any preconceived notions regarding how many approved insurance providers would elect to offer the premium reduction plan. RMA has always assumed that each approved insurance provider would examine its operations and the interests of its policyholders

and make a sound business decision with respect to whether it would participate in the premium reduction plan. That assumption continues to be true under the interim rule. Even if the commenter is correct that many or all of the approved insurance providers feel compelled to participate in the premium reduction plan, the interim rule has provisions that attempt to minimize the negative impact of potentially destabilizing forces while allowing the price competition that is required in the Act to operate. Under the alternative proposal, RMA can determine whether a premium discount would put any approved insurance provider into financial difficulties before approving payment of any premium discount. The interim rule has been revised to allow RMA to disapprove a premium discount if the payment of such discount could jeopardize the financial condition of the approved insurance provider.

*Comment:* A few agents and interested parties commented that if an approved insurance provider is able to operate at a higher profit level than other approved insurance providers through its ingenuity, technology, and entrepreneurial skills why should they be forced to pass on these profits to their insureds. The commenter states that technically they may not have to offer the premium reduction plan, but if other approved insurance providers choose to offer such a plan, then in order to remain competitive that approved insurance provider will be forced to also offer the premium reduction plan. The commenter asks what incentive will there be for an approved insurance provider to improve their business if more of the profits will be given away. The commenter asked if the premium reduction plan is able to generate a cost savings why these savings should be passed on to the insured and not the American taxpayer who already foots the bill for most of the current program.

*Response:* RMA agrees that, if an approved insurance provider can operate within the A&O subsidy, it is not required to participate in the premium reduction plan and can elect to keep these profits. RMA also agrees that competitive forces may move such an approved insurance provider to request to participate in the premium reduction plan. The potential to gain market share and thereby achieve underwriting gains on the additional business is a possible reason why an approved insurance provider would be motivated to find cost efficiencies even if the approved insurance provider must inevitably return such savings to farmers in the form of a premium discount. Although the commenter is

correct that taxpayers are paying a significant portion of the costs of the crop insurance program, section 508(e)(3) of the Act makes it very clear that policyholders are the sole recipients of these savings.

*Comment:* Several interested parties and agents commented that they thought such discounts were against the law in some states, which may mean that discounted products may not be made available to all farmers. A commenter stated that the premium reduction plan does not provide savings because the funds are returned to the farmer as a rebate. A commenter states the premium reduction plan is a rebate because the savings come from one source, agent commission, approved insurance providers have no control over rate making, and the discount is conditioned upon the purchase of insurance.

*Response:* Whether the premium reduction plan may be a form of rebating that is prohibited under most state laws is not material. As stated above, under section 506(l) of the Act, any state law that is in conflict with the Act or any regulation promulgated by FCIC is preempted. As stated above, since section 508(e)(3) of the Act expressly allows premium discounts to be provided and does not state that such authority is subject to state law, whether the savings come from one source or multiple sources, approved insurance providers have no control over rate making, or the discount is conditioned upon the purchase of insurance does not override this express authority. Since state law is preempted, premium reduction plans can be made available in all states.

*Comment:* An interested party commented that the premium reduction plan concept suffers from a fundamental design flaw, whether the payment is made up-front or on a delayed basis, in that the payment is based on only a single component of the approved insurance provider's income. Approved insurance providers would be encouraged to provide premium discounts for any savings achieved on the expense component of the business even if the approved insurance provider loses money on the underwriting component of the program.

*Response:* RMA disagrees that the premium reduction plan is flawed because it considers only the delivery expense component of an approved insurance providers financial statements. Under section 508(e)(3) of the Act, these are the only costs that can be used to finance a premium discount. However, this does not have to be the only factor RMA considers when

determining whether to approve a premium discount. As stated above, under the alternative proposal adopted in the interim rule, RMA has the ability to determine the financial condition of the approved insurance provider before any premium discount is approved and can deny such approval if there would be an adverse impact.

*Comment:* Several interested parties, agents, and approved insurance providers commented that premium reduction plans will result in a high degree of policyholder turnover or "churning" of the book of business causing more paperwork, data lost, and data reentered incorrectly. Commenters stated that data simply cannot be switched around over and over with out losing its integrity. Commenters state this turnover could overwhelm the operational and financial capacity of approved insurance providers. Commenters stated that the cost to regulate this type of turnover and the risks associated with the premium reduction plan will far outweigh the small benefits offered to farmers through the proposed premium reduction plan rule. A commenter asked whether a system cannot be developed that would permit better flow of information. A commenter asked how RMA will monitor the capacity and what safeguards are in place to assure the farmer that the needed infrastructure is available to handle fair, fast claims service and timely indemnity payment.

*Response:* RMA agrees that expanded participation in the premium reduction plan could result in switching of policies between agents and approved insurance providers, as policyholders gain increased consumer awareness. However, the impact may be mitigated by the fact that premium discounts are no longer guaranteed up front in the interim rule. Because farmers will no longer know whether they will receive a premium discount, or the amount, there will likely be less "churning" of the book of business.

Further, any approved insurance provider requesting the opportunity to offer a premium discount would need to account for any data processing costs associated with acquiring new policies as it evaluated cost efficiencies. The approved insurance provider would also need to ensure that its infrastructure was sufficient to handle claims. With respect to regulating such turnover and claims servicing, RMA would continue to hold approved insurance providers accountable under the standards established by the SRA. For data processing, for instance, those standards are contained in Appendix III of the SRA. Any approved insurance provider

that is eligible to participate in the premium reduction plan must meet those standards. An approved insurance provider that becomes overwhelmed by the task of entering new policy data or whose data loses its integrity would risk losing the eligibility to participate in the premium reduction plan or to operate under the SRA. RMA is confident that its data system could handle increased policy turnover so that an additional system is not needed. RMA is also confident that its systems can adequately monitor existing service standards under the SRA.

*Comment:* An interested party commented that approved insurance providers provide thousands of jobs across the country and asks if the U.S. government should be in the business of jeopardizing private jobs and substituting them with government employees.

*Response:* RMA would agree with the commenter that approved insurance providers are responsible, either through direct hires or contracts, for the creation of thousands of U.S. jobs and that it is possible that jobs may be affected by the premium reduction plan. However, neither the Act nor RMA dictate the manner in which approved insurance providers obtain their savings under the premium reduction plan and RMA has sought to provide greater flexibility in the interim rule for approved insurance providers to attain such savings. Market forces determined by competition among the approved insurance providers will determine how and to what degree savings are obtained.

*Comment:* Several agents commented that with increasing expenses farmers are looking for ways to cut costs such as crop insurance and the premium reduction plan will make it worse. A commenter stated that approved insurance providers offering premium reduction plans will just be taking advantage of their previous hard work helping and educating farmers. A commenter stated that many larger farmers will move to the approved insurance provider offering the larger discount.

*Response:* RMA would agree that farmers are looking for ways to reduce costs, but is unsure of how the premium reduction plan will thereby worsen a farmer's condition. RMA would agree that a farmer that has been helped in the past by a dedicated and hard-working agent might decide to abandon that agent for one offering a price reduction and that larger farmers might be particularly attracted to premium discounts because of their size of operations. These outcomes are all possible under the existing program

since farmers are free to choose their agents and approved insurance providers. While it may be argued that the proposed rule exacerbated this problem, the interim rule has been revised to no longer allow approved insurance providers to guarantee the premium discount up front, limit advertising or other promotions, and require approved insurance providers to specifically market the premium reduction plan to small, limited resource, women and minority farmers in the states where it is available. Further, as some commenters have pointed out, farmers also value service and may choose superior service and knowledge of their agent over the discount offered by another agent participating in the premium reduction plan when determining the best value to the farmer.

*Comment:* An approved insurance provider commented that decisions on the use of independent versus salaried agents should be based on competitive market forces and service considerations, not a government regulation intended to provide a benefit to farmers. The commenter stated the program needs to allow for individual approved insurance providers to deliver the program independent of government rules on how the agents are compensated. The commenter asked if the approved insurance provider is operating through independent agents, whether the agent is also required to offer the premium reduction plan to all of his customers. If not, the agent may only offer the premium discount to the larger customers due to commission considerations.

*Response:* RMA agrees that an approved insurance provider's decision on the types of agents it uses should be one based on market forces. In the interim rule, RMA has attempted to be sensitive to the different delivery structures of current approved insurance providers and allow approved insurance providers maximum freedom for such decisions. With respect to the question of whether an independent agent is required to offer premium reduction plan to all of his or her customers, all policyholders of an approved insurance provider that participates in the premium discount plan will automatically receive any premium discount paid by the approved insurance provider. If the agent represents more than one approved insurance provider, the agent is required to notify all customers of other approved insurance providers it represents that participate in the premium reduction plan, but is not required to notify the customer of the

status of approved insurance providers that the agent does not represent. As stated above, market forces will generally handle the situation where an agent attempts to place all large farmers with the approved insurance provider participating in the premium reduction plan and all small farmers with the one that does not. Lastly, approved insurance providers are required to independently market the premium reduction plan to all farmers including small, limited resource, women and minority farmers and no agent can refuse to insure any such farmer who requests coverage.

*Comment:* An approved insurance provider commented that RMA has espoused a principle and taken an action that is contrary. RMA states that "[d]ecisions on the use of independent versus salaried agents should be based on competitive market forces \* \* \*" However, RMA has crafted regulation that, by FCIC's admission, is intended to protect a specific business plan (salaried or "captive" agents) from the vicissitudes of the market.

*Response:* RMA agrees that competition should be based on market forces. The principle espoused in the interim rule is that the approved insurance provider should, wherever possible, have flexibility in identifying cost efficiencies and be able to act to achieve those possibilities under competitive market forces. The reference to protecting a specific business plan may have been confusing. What was meant was that, where specific requirements must be imposed to ensure that the objectives of the Act are met, those requirements should not create a clear or obvious advantage for one type of business plan over another. RMA believes that it is not inconsistent for a regulator to encourage competitive market forces whenever possible and, at the same time, impose regulations that attempt to balance the interests of approved insurance providers with different types of business plans. RMA wanted to create a neutral framework and it believes that the framework developed would permit all approved insurance providers to have equal access regardless of the manner in which it delivers the program.

*Comment:* An approved insurance provider commented that choosing varying delivery mechanisms is a normal function of free market choices and does not, therefore, unfairly bias qualification rules, unless they opted to affect the manner in which they deliver or account for delivery of product. The commenter stated that the competitive advantage, or disadvantage, of using captive agents is already contemplated

in a profit maximizing environment. The commenter stated that commissions are already subject to market forces and changes in commission rates are already driven by the market. Further, rate reductions built on commission reductions, as opposed to true operating efficiencies, would compel other approved insurance providers or agents to either follow or withdraw from the market, and if the latter, would potentially create under-served areas.

*Response:* RMA agrees that an approved insurance provider's choice of using captive or contracted agents is one to be determined in the context of a free market. Further, RMA agrees that commission rates for agents are already driven by market forces. However, in structuring the interim rule, RMA desires to avoid imposing provisions that would unnecessarily favor those approved insurance providers that had elected to operate with a captive agent structure or, alternatively those approved insurance providers with a contracted agent structure.

The commenter implies that there is a difference between a reduction in commissions and a true operating efficiency. Under the law, a reduction in either commission costs or other operating costs would be deemed an efficiency as long as the ability of the approved insurance provider to maintain service standards under the SRA was not adversely affected. Nevertheless, RMA shares the concern of the commenter that a reduction in compensation in certain geographical areas as a result of the premium reduction plan may cause agents or, ultimately, an approved insurance provider to withdraw from those areas. The provisions of the interim rule reflect measures designed to mitigate this potential, including allowing the approved insurance provider to select the states in which to participate in the premium reduction plan.

#### ii. Approved Insurance Providers

*Comment:* Many interested parties, agents, farmers, and approved insurance providers have commented that the proposed premium reduction plan rules will also force many approved insurance providers out of the industry, while new participants will not enter, thus reducing competition by driving approved insurance providers out of the market and forcing agencies into financial disaster and decreasing the competitive force that drives the private sector. A commenter stated this will increase premiums. Other commenters claim crop insurance has experienced high levels of budget cuts and regulation changes in the last several years which

have placed some approved insurance providers on the edge of financial disaster. A commenter stated that it looks like a lot of tracking and reporting needs to be done by the approved insurance providers and this added expense may be too much for smaller approved insurance providers. Commenters stated that this industry needs more providers, not less, and that competition increases service to farmers. A commenter states that farmers need options and this rule will remove several approved insurance providers as viable options and that it is not good for the system if only a few approved insurance providers remain—giving them leverage over the system. Another commenter stated that if the number of approved insurance providers is reduced, the approved insurance providers remaining will have to take on their business, thus slowing down the time a claim can be serviced.

*Response:* RMA does not agree with the commenters' basic assumption and resulting predictions that price competition will necessarily result in fewer approved insurance providers, less competitive approved insurance providers, and higher premiums (prices). One could point to many instances of government regulated industries where price competition has been introduced, such as the telecommunications and commercial airlines industries, where precisely the opposite has occurred.

RMA also disagrees that competition will increase premiums. As stated above, premiums are determined by the expected losses and a reasonable reserve and are independent from any efficiency related premium discount. Therefore, the amount of premium is unaffected by the premium reduction plan.

RMA further disagrees with the assumption that regulations and budget cuts have placed some approved insurance providers on the edge of financial disaster. Each reinsurance year RMA evaluates the financial conditions of the approved insurance providers. This evaluation has been strengthened considerably since the failure of American Growers Insurance Company (American Growers). The most recent evaluation shows no deterioration in the financial health of approved insurance providers. However, RMA agrees that such budget cuts can impact approved insurance providers. For this reason, the election to participate in the premium reduction plan is totally voluntary. Approved insurance providers are in the best position to determine whether they can participate in the premium reduction plan. In addition, with the adoption of the alternative proposal,

premium discounts will not be approved until after the cost savings have been proven and RMA determines that the approved insurance provider is in a sound financial position to pay the premium discount. Also, an approved insurance provider can elect not to request approval to pay a premium discount if it is concerned about its financial condition.

The adoption of the alternative proposal has also significantly reduced the paperwork burden on approved insurance providers, especially up front. Determinations of premium discounts will now be based on the Expense Exhibits that are already provided for the SRA. Further, as stated above, the interim rule now contemplates a simplified procedure to determine the amounts of premium discounts.

RMA agrees that it would be desirable to have additional approved insurance providers. New ones are being approved each year, even though the premium reduction plan has been available. There is no indication that this will change under this rule. To the contrary, RMA continues to receive inquiries and applications from new approved insurance providers to enter the program. Further, nothing in the interim rule precludes competition based on service. As stated above, commenters have pointed out that some farmers will value service more than the discount and likely elect to remain with agents that do not participate in the premium reduction plan. Others will choose a mix of service and price. These are choices that American consumers make every day.

*Comment:* An agent commented that if RMA allows one approved insurance provider to offer a premium reduction plan, many other approved insurance providers will most likely be motivated to do the same thing. If that proves true, RMA will end up with fewer approved insurance providers involved and those with economies of size will have the advantage.

*Response:* RMA would agree with the comment that once one approved insurance provider is able to compete on the basis of price, other approved insurance providers will likely want to respond. However, RMA does not agree that the result of price competition is necessarily fewer, larger approved insurance providers. One could point to other instances of government regulated industries where price competition has been introduced, such as telecommunications and commercial airlines, where the precise opposite has occurred.

Regardless of differing views about the possible impact of the premium

reduction plan on the industry, RMA has attempted to address possible negative industry impacts of the premium reduction plan such as allowing approved insurance providers to select those states in which it wants to participate in the premium reduction plan and reducing the reporting burdens on approved insurance providers electing to participate.

*Comment:* An agent commented that RMA will require that approved insurance providers not reduce its service to their insureds. The commenter asked how RMA would entice approved insurance providers to continue in this line of insurance. If the profitability is not there due to the premium reduction plan and tighter regulations, it would obviously have an impact on the overall financial strength of the industry.

*Response:* As stated above, service cannot be reduced below the standards required by the SRA. If an approved insurance provider does not think that it could provide this level of service at a cost below the A&O reimbursement, it does not have to participate in the premium reduction plan. It is approved insurance providers that are in the best position to determine whether they have the ability to participate in the premium reduction plan and, as stated above, approved insurance providers that do not participate can still compete because there are farmers that will value service more than the premium discount.

With respect to the question of attracting new approved insurance providers, the recent increase in the number of approved insurance providers entering the program demonstrates that there are still attractive business opportunities in the crop insurance program. Further, it is not evident that the commenter's assumption that the premium reduction plan would necessarily lead to lower profitability for approved insurance providers. Some of the expert reviewers predicted that the industry would become financially healthier under an expanded the premium reduction plan because of increased efficiencies. In addition, as stated above, the interim rule contains provisions that allow RMA to determine the financial condition of an approved insurance provider before approving a premium discount.

*Comment:* An interested party and agent commented that a premium reduction plan will allow new, unproven approved insurance providers to enter a marketplace where they may not belong. This could result in more approved insurance providers going broke and farmers being left with



unpaid claims for extended periods of time. This could in turn cause many farmers to go broke. A commenter stated that sometimes the purchase of "cheap" insurance results in the failure of the products to perform at the time of claims.

*Response:* To qualify to participate in the premium reduction plan, an approved insurance provider must first be able to meet all requirements under the SRA, including financial health and solvency standards. Thus, a new approved insurance provider entering the program wanting to participate in the premium reduction plan would be no more likely to fail than an existing approved insurance provider electing not to participate in the premium reduction plan. In addition, under the alternative proposal adopted, RMA can now re-evaluate the financial strength of the approved insurance provider before approving a premium discount based on the actual financial condition of the approved insurance provider.

Further, the commenter's fear about the delay of the payment of claims is unfounded. As RMA demonstrated through American Growers, it has the commitment and ability to ensure that farmer's claims are paid timely.

### iii. Agents

*Comment:* Several agents commented that if approved insurance providers create their efficiency by slashing agent commissions, agents may be forced to shift business to other approved insurance providers for economic reasons.

*Response:* If an approved insurance provider cuts commission too deeply, its agents may elect to shift their business to another approved insurance provider. However, since approved insurance providers have an incentive to keep their business, this is an issue between the agent and approved insurance provider. The contract between an agent and an approved insurance provider is freely determined in a competitive market and RMA would agree that the premium reduction plan may result in a reassessment by approved insurance providers and agents of the terms of those agreements.

*Comment:* Many agents, farmers and other interested parties commented that the proposed rules will create super agencies and consolidate the bulk of crop insurance business with a couple of approved insurance providers who are not familiar with the farmer's operation. Commenters stated that the industry can ill afford to become smaller. The premium reduction plan will help the large agent eliminate the small agent because of the reduced

commissions. Commenters state that lower commission will mean higher volume will be necessary to survive. A commenter stated the premium reduction plan would lower the participation in the program and return farmers to depending on disaster programs as in years past. Another commenter stated that the crop insurance program has succeeded over the years with the basic idea of a large number of agents and approved insurance providers selling crop insurance policies and the premium reduction plan will end this. The result would be fewer choices of approved insurance providers for insureds. A commenter stated that the larger the agent, the lower the service. A commenter stated that the premium reduction plan favors large agencies and approved insurance providers who will not provide the personal service of existing community agents.

*Response:* Most of the expert reviewers commissioned by RMA predicted that, if participation in the premium reduction plan is increased, the agent workforce would consolidate with higher average numbers of policies per agent and less personal contact between agent and policyholder, views that are consistent with the commenters. However, this is unlikely to happen to a degree that it harms the program because, as stated above, if service is reduced to the point that it no longer complies with the requirements of the SRA, approved insurance providers would risk their ability to participate in the crop insurance program.

The commenters assume that availability of the premium reduction plan will automatically result in farmers leaving their agents to go with those that participate in the premium reduction plan. However, the competition between the large and small agents currently exists as a result of economies of scale and levels of service. Further, commenters state that small agents stay in business because of the superior service they provide. As other commenters have pointed out, some farmers will still value the service from their existing agent more than the premium discount that may be available through another agent. This superior service should still permit small agents to compete. In addition, because the premium discount is no longer guaranteed, the switching of agents will likely be mitigated because some farmers will likely choose to remain with an agent that knows their operation and risk management needs rather than move to a new agent that is not familiar with the operation on the chance there

may be a premium discount at some point in the future.

It is possible that reduced commissions will require an increase in the amount of business for the agent to remain financially viable. However, as stated above, there will be a balance between any reduction in commission and the point at which the agent elects to take its business to another approved insurance provider. Both the agent and the approved insurance provider have an incentive to retain the book so this will be another opportunity for market forces to control. Further, approved insurance providers are not going to risk reducing commissions to the point that agents can no longer comply with the service requirements in the SRA.

The commenters fail to explain why the premium discount will result in lower participation in the program and reliance on ad hoc disaster programs. Most of the experts agree that there is likely to be a modest increase in participation and increased buy up at higher coverage levels, not a decrease. Further, the ability of a farmer to receive an additional benefit is not likely to result in the farmer abandoning the program providing the benefit. Even if agents do consolidate, farmers must still receive the level of service required by the SRA.

*Comment:* Many agents, farmers, approved insurance providers and other interested parties commented that widespread cuts in agent commissions under these plans would likely force many independent agents to stop delivering crop insurance. Commenters state that commissions will not be enough to cover the time and expense to properly deliver federal crop insurance, which involves more E&O exposure. Commenters stated that the agent's time can be spent more effectively in other areas of insurance with a lot less responsibility. Some commenters state agents will not be able to continue their excellent service to the customer and more farmers will fall through the cracks or result in poor risk management decisions being made by the farmer. A commenter wonders whether there will be enough agents left to service the business. Commenters state that farmers will suffer the biggest loss in experience and quality. A commenter stated that the statement that agents receive 70% of the A&O subsidy in the program is flawed. A commenter stated the unemployment rate will go up and asks what has been accomplished. A commenter stated that without agents, it would be a nightmare for approved insurance providers to obtain the necessary information from farmers.

*Response:* It would not be in an approved insurance provider's interest to seek large commission reductions from agents if such an action would deplete its agent force to a level where it could not properly service policyholders under the SRA because that would mean that the approved insurance providers' eligibility to participate in the premium reduction plan and operate under the SRA could be withdrawn. Thus, it would be in an approved insurance provider's interest to implement only those cost efficiencies that would avoid the situation where agents could no longer stay in business or elect to shift their efforts to other lines of business that are more attractive. Further, it is not in the best interest of approved insurance providers for their agents to have more E&O exposure or farmers to make poor risk management choices because of poor service from the inexperienced and poor quality agents that remain. Both situations would negatively impact the ability of the approved insurance provider to reduce costs and the profitability of the approved insurance provider.

While the commenter may question the statement that agents receive 70 percent of A&O subsidy, approved insurance providers prepare detailed Expense Exhibits each year in their Plan of Operations to qualify to participate in the delivery of crop insurance for the next reinsurance year. Although the figures vary by approved insurance provider, total compensation to agents approximates 70 percent of total expenses.

RMA would agree that agents play a vital role in the delivery of Federal crop insurance to farmers and that it cannot operate without them. However, market forces discussed above, and revisions to the proposed rule to require premium discounts be based on actual cost savings and allowing approved insurance providers to select states in which to participate in the premium reduction plan should mitigate the commenter's claimed adverse impacts.

*Comment:* Many agents, farmers, approved insurance providers and other interested parties commented that they disagree with the reviewers' observations about agent compensation, profit levels, and displacement of agents by a reduction in compensation because they are made without any viable proven facts and should be disregarded. A commenter stated that when the numbers of agents decrease, the amount of business for approved insurance providers will also decrease.

*Response:* RMA cannot address issues that the commenters might have with

the opinions of the expert reviewers commissioned by RMA to examine the premium reduction plan and RMA procedures because the commenters have not provided specific information that would refute any of the observations, conclusions, or analyses of the reviewers. The expert reviews were helpful in the development of a proposed rule and RMA has taken into consideration the comments regarding such expert reviews in drafting its interim rule. However, even if such expert reviews are disregarded, it does not change RMA's obligation to operate the premium reduction plan in accordance with section 508(e)(3) of the Act. As stated above, RMA has attempted to draft a rule that will mitigate the concerns of the commenters regarding the potential adverse impact on agents and allow all agents to continue to participate in the crop insurance program.

*Comment:* Many agents and interested parties commented that removal of large farmers from its book of business would force agents out of the crop insurance business. Commenters state that already a large portion of the policies they service generate the commission do not cover expenses. A commenter stated that to retain its largest accounts, the agency would be forced to offer them a discount, one which it could not afford to pass on to its smaller farmers who are already serviced at a loss. A commenter states it may have to drop them as customers all together, a thought which it cannot even consider from a legal and ethical perspective.

*Response:* RMA recognizes that, because servicing a policy by an agent entails a relatively large fixed cost, certain small policies must currently be serviced at a loss to the agent and the approved insurance provider. RMA also agrees that the larger policies tend to subsidize these small policies. This condition is not the result of the premium reduction plan. However, the commenters indicate that the condition that small policies are serviced at a loss might worsen if participating under the premium reduction plan were increased, presumably because the agent's commission would be reduced under the premium reduction plan. While this is certainly possible, as stated above, it is unlikely that any approved insurance provider would cut commissions to the extent that agents could not cover their costs for the book of business. Even with the premium reduction plan, approved insurance providers still have an incentive to retain their agents and ensure that policyholders are receiving the level of service required by the SRA. In

addition, if the agent's client base increased as a result of attracting clients seeking premium discounts, the agent might actually gain in dollar terms.

However, the commenters are incorrect that they will only be able to offer premium discounts to their large farmers. Further, agents cannot drop existing policyholders or not offer insurance to new applicants without violating the SRA and subjecting the approved insurance provider to sanctions. If the approved insurance provider and agent participate in the premium reduction plan in a state, and the approved insurance provider is approved to pay a premium discount, all policyholders insured with the approved insurance provider in the state must receive the premium discount. One assumes that these factors will probably be taken into consideration when the approved insurance provider determines where to cut expenses, including any reductions in compensation.

*Comment:* Several agents and interested parties claim that with fewer agents the service the farmers deserve would be dramatically reduced and it would have a negative impact on the economy of rural communities, including loss of employers, taxes, donations, etc.

*Response:* As stated more fully above, approved insurance providers are required to comply with all requirements of the SRA regarding the servicing of policies. Failure to comply with these requirements could lead to sanctions under the SRA. Therefore, even in the number of agents does become reduced, which as stated above is not as likely under the revisions made to the proposed rule, approved insurance providers are still required to ensure that policyholders receive the required service. With respect to a negative impact on rural economies, RMA is not sure why this would occur since farmers would be receiving an economic benefit and, as discussed above, revisions have been made to the rule to mitigate the adverse impacts on agents.

*Comment:* Many agents and interested parties commented that reductions in agent commissions should come from other efficiencies associated with the premium reduction plan delivery, NOT from approved insurance providers applying to participate in the premium reduction plan.

*Response:* The proposed rule has been revised to allow greater flexibility in attaining cost savings. Further, the rule specifically states that not all savings can come from a reduction in agent commissions. If and how much agent

commissions are reduced is a matter between the approved insurance provider and agent. However, as discussed above, approved insurance providers have the incentive to retain agents, which means ensuring that they make sufficient income to cover the expenses in servicing their book of business. RMA has determined that approved insurance providers should be allowed to consider a full range of potential cost efficiencies to participate in the premium reduction plan, as long as the implementation of those cost efficiencies does not cause service to fall below SRA standards.

*Comment:* Several agents commented that the premium reduction plan would affect the agent's ability to even continue living in small towns and would at the very least force the agent to find a job in the bigger towns and take the agent away from being an active member of the community. With a smaller income would come less ability to give to the local charities/churches/schools and less expendable income for the local businesses, hurting many other businesses along down the line.

*Response:* Nothing in the interim rule limits agents' free market decisions as to where to establish or maintain their businesses. RMA acknowledges that the commenters are likely assuming that the premium reduction plan will lead to a reduction in agents' commissions and will force some agents to abandon small rural communities. The expert reviews commissioned by RMA indicate that some commission reductions and consolidation may happen. However, none of the reviews identified commission reductions or consolidation as producing a significant negative impact on rural economies.

Nevertheless, the interim rule includes provisions, such as the four percent limit on premium discounts and the requirement that not all efficiencies can be achieved through reductions in compensation, which would ensure that the crop insurance delivery system, including approved insurance providers and their affiliated agents, is not destabilized if the premium reduction plan were to expand dramatically. Further, as discussed above, market forces will generally dictate any reduction in agent commissions because approved insurance providers have the incentive to retain their agents and too large a reduction in agent compensation would likely result in agents leaving crop insurance, which could prevent the approved insurance provider from adequately serving farmers, or agents moving to other approved insurance providers and taking their books of business with them. Approved

insurance providers would want to avoid either outcome because it could result in the reduced potential for underwriting gains or potential sanctions under the SRA.

*Comment:* Many agents and interested parties commented that the premium reduction plan is funded 100% on the backs of agent's commission, the very group that is the most critical to crop insurance being delivered. Commenters stated that the agent's income would be severely reduced even when expenses are increasing. Commenters state that the premium reduction plan approved insurance provider contributes nothing to the farmer or to any of the discounted premium and they are not in the communities dealing with the farmers on a day-to-day basis as current agents do. They state they cannot take another reduction in income because the discount will be passed on to the agent, who still has bills to pay and families to support. Commenters state that the premium reduction plan will make crop insurance unprofitable.

*Response:* Nothing in section 508(e)(3) of the Act or the interim rule specifies where approved insurance providers can look to find cost efficiencies, including agents' commissions. RMA would agree generally with the commenters that agents play a vital role in the delivery of Federal crop insurance to farmers and that the program cannot operate without competent and professional agents to service the risk management needs of the farmer. Market forces and limitations in the interim rule ensure that it would not be in an approved insurance provider's interest to seek large commission reductions from agents if such an action would deplete its agent force to a level that would endanger, or otherwise lose its capacity to properly service policyholders under the SRA. However, as stated above, the interim rule also contains provisions that should mitigate adverse impacts on agents. Now approved insurance providers can select the states in which it wants to participate in the premium reduction plan.

With respect to the comment that the premium reduction plan will make crop insurance unprofitable, RMA disagrees. The choice of an approved insurance provider to qualify for and offer a premium discount is strictly voluntary. An approved insurance provider will not choose to offer premium discounts if it is unprofitable to do so. Moreover, the most profitable aspect of the crop insurance business, underwriting gains, is not directly impacted by the premium reduction plan. In addition, approved insurance providers can now select the

states in which they will pay premium discounts and the amounts. Further, RMA will have the opportunity to determine the financial condition of the approved insurance provider before any premium discount is approved. Many of the expert reviewers commissioned by RMA to study the premium reduction plan issues concluded that the crop insurance industry would become financially healthier with price competition.

*Comment:* A few agents and interested parties commented that the premium reduction plan will severely affect insurance agents that concentrate and specialize in crop insurance only.

*Response:* Only one of the expert reviewers commissioned by RMA to study the premium reduction plan addressed the issue of the impact on agents that specialized. That reviewer concluded that the premium reduction plan would impact such agents positively, with more of the existing book of business shifting to them from part time agents. Moreover, the reviewer predicted that this trend would lead to less fraud and better service to farmers because the agent workforce would become increasingly more knowledgeable and professional through specialization.

Notwithstanding the expert reviewer's opinion, the changes to the premium reduction plan previously discussed should mitigate any adverse effect on all agents, including those that specialize in crop insurance. Further, as discussed above, approved insurance providers have an incentive to avoid imposing hardships on their agents because approved insurance providers may be left without agents to service the business in areas, lose business to other approved insurance providers as agents move their book of business, or face the possibility of reductions in services to farmers, which can result in sanctions under the interim rule and SRA.

*Comment:* Many agents and interested parties commented that RMA's core assumption that "efficiencies" automatically result from lowering agent compensation is only true if agents are making excessive profits. The commenters state this assumption is based on no empirical evidence or expert testimony. A commenter stated that people only spend extra time working and servicing programs when rewarded monetarily and that agents must receive fair compensation for their services. The commenter stated that crop insurance is in rural areas of America, and to meet the rising costs of travel, communication, and education in rural areas agents and approved

insurance providers need to be reimbursed fairly.

*Response:* Nowhere in the proposed rule did RMA assume cost efficiencies claimed by an approved insurance provider must automatically result from lower commissions. Further, nowhere in the proposed rule did RMA make the claim or imply that agents are receiving excess profits. Approved insurance providers are free to assess their business structure to determine where it can achieve savings. Further, the contract between an approved insurance provider and an agent is determined in a competitive market, which will not change under the premium reduction plan. As stated above, approved insurance providers have the incentive to retain agents and, therefore, would have to be judicious in their evaluation of whether to cut agents commissions and the amount of such cuts to avoid losing business, suffer a reduction in service below SRA required levels, etc.

RMA agrees that agents deserve fair compensation. However, whether under the existing crop insurance program or the premium reduction plan, it is the market that determines what is fair. Nothing in the interim rule would change this.

*Comment:* An agent commented that there should be clear documentation and rationalization how agent costs will be reduced before any premium reduction plan depending on a reduction in agent compensation be considered.

*Response:* The interim rule requires that an approved insurance provider certify that any cost efficiencies considered for a premium discount, including reductions in agent commissions, will not result in a reduction in service below the requirements in the SRA and approved procedures. Further, now that premium discounts are paid after all costs saving measures have been implemented and the impact of such measures are known, RMA may determine whether there has been any violation of the interim rule, SRA or approved procedures and take the appropriate action before any premium discount is approved or paid.

*Comment:* Many agents and interested parties commented that crop insurance is the largest E & O exposure they have. A commenter stated that there will be a lot more E & O claims and that already is an issue with E & O companies that either do not want to write crop insurance agents or have placed high deductibles on their policies for crop insurance claims. The commenter asked if the government is going to get into the E & O business.

*Response:* The commenters' assume that E&O exposure will increase but the commenters do not explain why they believe that it will. The commenters apparently assume that reductions in commissions would result in reductions in service, leaving agents more exposed to E&O claims. Under the interim rule, as stated above, approved insurance providers wanting to offer the premium discount will be required to maintain the same service standards as required by the SRA. This is the same standard under which E&O would be based for the premium reduction plan. Approved insurance providers would not have an incentive to implement cost efficiencies if the cost savings resulting from such actions were to result in increased litigative exposure, thereby increasing costs. Further, as stated above, approved insurance providers would not have an incentive to cut commissions so low that agents, who are needed to service their business, would have no choice but to reduce service, move their book of business, or leave the crop insurance business.

*Comment:* Many agents and interested parties commented that multi-peril insurance is also the most labor intensive and time-consuming line of business that insurance agents write and with the lowering of commissions it would make it more difficult to continue writing this line of business at a profitable level. A commenter states that agents do considerable work to make sure the farmer is adequately covered. A commenter states that their expense ratio with crop insurance is higher. A commenter stated that the approved insurance providers have already transferred a majority of the paperwork and administration onto the agents to reduce their expenses so the premium reduction plan will compound the problem. A commenter also stated that with the premium reduction plan lingering in the background, it cannot make long-term business plans because of the uncertainty of projected income. A commenter stated that crop insurance is very complicated and it takes an enormous amount of education to be able to deliver the products to farmers that best meets their needs.

*Response:* RMA agrees that the delivery of crop insurance is labor intensive and requires substantial paperwork, that agents play a vital role in the delivery of Federal crop insurance to farmers, that substantial education is required to ensure that a farmer's risk management needs are met, that the program cannot operate without competent and professional agents that can service policyholders, and that the ratio of expenses to

premiums may be higher with crop insurance than other lines of insurance.

With respect to the comment that the premium reduction plan would "compound the problem," the context of the comment would suggest that the commenter assumes that a premium discount would add to the paperwork or administrative costs incurred by the agent. RMA disagrees with this assumption. Although an agent would need to be aware of new market conduct rules added to the interim rule regarding how a premium discount could be represented verbally and through marketing materials, nothing in the interim rule would require additional paperwork by an agent that represents an approved insurance provider authorized to offer a premium discount. Further, these new market conduct rules were necessary to ensure that farmers are not misled into thinking that they will receive premium discount or the amount of any such discount. Under the alternative proposal adopted, approved insurance providers and agents will not know at the time of sales whether a premium discount will be approved.

To the extent that commenters are assuming that agent commissions will be reduced to the point that selling crop insurance is no longer profitable, as stated above, it would not be in the best interests of approved insurance providers to make such reductions. As stated above, approved insurance providers have the incentive to retain agents and their books of business to maximize their potential for gains and ensure that their policyholders are served in accordance with RMA's requirements.

With respect to uncertainty created in the marketplace from a potential expansion of the premium reduction plan, RMA would agree that price competition would add another factor an agent or approved insurance provider would need to consider in business planning. The whole premise of price competition is to be able to provide the same product or service for less money.

However, most businesses in the U.S. economy must consider price uncertainty in the normal course of business planning. Further, as other commenters have suggested, price is not the only benefit that stirs competition. Commenters state, and RMA agrees that there will be some farmers who value the service provided by their agents more than the premium discount they may be receive at a future date. This is what occurs with personal lines insurance that currently allows rate competition and there is no reason to believe it would any different with crop insurance.

*Comment:* Many agents and interested parties commented that agents receive fair compensation for their services and earn the commissions they receive. Commenters stated that they do not understand how RMA could believe that agents make too much commission. Commenters stated they would not be interested in servicing crop insurance for less than the current commission. A commenter stated it was not fair to expect agents to reduce profits when the profit margin is so small.

*Response:* RMA did not take a position in the proposed rule with respect to the fairness or possible excessiveness of the current level of agents' commissions. RMA assumes that it is solely between the approved insurance provider and agent to determine what is fair compensation and that this would continue under the premium reduction plan. Further, in those states where commissions cannot be cut without jeopardizing the agent force, under the interim rule, approved insurance providers now can elect not to offer premium discounts in such states. As stated above, the amount of commission is between the agent and approved insurance provider and approved insurance providers have an incentive to retain their agents and ensure that service to policyholders meet the standards required by the SRA and approved procedures.

*Comment:* Many agents and interested parties commented that FCIC inaccurately estimates the percentage of administrative expenses attributable to agent compensation. The commenter stated that there is no empirical evidence in the rulemaking record to show that agent compensation is excessive and, worse, there is no evidence to show what the effect of a cut in compensation would be on the agent workforce or level of service. Without such empirical record evidence, FCIC and RMA cannot rationally conclude that a reduction in compensation would yield "efficiency" within the meaning of the Act.

*Response:* With respect to the comment that FCIC inaccurately estimates the percentage of administrative expenses attributable to agent compensation, the commenter does not explain why the estimate is inaccurate. Approved insurance providers prepare detailed expense reports each year in their Plans of Operation to qualify for participation under the SRA for the next reinsurance year. Although the figures vary by approved insurance provider and year, total compensation to agents for the industry, based on information reported by approved insurance providers,

approximates 70 percent of total delivery expenses.

The comment suggesting that RMA has not conducted a study to show the effects of a reduction of agents' commissions on service assumes that the purpose of the rule is to attain efficiencies through the reduction in commissions. According to section 508(e)(3) of the Act, an efficiency occurs when the approved insurance provider's delivery costs are less than the A&O subsidy it receives. The approved insurance provider can attain this efficiency in any manner that best suits its business structure. A study is not necessary because, as stated above, approved insurance providers will not reduce commissions to the point that they can no longer provide the required level of service. Further, as stated above, approved insurance providers have the incentive to retain agents. Therefore, it would be unlikely they would cut commissions to the point that agents would move their books of business to other approved insurance providers. As has always occurred in the program, the market determines fair compensation. Finally, since the premium discount will be paid at the end of the process and is not guaranteed, approved insurance providers will be able to ensure that discounts actually paid will not be so large as to jeopardize the providers' financial position or its relationship with its agents.

*Comment:* Many agents and interested parties commented that the premium reduction plan will hurt the small town agencies that will not be able to handle the reduction and they will be forced out of servicing crop insurance. Commenters stated that this will leave areas without service and will pave the way for more errors, and, consequently more fraud, waste and abuse. Commenters state that these are the agents who are serving the small family farms. Commenters also claim it will be impossible to maintain the level of service the insureds currently experience. Commenters state this will harm rural communities.

*Response:* The interim rule does not limit agents' free market decisions as to where to establish or maintain their businesses. The expert reviews commissioned by RMA indicate that commission reductions and consolidation are likely. However, none of the reviews identified commission reductions or consolidation as producing a significant negative impact on rural economies. And, contrary to the predictions of the commenters, one reviewer suggested that such consolidation would result in agents that would provide better service.

With respect to the comment that, under the premium reduction plan, it will be impossible to maintain the level of service that policyholders expect, the interim rule requires that any approved insurance provider maintain the level of service required by the SRA and approved procedures. RMA admits that these required standards may be below the level of service provided by some agents. However, RMA cannot require that a higher level of service be maintained than is currently required by the SRA and approved procedures. It can only enforce requirements of the SRA and approved procedures. Further, as commenters have stated, this higher level of service that may be provided by some agents is a source of competition and that some farmers value this high level of service over any premium discount they may receive at some future date.

Lastly, neither RMA nor the approved insurance providers wants to harm the economy of any rural community. Such a consequence would defeat the purpose of crop insurance, which is to stabilize the economies of rural communities. As a result, RMA has added provisions to the interim rule that allow approved insurance providers to select the states in which they will participate in the premium reduction plan. Further, approved insurance providers have an incentive to ensure that their actions do not adversely impact rural communities because such action would only result in fewer customers, which would adversely affect their business.

*Comment:* Several agents commented that the premium reduction plan could result in crop insurance being delivered by FSA and asked if that was the purpose of the premium reduction plan. A commenter stated that RMA tried to use FSA to deliver the program before and they couldn't do it.

*Response:* The commenters assume that there will be insufficient agents left to deliver the crop insurance program so that RMA will have to deliver the program through FSA. However, as stated above, RMA does not believe that agents will be impacted to the extent that they will exodus the crop insurance program. This conclusion was supported by one of the expert reviewers that studied the impact on premium discounts on agents. As stated above, it would not be in the best interest of approved insurance providers to cut commissions so much that this would occur. The more likely outcome is that agents and approved insurance providers will negotiate a commission that is fair to both parties and if any savings are achieved, they can be used to pay a premium discount. However, it

is the market that will determine what reductions, if any, will be made.

*Comment:* An agent asked what RMA will do to protect the smaller agents.

*Response:* RMA is concerned with any possible negative effects that the premium reduction plan might have on the crop insurance delivery system. Certain provisions of the interim rule, such as the four percent premium discount maximum and the requirement that not all efficiencies can come from reduced compensation, seek to ensure that any changes resulting from expanded price competition are not so excessive that the industry or RMA cannot adjust quickly enough. With respect to protection for smaller agents, the fact that an approved insurance provider must still meet the standard of service required by the SRA and approved procedures for all farmers or risk sanctions under the SRA would tend to protect all agents, including smaller ones. For instance, if a smaller agent is providing the required service to his or her policyholders at an efficient cost, then an approved insurance provider could not reduce that agent's commissions without the risk of losing that agent, along with that agent's policyholders, to another approved insurance provider.

*Comment:* An agent commented that the savings to the insured do not appear to be that significant but the loss to the agent adds up to several dollars.

*Response:* If the commenter is correct and that the policyholder does not perceive much benefit from the premium discount relative to the impact of a commission reduction to the agent, then a free, competitive market would suggest that the policyholder would not be attracted to a premium discount and the policyholder's agent could affiliate with an approved insurance provider that does not offer premium discounts without the risk of losing customers. Nothing in the interim rule would prevent such free market choices by agents or policyholders.

*Comment:* An agent commented that the commissions for other types of property and casualty insurance are very similar to the commission levels for crop insurance.

*Response:* RMA has no direct information to be able to respond to this commenter's assessment. Moreover, if such rates are consistent with a long-term equilibrium, then approved insurance providers would not be able to reduce commissions to achieve efficiencies. Commission reductions can only be attained if both the agent and the approved insurance provider agree to such reductions and, as stated above, the agent always has the recourse of

moving its book of business to another approved insurance provider if there is no agreement on a fair commission.

*Comment:* An agent commented that if farmers thought agents were making too much money and wanted to reduce their salaries and spread the wealth, it would require them and RMA employees to take on other work to make up for the lost income. The commenter also suggested it was unlikely the savings would be passed to the farmer and more likely the savings would remain with the approved insurance provider.

*Response:* Neither in the proposed rule nor in this interim rule has RMA suggested that agent commissions are too high. It is not RMA's position that agent commissions are too high or too low. RMA is not responsible for the regulation of agent commissions. The approved insurance provider and agent are the only parties that can determine what is a fair commission. With respect to whether savings would be passed to the farmer, the interim rule does not require that any savings attained by the approved insurance provider be passed on to the farmer. The market forces will determine whether premium discounts are paid. However, approved insurance providers have an incentive to pay premium discounts because their advertising is limited to past amounts that were paid and the year they were paid. Many farmers are not likely to change approved insurance providers or agents to sign on with an approved insurance provider that does not pay premium discounts.

*Comment:* Several agents commented that they have already been adversely affected by the premium reduction plan because they've lost customers and that it would have an impact on their state.

*Response:* RMA acknowledges that under the current premium reduction plan, where the premium discount was guaranteed up front in a fixed amount, there was a strong incentive for policyholders to shift approved insurance providers and agents. This behavior may continue under the interim rule but changes to the premium reduction plan will allow for a longer term transition and make it less likely. First, the premium discount can no longer be guaranteed or an amount promised at the time of sale. Second, farmers that are satisfied with the service they receive from their current agent are less likely to switch to other agents, even if there is a chance that a premium discount may be paid at some point in the future.

*Comment:* An interested party commented that there are many small and mid-sized agents selling and

servicing crop insurance who are very efficient, as well as the larger agents. The commenter states that to make the assumption that these agents will become more efficient simply by reducing agent compensation is simply not correct.

*Response:* The commenter incorrectly assumes that the purpose of the premium reduction plan is to reduce agent commissions and this is not correct. The purpose of the premium reduction plan is to implement the intent of Congress to permit approved insurance providers to compete on price by evaluating their own business operations to determine whether they can deliver the program more efficiently. It must be remembered that participation in the premium reduction plan is entirely voluntary and it is the approved insurance providers that determine where they can cut costs and they cannot cut agent commissions without the consent of the agents. If agents are already efficient and there is no room for negotiation of lower commissions, it is presumed that the approved insurance provider will look to other avenues to attain savings.

Further, under the interim rule, approved insurance providers no longer have to report how and from where savings are to be attained. Since premium discounts are paid on actual savings, not projected, RMA will simply be reviewing the actual costs reported to determine whether there has been savings and the amount of premium discount that can be paid in each state in accordance with a formula, which will be provided in procedures, that looks at the approved insurance provider's entire crop insurance operation.

*Comment:* Several agents and interested parties commented that for a large percentage of policies, the expenses exceed the amount of commission earned and for many others the agent barely breaks even. A commenter states the part of the book that is earning a profit must subsidize the rest of the policies. A commenter stated that it actually loses money providing insurance for some small farmers.

*Response:* RMA acknowledges that, because servicing a policy by an agent entails a relatively large fixed cost, certain small policies currently may have to be serviced at a loss to the agent and the approved insurance provider and that larger accounts tend to subsidize these small accounts. This is a condition that exists notwithstanding whether there is a premium reduction plan in existence. Further, when RMA determines whether there is an

efficiency, it is looking at the book of business and the determination of the amount of premium discount is done on a state basis. Approved insurance providers determine how any savings are attained and, if reductions in agent commissions may be a tool, it can decide what commissions are cut. There is nothing in the interim rule that would preclude an approved insurance provider from only cutting the commissions of policies with premiums that exceed a certain threshold and leaving the medium and small policies untouched. As RMA has stated above, the determination of what constitutes a fair commission is a matter between the agent and the approved insurance provider.

*Commenter:* Several agents and interested parties commented that each year it has to battle retaining the bigger accounts because of outfits like the local Farm Credit Service, which have enticed some insured's away by offering operating loans at ½% less interest if they also carry the client's crop insurance coverage. A commenter states that banks and lending institutions should not be able to force farmers to insure with them as a condition of getting loans.

*Response:* The commenter is referring to an issue that is not directly related to the proposed rule. However, the conduct complained of may constitute an impermissible rebate. Only cooperatives and trade associations that sell crop insurance approved by RMA may take all or a portion of the A&O subsidy they receive and pay a portion of their policyholders' administrative fees or premium. However, there is no authority for any bank or lending institution to offer a reduced loan rate conditioned upon the purchase of insurance. If the commenter has specific information, it should report it to RMA.

*Comment:* Several interested parties and agents commented that reduced agent compensation could increase instances of novice agents, such as agribusiness firms that sell seeds and equipment, easily entering the business of crop insurance in some states. The commenter stated that these firms have sources of profit other than agent commissions and could thereby help approved insurance providers offer crop insurance for lower premiums by servicing policies for less compensation than the current agent workforce. However, these firms lack the experience and skill of agents in the current delivery system and have incentives to bundle lower premiums with other goods and services. Commenter states that this could result in practices such as illegal rebating and

tying arrangements. A commenter suggests that these entities could harm existing agents and that RMA should require that businesses derive at least 80–90% of their income from insurance to market crop insurance.

*Response:* As stated above, all approved insurance providers and agents must comply with the same requirements of the SRA and approved procedures regarding service. Further, approved insurance providers and agents must comply with state licensing requirements for agents. If all of these requirements are met, RMA cannot preclude any agent from participating in the program, regardless of what other business it may be affiliated with. Further, farmers will determine if they are happy with the level of service they receive. As commenters have stated, farmers may be more interested in the level of service they receive than the possibility of receiving a premium discount. Therefore, no change is made as a result of this comment.

With respect to the potential for conditioning the sale of crop insurance on whether a farmer purchases other products, such practice is prohibited under the SRA and if RMA determines that such practices are taking place, there are sanctions available under the SRA and, if such actions occur under the premium reduction plan, RMA has added sanctions to the interim rule that would allow it to withdraw eligibility for the opportunity to offer a premium discount, withdraw approval of all or a portion of the payment of a premium discount, effectively disqualify an approved insurance provider or agent from participating in the premium reduction plan, or taking remedial measures to correct the problem. The threat of an agent's farmers not receiving a premium discount even though farmers with other agents of the approved insurance provider receive the premium discount or of ineligibility to participate in the premium reduction plan should pose a substantial deterrent to, or sanction for, any such prohibited activity. If these remedies are insufficient, RMA can take action under the SRA. If anyone knows of such conduct, they should be reporting it to RMA.

With respect to the suggestion of requiring that some minimum percentage of an agent's revenues come from insurance to qualify as a crop insurance agent, such a qualification would likely be extremely burdensome on agents, approved insurance providers, and RMA and would not necessarily ensure that an agent that met such a requirement would be better qualified to serve crop insurance

policyholders as one who failed to meet such requirement. Further, many agents today derive only a portion of their income from selling crop insurance. Therefore, RMA does not think such a requirement would be in the best interests of farmers or the delivery system.

*Comment:* Several agents and interested parties commented that as income is drastically reduced, staff would have to be let go even though the workload is the same or has greatly increased. A commenter stated that, due to drought, changes in the program, and added paperwork, it takes a great deal more time to service the needs of farmers. A commenter states this additional work would cut into the time spent with farmers. A commenter stated it may have to find other sources of income. Commenters state that farmers will suffer.

*Response:* RMA does not agree with the commenters' initial assumption that the premium reduction plan will be the catalyst for such a chain of events. As stated above, commissions will only decrease in an amount the market can bear. Further, approved insurance providers have incentives not to financially stress agents to the point that they must let staff go and find other sources of income. Approved insurance providers do not want to risk that their agents would be unable to service their policyholders in accordance with the requirements in the SRA and approved procedures.

*Comment:* An agent commented that the premium reduction plan will increase regulation in the crop insurance industry and the delivery of the crop insurance program, thus negatively impacting farmers.

*Response:* RMA disagrees with the commenter's assessment on several grounds. First, participation in the premium reduction plan is voluntary and only those approved insurance providers that wish to participate will need to subject themselves to the added requirements of the interim rule. Second, the requirements in the interim rule have been drastically reduced from those in the current program or the proposed rule. These changes should substantially reduce the administrative burdens on approved insurance providers and RMA to carry out this regulation. Specifically, RMA has removed the requirements that approved insurance providers state how they will attain the efficiencies, estimate the amount of such efficiency, provide documentation to support such estimates, and determine the amount of the premium discount because these requirements are no longer necessary

now that premium discounts will be paid based on the actual cost savings of the approved insurance provider. Now all approved insurance providers must provide is the name of the person responsible for implementing the premium reduction plan, the states in which the approved insurance provider is seeking the opportunity to offer a premium discount, a credible marketing plan to ensure that all farmers, including small, limited resource, women, and minority farmers have access to a premium discount, and a certification that service will not fall below that required by the SRA and approved procedures by any cost saving measures implemented by the approved insurance provider. The burden on the back end is also reduced because the determination of efficiencies and the amount of premium discounts will now be based on the Expense Exhibits provided with the Plan of Operations and a formula that RMA will provide in procedures. Further, many of the other requirements, such as no reduction in service, having the operational and financial capacity, etc., currently exist in the SRA and are only reiterated in the rule to remind participants of their obligations under the crop insurance program.

*Comment:* An interested party comments that the agent is the backbone of the growth and success of this program, and agents are receiving little compensation for the amount of work that they do on behalf of the farmers of America. The commenter states that as more and more regulations and penalties are being placed on the system, the need for qualified agents to deliver this product becomes a more necessary part of the plan.

*Response:* RMA agrees that agents play a vital role in the delivery of Federal crop insurance to farmers and that it cannot operate without them. RMA cannot pass judgment on the amount or fairness of the compensation the agents' receive to perform this service but the level of compensation is a result of a voluntary agreement between an approved insurance provider and the agent. If compensation were too little, then the agent would not choose to enter into the agreement and if too much, then approved insurance providers would choose not to.

RMA also agrees that with the growing complexity of the crop insurance program, and RMA's vigilance in ensuring that program requirements are complied with, there is a need for knowledgeable, qualified agents. However, RMA does not believe that this interim rule will negatively affect the knowledge or skill of agents.

Many of the requirements under this rule are the same requirements that exist under the SRA. Further, requiring that any premium discount be paid after cost savings have been realized will mitigate or eliminate any potential dramatic changes to the program.

*Comment:* Many agents and interested parties commented that commissions have been reduced drastically in the past few years and the premium reduction plan will further reduce commissions but not the workload. A commenter stated that costs are increasing. A commenter stated that agents are doing twice the work that they used to do in the past because of all the different products that have been introduced and also that they do most, if not all of the inputting of information that used to be completed at the approved insurance provider level. Commenters stated that agents are required to attend classes for updates to stay on top of the changes and accurately explain the coverage options to the farmer and agents have been very patient with the constant changes and additional requirement that have been placed upon them. A commenter stated agents also put on workshops and hire quality speakers to inform clients of the values of having MPCI insurance, and have the increased cost of software and computer updating.

*Response:* RMA admits that the crop insurance program has steadily grown more complex with more and varied policies available to farmers. RMA admits that agents must be trained each year to stay abreast of program changes and explain such changes to their policyholders. However, the sharing of the workload involved in the inputting of information is an issue between the agent and the approved insurance provider. RMA does not dictate who inputs this information.

Further, because commission rates are a private matter negotiated between agents and approved insurance providers, RMA cannot comment with respect to whether these commissions have been reduced drastically in recent years. However, RMA does know that in the last few years, premium volume has increased significantly as farmers purchase revenue policies and increased their coverage levels following the increase in premium subsidies in 2001. Since agent commissions are generally based on the percentage of premium, this means that although an agent's commission rate may have fallen through this period, any decline in commission rates may have been more than offset by the dramatic increase in average premium per policy. This is confirmed by expense statements

provided to RMA by approved insurance providers, which show both total commission dollars paid to agents and dollars commissions per policy rising sharply since 2000.

*Comment:* Several agents commented RMA should strongly simplify this program, and then and only then should they consider any reduction in premiums to the agents that are working hard to provide this coverage in a timely and efficient manner. A commenter stated that there would have been premium savings to farmers, but all at the expense of the agent. For example, CRC and RA could be combined, unit structures could be simplified, and the time between releasing of Revenue Assurance Base Prices and pricing factors and sales closing date could be expanded.

*Response:* RMA has been striving to simply the crop insurance program. However, it must do so while still maintaining program integrity. Therefore, some of the commenters suggestions are under consideration, such as the combination of CRC and RA. However, others depend on whether adopting such changes would introduce program vulnerabilities. Even without simplification, RMA would still be obligated to make available the premium reduction plan because it is based on whether approved insurance providers can operate the program for less than their A&O subsidy. If the costs are too high under the current program, then approved insurance providers would not be able to participate. However, the intent of section 508(e)(3) of the Act is to provide the approved insurance providers with the opportunity to enter into price competition.

With respect to the commenters' prediction that premium discounts to farmers will inevitably come at the expense of agents, nothing in the premium reduction plan requires this conclusion. Approved insurance providers have to assess their business operations to determine the most appropriate place for savings. Further, commission is freely negotiated between the agent and approved insurance provider. This means agents still have a voice because if they do not like the commission they are offered, they are free to move their book of business to other approved insurance providers. The market will determine what, if any, reductions in commissions there will be.

*Comment:* A few agents commented that if the workload were reduced, the premium reduction plan would be tolerated.



*Response:* The only workload required of agents by RMA are those contained in the SRA and approved procedures. RMA continually reviews these procedures to ensure that they are meaningful and necessary. As procedures no longer become necessary, they will be removed. However, RMA is unable to reduce the workload any further than that. Further, RMA is unable to change any workload that may be imposed on the agent by the approved insurance provider. That is negotiated between the agent and approved insurance provider.

Further, it is the agent's choice whether to write for approved insurance providers that are eligible for the opportunity to offer a premium discount. As commenters have stated, there are farmers that will value superior service over the potential for a premium discount and who will remain with the agent even if the agent elects not to participate in the premium reduction plan. As RMA has continually stated, the purpose of section 508(e)(3) of the Act was to create competition so the interim rule allows the market, to the maximum extent practicable, to dictate who will participate and who will not.

*Comment:* A few interested parties commented that every year there are more demands placed on the approved insurance providers for training, auditing and reviewing, verifying data certified by the insureds, etc. That means that every year the approved insurance providers' costs go up. The commenter asks how RMA can expect the approved insurance provider to act on all these added demands and THEN pay them less for it on a premium reduction plan.

*Response:* RMA does not require that an approved insurance provider participate in the premium reduction plan. Participation is strictly voluntary. Further, no approved insurance provider can pay a premium discount until the approved insurance provider can prove that its A&O costs are less than the A&O subsidy. Since premium discounts are now based on actual cost savings, to the extent that approved insurance providers are unable to sufficiently reduce costs, the only consequence under the premium reduction plan is that no premium discount will be paid. However, if the approved insurance provider can qualify to pay a premium discount, section 508(e)(3) of the Act obligates RMA to provide the opportunity.

*Comment:* Several agents and interested parties commented that the lack of agents, less agency office staff, and service centers will result in

mistakes made on crop policies and the whole crop insurance system will suffer, including lower or no indemnity payments. A commenter stated that the time that goes into learning all of the regulations is very high and if an agent does not take this time, the mistakes can be very costly. Another commenter stated that one reason the independent agencies are getting out of the business is the increased complexity of the program and the potential lawsuits that may be filed because of the penalties being applied for honest mistakes. A commenter stated that agents take the time to know their farmers operations.

*Response:* As stated above, the premium reduction plan is unlikely to result in reductions in staff if such reductions are likely to result in more mistakes. First, the litigation costs associated with such mistakes are likely to result in little if any savings upon which to pay a premium discount. Further, approved insurance providers have an incentive to ensure there is no reduction in service beyond that required in the SRA and approved procedures and the imposition of sanctions under the SRA would make it untenable to allow such a condition to exist.

Further, the commenter implies that the time an agent takes to know their policyholders' operations now might not happen under the premium reduction plan. However, under the interim rule, the payment of a premium discount is no longer guaranteed up front and the farmer will know whether the agent is providing the level of service he requires, which may exceed the level required by RMA, long before the farmer knows whether he will receive a premium discount. Therefore, agents have the incentive to ensure that their customers risk management needs are met because they risk losing a customer, even if they have complied with all required of RMA.

*Comment:* An interested party commented that in the event farmers are going to try to purchase this product on the web without the counsel of licensed agents, their only recourse in the event that an error is made is to sue RMA for damages. The commenter stated the farmer will make mistakes, they always do, and when they do they want someone to blame, RMA has placed the agent in the forefront of that with the SRA, and if RMA removes the agent, RMA is directly in the line of fire.

*Response:* RMA has not suggested and nothing in the interim rule or section 508(e)(3) of the Act suggests that the crop insurance agent should be removed from his or her role in helping America's farmers with their risk

management needs. Further, RMA has not suggested that farmers be required to use the internet to purchase crop insurance. Approved insurance providers are still required to ensure that their policyholders get the service mandated by the SRA and approved procedures. Further, even if approved insurance providers elect to offer crop insurance via the internet, certain functions are still required to be performed by licensed agents and the use of the internet does not abrogate this requirement.

RMA does anticipate that information technology will likely become increasingly important in all aspects of the delivery of crop insurance. To the extent that an approved insurance provider can harness that technology for cost efficiencies for delivery of crop insurance, RMA is obligated to consider such cost efficiencies in the context of qualifying for the payment of a premium discount.

*Comment:* An agent commented that since a farmer's premium fluctuates as high as 10–20% every year because the prices and rates of each crop change annually, the farmer would not even notice he was getting a discount.

*Response:* There are price and premium rate fluctuations and coverage choices by the farmer each year that affect premiums. However, this does not mean the farmer would not notice a premium discount, especially when, under the alternative proposal adopted in the interim rule, such premium discount is likely to be in the form of a specific payment in the future. But even assuming the commenter is correct, this provides another reason why the drastic changes that commenters claim will occur are less likely. RMA has attempted to craft a program that offers the possibility of a benefit to farmers while minimizing adverse effects to the program.

*Comment:* Several interested parties and agents commented that farmers will be forced to make their purchase without the expertise of a local, tenured, qualified agent and the end result will most likely be greater unpaid claims when the farmers suffer crop losses. Commenters also stated that reduction in the agent force will lead to many farmers being forced out of business due to inadequate coverage levels or crop insurance simply not being practicably available in their area. Commenters stated that as many farmers become less protected due to inadequate coverage in ensuing years, there will be greater support among farmers and their farm groups for disaster aid bailouts and less support for a strong national crop insurance program.

*Response:* Nothing in section 508(e)(3) of the Act or in the interim rule would force local crop insurance agents out of business, thereby causing farmers to make uninformed, poor decisions, suffer from a lack of claims servicing, or be deprived of adequate local crop insurance products. The commenter's are apparently extrapolating these conclusions from an expectation that the proposed rule will cause agents' commissions to be cut so deeply that local agents will abandon their businesses in significant numbers. As stated above, it will not be in an approved insurance provider's interest to devastate its own agent force, and the service that its agent force provides, just to be able to offer a premium discount. It is also not in the approved insurance provider's best interests to take any action that could result in its customers being driven out of business.

Approved insurance providers are also not likely to take any action that could result in an inability to service policies as required by the SRA and approved procedures. In addition, as stated above, the payment of any premium discount will occur long after the farmer's policy has been serviced and a claim paid. If the farmer is not satisfied with such service or loss adjustment, the farmer is likely to move on to another agent or approved insurance provider. Therefore, under the interim rule, approved insurance providers have added incentives to ensure the proper service of farmers, which includes a skilled, knowledgeable agent force. Under the premium reduction plan contained in the interim rule, there is no reason why the crop insurance program, approved insurance providers, agents, and farmers will not continue to thrive.

*Comment:* An agent commented that the premium reduction plan will reduce the availability of crop insurance to our rural farmers. The commenter claims that many elder landowners rely on the agent's expertise to enable them to properly choose coverage levels, meet RMA deadlines, and inform them of new products.

*Response:* There is no reason to assume that crop insurance will not be available to any farmer that wants it. As stated above, the interim rule now allows approved insurance providers to select states in which it wants to participate in the premium reduction plan to avoid situations where approved insurance providers may pull out of a state to avoid having to provide a premium discount in that state. Further, approved insurance providers have an incentive to maintain their customer base in order to realize potential gains

and would not take an action that would result in a lack of agents, reduction in service, or farmers seeking other approved insurance providers.

Further, RMA agrees with commenters that there are farmers who rely heavily on the agent. These are the farmers that are likely to value service over the potential for a premium discount and are likely to remain with their agent, even if the agent does not offer a premium discount. Therefore, all agents will be able to compete, either on service or with the potential for a premium discount and the market will determine how it will meet the greatest needs of farmers.

*Comment:* Many agents and interested parties commented that this plan is placing additional burdens and work on the farmers. Farmers have trouble enough getting their paperwork filed on time with an agent calling and explaining things to them. Commenters state that the average farmer does not understand their crop insurance policy as well as they should. Commenters state that with the premium reduction plan, farmers would be expected to understand and file their own crop insurance forms and complete the necessary requirements and very few would be able to do this as needed and required by the policy. They state that farmers would not be willing to attend meetings, updates, and review policy changes from year to year and with paperwork not being completed as necessary, many farmers could be left out in the cold come claim time. Commenters stated that farmers have come to rely on agents for assistance with reporting deadlines, screening information and quality control. A commenter stated that requiring farmers to do their own work could result in increased fraud, waste, and abuse. A commenter asked if farmers will be required to obtain E&O insurance.

*Response:* There is nothing in the proposed or interim rule that will increase burdens on farmers or require them to do their own work. Approved insurance providers have to evaluate their business operation to determine where it can attain savings while still maintaining its agent and customer base because the latter is where the approved insurance provider makes its profit. Approved insurance providers are also not going to take actions that will result in farmers not understanding their coverage, missing deadlines, etc. It is in the approved insurance provider's best interest to keep their customers satisfied or risk losing their customers to a competitor. Therefore it is unlikely that the tasks currently being performed by an agents would somehow, under the

premium reduction plan, be shifted to the farmer—tasks such as filing forms, attending update meetings, reviewing policy changes, ensuring that reporting deadlines are met, screening information, and maintaining control over the quality of insurance information.

Further, the SRA and approved procedures mandate certain services be provided to farmers and approved insurance providers and agents can be sanctioned for failing to provide those services.

*Comment:* Many agents and interested parties commented that farmers are not ready to use the internet to get their service and they need the agent's expertise. A commenter stated that farmers will have to do the work themselves or go to large brokers who will not offer the kind of one on one advice the local agent gives to the farmer now. A commenter stated that having a computer and access to the internet does not make a farmer a crop insurance expert.

*Response:* As stated above, nothing in the proposed or interim rule requires that a farmer use the internet to purchase crop insurance, do the administrative work associated with obtaining a policy, or abandon the services provided by a traditional agent. Approved insurance providers still have the incentive to ensure their customers are satisfied or risk losing their business, which affects the approved insurance provider's profitability. In addition, the level of service required by the SRA and approved procedures must still be provided or the approved insurance provider or agent risks sanctions imposed by RMA.

*Comment:* Several agents commented that if farmers do not have the small town agency that they have been using they will have to go to the larger agencies which are not always close to where the farmers live. Any savings in premium could be eaten up in travel and long distance phone calls to service their crop insurance.

*Response:* The commenters assume that the premium reduction plan will result in the elimination of the small town agency. However, as stated above, this is not likely to be the case. The approved insurance providers have an incentive to maintain their agent bases to ensure the required level of service is provided and enable them to maximize their profitability. Therefore, the agents and approved insurance providers will determine the fair commission to allow such agents to stay in business, provide the required service, and, if possible, allow the approved insurance provider to achieve some savings.

*Comment:* An agent commented that it has seen how the discount can help farmers. The commenter states that many farmers chose to use the discount so that they could purchase additional coverage, and many farmers have seen the ads talking about the discount and purchased crop insurance for the first time in many years. The commenter stated that the premium discount is not going to be used by every farmer because many farmers are happy with their current coverage and agents. However, there are many farmers who do like to use the discount plan.

*Response:* Under the proposed rule, premium discounts were likely to increase coverage levels because they resulted in a direct decrease in the amount of premium owed, which would allow farmers to increase coverage and pay the same amount as they would under the lower coverage level. It is not clear whether the interim rule will have the same effect because farmers will not receive their premium discount until long after premiums have been paid. While hope and the intent is that farmers would use the discount to purchase additional coverage in future years, farmers are free to use the discount in any manner they choose.

RMA agrees that not all farmers are going to elect to insure with approved insurance providers that participate in the premium reduction plan. This is especially true under the alternative proposal adopted in the interim rule. Some farmers will prefer to receive superior service over the premium discount. This simply allows another mechanism for competition, price and service, and the market will determine which farmers value most.

*Comment:* An agent commented that the premium reduction plan encourages farmers to go for quick and easy fixes rather than determining which true "risk management" solutions may best fit their operations, which can lead to less information and less proper risk management. The commenter stated that purchasing additional coverage with the discount is not always beneficial because it may not be economical and farmers may actually receive a reduced disaster payment.

*Response:* Under the alternative proposal adopted in the interim rule, no premium discount is guaranteed up front. Therefore, farmers have no incentive to go for quick and easy fixes. Because the premium discount payment is based on actual costs and may never be paid for a reinsurance year, it is unlikely farmers' behavior will change much and it is likely that they will continue to seek the best risk management tools for their operation.

Further, although premium discounts can be used to purchase additional coverage, there is no requirement that they do so. The purpose of section 508(e)(3) of the Act is to allow farmers to benefit from price competition, which is what the interim rule does.

*Comment:* A farmer commented that the premium reduction plan will result in farmers being left without coverage and service needed to protect their crops.

*Response:* It is unclear from the comment why the commenter would predict that farmers would be left without coverage as a result of the premium reduction plan. If the commenter is concerned that agent commissions will be reduced to the point that there will no longer be agents in the area to serve the farmers, as stated above, this is not likely to occur. The approved insurance provider has too much incentive to maintain its customers and agents to cut commissions to the point that either or both may go to another approved insurance provider. Further, approved insurance providers are required to provide service to farmers as required by the SRA and approved procedures. Approved insurance providers are not going to risk sanctions under the SRA by taking actions which may result in a reduction in this required service.

#### b. Administration and Verification

*Comment:* An agent suggested that RMA only allow those approved insurance providers with strong financial positions and a strong management teams to participate in the premium reduction plan. The commenter suggested an approved insurance provider allowed to pay a premium discount should be in a strong financial position (EX: At least an A-A M Bests rating), not just partnered with a strong reinsurer. The commenter also suggested an approved insurance provider allowed to pay a premium discount should have an experienced management team with minimal turnover of upper management and have trained adjusters in EVERY state in which they write business.

*Response:* To participate in the premium reduction plan under the interim rule, an approved insurance provider must first qualify financially and operationally under the SRA. After the insolvency issues regarding American Growers, RMA has heightened its scrutiny of the approved insurance providers and has required more detailed financial information. Further, under the alternative proposal adopted in the interim rule, RMA approval for payment of premium

discounts is conditioned upon the existence of actual cost savings and the approved insurance provider's compliance with the SRA, including being in an acceptable financial condition. Since approval of the payment of an amount of premium discount will not occur until after the end of the reinsurance year, RMA should be in a good position to ensure that the payment of a premium discount will not jeopardize the financial condition of an approved insurance provider.

Further, because the approval of the payment of premium discounts is based on actual cost savings and is made after the financial condition of the approved insurance provider is known, there is no need to add requirements to those provided for in the SRA regarding the partnering of approved insurance providers with strong reinsurers and the makeup and turnover of the management teams. The requirements in the SRA should be sufficient to ensure the continued financial stability of the approved insurance providers.

With respect to loss adjusters, the loss adjustment process under the premium reduction plan is no different than under the current policies and approved procedures. Therefore, there is no need to impose additional requirements regarding the availability and location of loss adjusters. Further, market forces are likely to play a significant role because if farmers' claims are delayed, they are likely to move to another approved insurance provider. Therefore, the suggested changes have not been made.

*Comment:* Several agents and interested parties suggested RMA consider a premium modification plan that is based on a farmer's good experience or loss history. A commenter states that this will reward the top farmers and give incentive for quality farming practices by all farmers. One commenter stated it has a hard time believing a farmer deserves a discount and a loss check in the same year.

*Response:* There is no rational basis to condition the payment of the premium discount on whether the farmer was paid a loss in a crop year or their experience. Under section 508(e)(3) of the Act, approved insurance providers can pay premium discounts to their farmers if they can prove that their actual A&O costs were less than their A&O subsidy. The loss history has no bearing on whether such efficiency is attained for a particular reinsurance year. Further, even though in years of high losses where it may be difficult for the approved insurance provider to achieve the requisite savings because of the increased loss adjustment expense,

there is no justification to punish farmers because of the vagaries of weather or other natural disasters. If the approved insurance provider attains an efficiency, it must be permitted to pay the premium discount to all its farmers. Therefore, the suggested changes have not been made.

*Comment:* An agent commented that if RMA still thinks it needs to offer a premium reduction plan, then the premium discount should be the same no matter which approved insurance provider or agent the farmer buys it from and there would need to be less regulation and paperwork involved in order for an agent to make a living selling it.

*Response:* RMA has no choice with respect to whether it will make the premium reduction plan available to approved insurance providers. Section 508(e)(3) of the Act provides approved insurance providers with the right to request to be able to pay premium discounts and if an efficiency is attained, RMA can only limit the manner in which such payments are approved to be made. Further, RMA cannot require all approved insurance providers pay the same amount of premium discount. The payment of a premium discount is conditioned upon the approved insurance provider attaining an efficiency and the amount must correspond to the amount of such efficiency. Since the approved insurance providers all have different compositions of their books of business and operations, it is highly unlikely that approved insurance providers will be able to attain the same amount of savings in the same places. Therefore the suggested changes have not been made.

*Comment:* A few agents suggested that if RMA must keep the premium reduction plan, keep it the way it was planned—through the internet exclusively.

*Response:* There is no rational basis to restrict the premium reduction plan to the use of the internet or any other specific cost efficiency. It is the approved insurance providers who are to determine whether they can deliver the program for less than the A&O subsidy. They are in the best position to determine how to attain savings based on their individual operations. It would be arbitrary and capricious for RMA to dictate the manner in which the efficiencies must be attained, especially since such a requirement could penalize farmers who do not have access to the internet. Therefore, the suggested change has not been made.

*Comment:* A few agents expressed concern that nothing in the rule defines

expectations for agents selling for more than one approved insurance provider.

*Response:* RMA agrees with the commenter that the proposed rule did not address expectations for agents selling for more than one approved insurance provider. However, RMA agrees that there may be legitimate concerns that agents that write for more than one approved insurance provider will direct the large policies to the approved insurance provider that is eligible for the opportunity to offer a premium discount and the small farmers to its other approved insurance providers. Such a practice is unlikely to persist in the long run because those approved insurance providers that write only small policies through an agent are apt to either require more equality in the distribution of policies from the agent or sever their contractual relationship with the agent. However, to ensure that no unfair discrimination occurs, the interim rule now requires agents to inform their insured of all approved insurance providers they write for that are eligible for the opportunity to offer a premium discount.

*Comment:* An interested party commented that it should remain a concern for RMA that allowing access to approved insurance providers that own their own reinsurance company could compromise the program.

*Response:* RMA agrees that if commercial reinsurance market transactions are not excluded from consideration when determining an efficiency, the A&O costs may not reflect the actual cost to deliver the program. Commercial reinsurance has nothing to do with the delivery of the crop insurance policy to the farmer. It is a tool for approved insurance providers to be able to manage their risk and each approved insurance provider handles commercial reinsurance differently. Therefore, the interim rule considers A&O costs to include only compensation paid, loss adjustment expenses, and other operating expenses reported on the Expense Exhibits provided with the Plan of Operations and has revised the definitions of “A&O costs,” “A&O subsidy,” and “efficiency,” to clarify that any costs incurred or commissions earned from commercial reinsurance are not included for purposes of the premium reduction plan.

*Comment:* An approved insurance provider commented that the proposed rule does not assist it in lowering its current administrative and operating expenses to a level that would qualify it for a premium discount. The commenter stated the inefficiencies in the Federal crop program are a direct

result of the costs associated with interpreting, maintaining and implementing the regulatory requirements to administer the program to the greatest extent possible. The commenter states it prides itself on its compliance with these guidelines and feels a huge responsibility to provide financial security to the farmers in the States where it does business. Any type of approved premium reduction plan must be based on a strict and enforceable process with the appropriate penalties in place to ensure the approved provider is not compromising service to the farmer.

*Response:* RMA agrees that the premium reduction plan does not tell approved insurance providers how to be able to deliver the program for less than their A&O subsidy. It would be impossible to do so since each approved insurance provider operates differently and is in the best position to determine whether efficiencies can be had in its operation. RMA also agrees that the premium reduction plan must be based on a strict enforceable process with appropriate penalties. To accomplish this goal, RMA adopted the alternative proposal because it would require the approved insurance provider to prove actual costs savings instead of relying on projections that might not be realized. There are also provisions in the interim rule that require that determinations of A&O costs be based on Expense Exhibits that are provided with the Plan of Operations and audited and certified by an independent certified public accountant experienced in insurance accounting after the reinsurance year and before any premium discount can be approved. Further, determinations of the premium discount that can be paid in the state are based on a formula that will be provided to the approved insurance provider through procedures. The standard of service that will be used to determine whether there has been a reduction in service are those currently contained in the SRA and approved procedures. These and other provisions in the interim rule create a strict and enforceable standard that can be applied to all approved insurance providers. In addition, RMA has added different sanctions, such as withdrawing approval for all or part of the payment of a premium discount and disqualifying agents or approved insurance providers from participating in the premium reduction plan, that allow it to better tailor the sanction to the offense.

*Comment:* Several approved insurance providers, loss adjusters and interested parties commented that if the

proposed rules are adopted in their entirety and, more importantly, followed and evenly enforced for all signatories by RMA, it does not appear that any of the current approved insurance providers would meet the eligibility criteria. A commenter stated that reductions in the A&O subsidy rate will make it impossible to reduce expenses below the A&O subsidy paid by RMA. A commenter stated that it is even more difficult to envision an approved insurance provider being able to provide a premium discount based on delivery cost efficiency because implementation of the Combo Policy, a new DAS, and CIMS will require millions of dollars to be expended by RMA and the approved insurance providers, and will cause a significant strain on staffing resources for both RMA and the approved insurance providers for several years to come.

*Response:* Under the interim rule, it is unlikely that any approved insurance provider would fail to be determined eligible for the opportunity to offer a premium discount. However, it is true that not every approved insurance provider may attain sufficient savings to enable them to receive approval to pay a premium discount. The purpose of section 508(e)(3) of the Act is not to guarantee that all approved insurance providers will qualify to pay a premium discount. Section 508(e)(3) simply gives approved insurance providers the opportunity to compete on service and price and farmers the opportunity to receive a benefit they may not otherwise receive. Because the premium discount is no longer guaranteed up front, there should be no harm to approved insurance providers if they cannot pay premium discounts because the farmers should not have expectations regarding the guaranteed receipt of such discounts.

*Comment:* An agent questioned the proof for RMA's statement that "it was also easy to determine whether the reduction in premium from the efficiencies corresponded to the states from which they were derived."

*Response:* The commenter is referring to the background section of the proposed rule dealing with RMA's experience in approving the approved insurance provider currently authorized to offer a premium reduction plan. The full quote is: "It was also easy to determine whether the reduction in premium from the efficiencies corresponded to the states from which they were derived since the same efficiencies and same reductions applied to all states in which the approved insurance provider wrote business." In other words, RMA

analyzed the expense schedules of the approved insurance provider before and after the application of cost efficiencies, including state level information on agent commissions. What RMA found in examining these documents was that the cost efficiencies (cost reductions) proposed by the approved insurance provider were proportionately the same for each state and, in total, were equal to the single percentage amount of premium discount sought by the approved insurance provider to be offered in all states. Therefore, the approved insurance provider complied with the requirement in section 508(e)(3) of the Act that premium discounts must correspond to cost efficiencies. The fact that a comparison of the exhibits in this particular application so clearly demonstrated correspondency is the basis for RMA categorizing the process as "easy." The same was not true for other applications that RMA received.

However, RMA has developed a relatively simple means to allow for state variability through the approval of premium discounts for each state selected by the approved insurance provider. It developed a formula that could be applied based on the information already submitted by the approved insurance provider on the Expense Exhibits provided with the Plan of Operations. This formula works with all business operations and provides an easy means of allocating costs.

*Comment:* An agent commented that the rule does not address the issues and problems raised by the diverse applications received by RMA. The commenter stated that it raised the same issues in 2003 and that if the premium reduction plan continues it will lead to the demise of the crop insurance program and Congress having to authorize record breaking ad hoc disaster relief.

*Response:* While the proposed rule sought to eliminate the problems and issues raised by the diverse applications received from approved insurance providers by requiring the same premium discount be provided in all states in which the approved insurance provider did business, RMA realized that such a proposal did not meet the business operations of all approved insurance providers. From comments and analysis provided to the proposed rule, RMA realized that allowing approved insurance providers to select the states where they want the opportunity to provide a premium discount allowing variations in premium discounts between states were important to the financial stability of the

approved insurance providers and the crop insurance program. As a result, RMA adopted the alternative proposal that, as stated above, would allow the selection of states and state variability. For instance, the issue raised in some applications that allowed its agents to carry both the premium reduction plan and non-premium reduction plan policies for the same approved insurance provider is addressed in the interim rule by requiring agents to notify their policyholders and applicants of the names of all approved insurance providers that are eligible for the opportunity to offer a premium discount. Further, the concerns about the ability to allocate costs and provide cost projections for savings have been eliminated through the adoption of the alternative proposal.

*Comment:* An interested party comments that RMA cites an example of a 3 percent across the board computing cost efficiency. The commenter states that RMA states this would warrant a single discount across an entire book of business. However, if the efficiency to discount relationship is at the plan of insurance level, an approved insurance provider should first allocate computer costs across plans of insurance. The commenter states that if it costs \$50 in computer costs per policy, but each policy generates a different amount of premium, then the application of an equal discount, say 1% will not correspond to the efficiency at the plan of insurance level. For example, policy A generates \$1,000 in premium and costs \$50 in computing costs. Policy B generates \$500 in premium and costs \$50 in computing costs. A 1% discount results in \$10 in savings on policy A and \$5 in savings on policy B. Yet the efficiency is the same dollar amount for both policies. Clearly the discount does not correspond to the efficiency in this case.

*Response:* The commenter is correct that the percentage may not be the same on a plan of insurance basis. However, nothing in section 508(e)(3) of the Act requires that the efficiencies and corresponding premium discounts be determined on a plan of insurance level. It would be impossible to administer the program at such a level because approved insurance providers do not report their costs on a plan of insurance basis. RMA would never be able to verify such costs, it could lead to manipulations of cost allocations in order to achieve savings.

As other commenters have pointed out, to properly be able to administer the premium reduction plan RMA needs to develop a rule that is clear, strict and enforceable. Based on the comments,

RMA determined that the proposed rule did not meet these criteria because they still may have required complex accounting rules and did not allow sufficient flexibility for the different business operations of the approved insurance providers. However, RMA believes the interim rule accomplishes these goals. The criteria for cost allocation is relatively simple, based on reported and verifiable information, contained in a formula that minimizes the opportunities for the manipulation of cost allocations, and it allows the flexibility for approved insurance providers to select the states in which it wants to participate in the premium reduction plan and allows variation in the amount between states.

*Comment:* An interested party commented that the current proposed rule does not provide for penalties or sanctions for a submitter that does not achieve the projected savings. The rules must provide for penalties for misrepresentation of a provider's ability to provide the premium reduction plan according to the established criteria; *i.e.*, reject any and all future premium reduction plans, charge the amount of the premium discount as a policy surcharge in the following year, require that amount as an additional expense in each of the next two reinsurance years, etc.

*Response:* Since RMA has adopted the alternative proposal in the interim rule, the concerns of the commenters are moot because all premium discounts will be based on the actual savings achieved by the approved insurance provider and the content of any information that can be provided to farmers regarding the certainty or amount of premium discounts to be paid under the premium reduction plan is severely limited prior to actual results being available and RMA approving the payment. This eliminates the need for penalties for approved insurance providers that fail to pay premium discounts unless the approved insurance provider or its agents violates a requirement in the interim rule. In such case, as stated above, RMA has added significant sanctions that allow it to better tailor the punishment to the offense.

In addition, the market will likely naturally sanction approved insurance providers that do not pay premium discounts. Farmers who insure with approved insurance providers that are eligible to offer a premium discount but who continuously fail to do so would be likely to move their business to an approved insurance provider that does pay the premium discount.

*Comment:* An agent commented that it could be difficult to impossible for discounts to be "verifiable". For example, the 2003 plan allows a reduction for the farmer reporting via the internet. The documentation submitted pointed to a reduction in approved insurance provider time in gathering and entering this information. However, there was no mention of the cost to the farmers who were too busy to report the information or the possibility of the farmer entering it incorrectly because they didn't understand all the rules. The result is a cost to the farmer far greater than what is saved. The commenter stated that while many proposals can outline what they think will be the savings, the added costs must also be considered (which in many cases will be a net cost to the farmer!)

*Response:* RMA disagrees with the comment that its ability to verify cost efficiencies would be difficult to impossible. First, the efficiencies are measured by whether the approved insurance providers A&O costs are less than the A&O subsidy it receives from RMA. The cost to farmers because the farmer may have to do additional work is not considered unless this burden results in higher costs to the approved insurance provider as a result of having to make corrections or in legal expenses.

Further, under the interim rule, the costs are easily verifiable because RMA is using the actual costs contained in the Expense Exhibits provided with the Plan of Operations to determine efficiencies. These Expense Exhibits are verifiable through the statutory accounting statements and now require that an independent certified accountant with insurance experience audit and certify these Expense Exhibits. Increase in approved insurance provider costs because of farmer error would be reflected in these actual costs. Further, if farmers are required to do more work with an agent or approved insurance provider, he may choose to move to another agent or approved insurance provider that provides the service he desires.

*Comment:* Many agents, approved insurance providers and loss adjusters commented that RMA is proposing a plan that will require considerable auditing expertise. The auditing would primarily be in the area of approved insurance provider expenses and policy issuing discrimination. The commenters ask if RMA can say, with confidence, that they have sufficient resources to assure the American taxpayer that the premium reduction plan is being fairly administered.

*Response:* RMA agrees that the proposed rule required considerable auditing skill to determine whether the projected cost savings were reasonable, were actually achieved, and the cost allocations appropriate. The interim rule reduces this burden considerably. First, the efficiencies are determined based on the actual costs reported on the Expense Exhibits provided in the Plan of Operations, which RMA staff is already familiar with. Second, the cost information can be readily verified through the annual accounting statements approved insurance providers are already required to file and the audit, certification and verification of the actual costs as reported in the Expense Exhibits. Lastly, the cost allocations have been simplified and contained in a formula that will be provided to approved insurance providers in procedures. Based on these changes, the current skill and knowledge of RMA employees should be sufficient to administer the premium reduction plan.

However, RMA disagrees that the premium reduction plan will require extensive auditing to discover evidence of unfair discrimination. The interim rule now contains provisions that put approved insurance providers on notice that RMA may compare the composition of its book of business to other approved insurance providers in the state to determine whether there are differences that may warrant further investigation to determine whether unfair discrimination is occurring. This information is currently contained in RMA's databases and would require no more sophisticated auditing than currently done by RMA when it runs certain queries for the purposes of its annual summary of business, compliance reports, data mining, etc. In addition, provisions have been added that allow consumer complaints to be made to RMA. These complaints will also be investigated.

*Comment:* A few approved insurance providers and interested parties commented that all costs should be evaluated by a CPA or auditing firm at the end of each crop year to assure compliance with the established criteria for offering the premium reduction plan.

*Response:* The interim rule contains a provision that the Expense Exhibits provided with the Plan of Operations, which will be used to determine any efficiency, must be audited and certified by an independent certified public accountant with experience in insurance accounting.

*Comment:* An agent commented that the RMA plan includes audit expenses to monitor the program. The commenter

states that more auditing should be directed toward fraud and abuse by some farmers than the approved insurance provider's expenses.

*Response:* While RMA agrees with the commenter that fraud and abuse are worthy of considerable and increased attention, RMA has no choice but to implement the premium reduction plan and ensure it complies with the requirements of the Act. Based on the nature of the premium reduction plan, compliance requires that RMA be able to verify expenses. By structuring the interim rule so that existing documentation is used to determine efficiencies and verification, the burden imposed on RMA should be minimal and not affect its ability to discover and investigate fraud, waste, and abuse.

*Comment:* Several interested parties and agents commented that the proposed rules contain no mechanisms to detect and prevent anti-consumer practices, such as rebating and tying, under the premium reduction plan. A commenter states that creation of an enforcement office would be necessary to monitor anti-consumer practices and address farmer complaints. Commenters state that RMA does not have the resources to police these practices.

*Response:* RMA agrees with the commenters that market conduct issues under the premium reduction plan are a significant concern. However, RMA disagrees with the comment that the creation of an enforcement office is necessary to monitor such conduct under the premium reduction plan. The premium reduction plan should have no effect on whether such rebating or tying occurs and RMA is currently monitoring such conduct today. Further, conduct such as tying is also regulated by the states, which have well-established structure for detecting and preventing tying. Moreover, RMA is fostering closer ties to the states through recently signed Memoranda of Understanding that will expand information sharing between the states and RMA. These measures should result in synergies between state and federal regulators that will strengthen market conduct enforcement, not only for the premium reduction plan but for the entire crop insurance program. In addition, RMA has added provisions that allow consumer complaints to be made directly to RMA and would include market conduct complaints.

*Comment:* Many interested parties and agents commented that there are insufficient resources and expertise to timely and properly evaluate the proposed premium reduction plan submissions, regulate the process, and monitor the program to ensure adequate service and prevent abuses. Commenters

stated that if there were sufficient resources, the cost of those resources would far outweigh the minimal benefits offered to farmers through the proposed premium reduction plan rule. A commenter stated that RMA has a responsibility to supervise the approved insurance providers to determine whether they are operating in a financially sound manner without reducing service to the farmer. A commenter asked how RMA proposes to monitor, control and advance the premium reduction plan. A commenter stated that the rule does not discuss RMA's resource needs but that it is likely RMA will need to establish a premium reduction plan office.

*Response:* Under the proposed rule, the premium reduction plan demanded considerable resources to evaluate the requests to participate in the premium reduction plan. However, RMA has taken two significant steps to ensure that it has the resources needed to perform these tasks effectively. First, is the adoption of the alternative proposal. Since the premium discount is based on actual costs, there is no longer a need for RMA to have the resources and expertise to conduct extensive audits to verify both forecast expenses under the requests to participate in the premium reduction plan and actual expenses and efficiency savings after the reinsurance year. Under the interim rule, RMA would only have to evaluate the approved insurance provider's marketing plan. Determinations of financial condition would be included in the evaluation of the approved insurance provider's Plan of Operations. Further, since approval of the payment of a premium discount and the amount allowed are based on actual cost savings and after losses have been paid, RMA is in a much better position to evaluate the financial impact of paying such discounts on approved insurance providers.

The second step is that RMA has structured the interim rule so existing documentation, such as Expense Exhibits provided with the Plan of Operations under the SRA, are used. The result is that much of the evaluation and monitoring under the interim rule would be the same as is required for any approved insurance provider under the SRA, including the determinations of financial solvency. In addition, RMA has established a formula that can be applied to each approved insurance provider's operation to allow it to calculate the efficiencies in each state so it can determine the amount of premium discount. Since little additional work is required, RMA should not require significant additional resources to

complete these reviews. Therefore, the costs of regulation should not exceed the benefits of premium discounts to farmers and no special premium reduction plan office is needed.

*Comment:* Many approved insurance providers, interested parties and agents commented that the proposed rule should be shelved or there should be an indefinite extension of the comment period. A commenter asked that RMA postpone adopting rules and approving new premium reduction plans until it: (1) Develops an adequate evidentiary record and makes available for public comment rules that address the adverse consequences that these programs may have on delivery service levels and on farmers; (2) establishes an enforcement mechanism that protects farmers from unfair discrimination under the premium reduction plans; and (3) can avoid adopting rules that include reductions in agent compensation which would decrease the amount and quality of services available to farmers under the current crop insurance delivery system.

*Response:* Based on the changes to the proposed rule discussed above, there is no need to extend the rulemaking at this time. However, as stated above, RMA has elected to publish this rule as an interim rule to allow for additional comments after the premium discount plan is implemented. Further, the interim rule clarifies the requirements regarding the service of farmers and believes that the current sanctions in the SRA and those included in the interim rule should provide sufficient deterrent to the possibility of a reduction in service below that required in the SRA and approved procedures. In addition, the alleged reduction in service is purported to be a consequence of severe reductions in agent commission, and as stated above, the adoption of the alternative proposal and market forces make this less likely.

With respect to the enforcement mechanism that protects farmers against unfair discrimination, the interim rule contains provisions that allow RMA to compare books of business to determine whether such discrimination is occurring, places the burden on approved insurance providers to target marketing to all farmers in a state, including small, limited resource, women and minority farmers, and contains sanctions that would be a deterrent to discriminatory practices, such as withdrawal of eligibility if the approved insurance provider unfairly discriminates, the denial of all or part of the premium discounts if an approved insurance provider or its agents unfairly discriminates and disqualifying the

approved insurance provider or agent from participating in the premium reduction plan.

With respect to the concern that agent commission will decrease to the point that there will be a reduction in service, as stated above, there are many market forces and regulatory sanctions that make this unlikely. One is that approved insurance providers have the incentive to retain agents and farmers to maximize their capacity for underwriting gains. Another is that approved insurance providers could risk significant sanctions under the SRA if they reduce service below that required in the SRA and approved procedures. Agents are also likely to move their book of business if the reductions in commission are too severe. No changes have been made in response to this comment.

*Comment:* An approved insurance provider commented that the proposal suggests that costs are to be determined on a reinsurance year basis but will use SRA Expense Exhibits, which are on a calendar year basis. The commenter claimed there will be allocation, monitoring and audit issues because such costs will have to be converted to a reinsurance year basis. The commenter stated this will be further complicated because certain costs may have to be allocated between several different lines of insurance. The commenter stated it is unlikely RMA's goal that efficiencies be easily verifiable is attainable.

*Response:* In Appendix II of the SRA that is effective for the 2005 and future reinsurance years, several expense exhibits are required. Exhibit 18B is a calendar year accounting of expenses that can be reconciled to the Annual Statutory Accounting Statements required by state regulators. However, Exhibits 10m, 10n, and 10o show agent commission expenses by state, loss adjustment expenses by state, and total expense by category, respectively, for the prior reinsurance years, the current reinsurance year, and the forecast for the coming reinsurance year. These exhibits can be reconciled with those for the calendar year guidance that has been provided to the approved insurance providers. Further, the interim rule requires that these Expense Exhibits be audited and certified by a certified public accountant experienced in insurance to verify the reported costs and compliance with the requirements of the SRA.

Since premium discounts will be based on the actual costs and the savings attained in a specific reinsurance year, RMA has developed a formula that allows it to use Expense

Exhibits 10m and 10n to allocate certain costs to the state so that it can determine the maximum premium discount that can be offered in the state. The formula will be provided to the approved insurance providers in procedures. The use of these Expense Exhibits and the procedural formula should greatly simplify the process.

*Comment:* Several approved insurance providers, interested parties and agents suggested that an independent CPA or auditing firm should be retained to provide comprehensive and objective evaluation of premium reduction plans that are submitted to assure that such plans meet or exceed the requirements outlined in the regulations. A commenter stated the auditor must know and understand how the costs have been allocated and if the allocations are complete, reasonable and accurate.

*Response:* Adoption of the alternative proposal eliminates much of the accounting burden associated with the proposed rule, specifically the burden to verify cost projections. However, RMA agrees that the actual costs should be audited and certified by the independent certified public accountant and that such person be experienced in insurance accounting so that they can understand the information contained in the Expense Exhibits to determine whether such information is complete, accurate and complies with the SRA. This requirement has been included in the interim rule. However, RMA believes that its staff is qualified to review other aspects of the request to participate in the premium reduction plan and approval to pay a premium discount.

*Comment:* An agent commented that according to the **Federal Register** information, the estimated total public burden is 7,560 hours annually. The commenter asked that if the Administrator is requesting an increase in staff years by 17 to meet the current workload, how many additional staff years will be required for the premium reduction plans and what will the additional cost be.

*Response:* This comment is referring to the paperwork burden estimated by RMA, as required under the Paperwork Reduction Act. It was an estimate of the total amount of time spent annually by all potential approved insurance providers to read, understand, develop, prepare, and submit a revised Plan of Operations under the SRA that would qualify for the premium reduction plan under the proposed rule. The commenter appears to mistakenly assume that it reflects an estimate of

RMA resources needed to regulate the premium reduction plan. It does not represent such an estimate. Further, as stated above, much of the information collections have been revised significantly in the interim rule so the paperwork burden hours for approved insurance providers has been significantly reduced. In addition, as stated above, the burden on RMA to determine eligibility for the opportunity to offer a premium discount and approval of the payment of an amount of premium discount should also be significantly reduced.

*Comment:* Several approved insurance providers and interested parties commented that regardless of the mechanism adopted by RMA to administer the submission and approval of premium reduction plans, it will be the adequacy and sufficiency of the RMA supervision that will determine the success or failure of the premium reduction plan. A commenter questions whether RMA is equipped to oversee the delivery of the premium reduction plan by the seventeen approved insurance providers, due to apparent deficiencies in accounting and fiscal expertise, as well as the lack of financial and personnel resources. Furthermore, budgetary constraints already are having an adverse effect on RMA's information technology capabilities and RMA's data-mining initiative may be in jeopardy. A commenter asked that if RMA does not have the financial resources to accomplish its existing obligations, how RMA proposes to regulate the respective premium reduction plans of seventeen approved insurance providers. A commenter stated that this oversight function will have to be developed at a time when RMA faces a significant loss of staffing due to pending retirements within all program areas of RMA and the premium reduction plan will put additional strain on RMA's ability to fully manage the program while simultaneously ensuring compliance.

*Response:* Although the commenters do not specifically define what success or failure of the premium reduction plan might be, RMA would generally agree that RMA must adequately regulate the premium reduction plan if it is to not adversely impact the crop insurance marketplace or policyholder service. RMA also agrees that under the proposed rule, the premium reduction plan supervision would have required considerable personnel resources, financial resources, and expertise. However, as stated above, with the adoption of the alternative proposal, the oversight, accounting and auditing burden on RMA is significantly reduced to not much more than would be



required when approving the Plan of Operations and oversight of the SRA. Use of a procedural formula to determine the amount of premium discounts also simplifies the process. Further, RMA's monitoring of the means used to accomplish the savings is limited to the assurances that there is no reduction in service. RMA has also enlisted the states in monitoring market conduct. Consequently, RMA is confident that it has the resources and expertise to adequately regulate the premium reduction plan.

*Comment:* An interested party asked how RMA plans to exercise oversight to ensure that premium discounts are commensurate with savings. The commenter wants to know at what level does the efficiency rule apply and how does RMA plan on enforcing this rule, given that approved insurance providers write insurance in different states.

*Response:* Although State variation was not permitted under the proposed rule, as stated above, RMA has reconsidered this program feature based on public comments. The interim rule now allows for variation of premium discounts by state to the extent that such discounts correspond to documented cost efficiencies for each state. With the adoption of the alternative proposal, state level costs can be documented and verified at the end of the reinsurance year through the use of state level expense reports that approved insurance providers already prepare for their annual Plan of Operations and by using relative simple procedures to allocate remaining costs by state. Further, as stated above, RMA has developed a formula to allow it to determine the maximum amount of premium discount that can be paid in each state, which will be provided in approved procedures. Therefore, it should be relatively simple to determine whether the premium discounts correspond to the efficiencies attained in the state. However, because costs are not reported below the state level, it would be impossible for RMA to track efficiencies below this level without the development of complex cost accounting rules, which other commenters have asked RMA to avoid.

*Comment:* An approved insurance provider commented that the proposed rule suggests that RMA puts undue emphasis on simplicity. In doing so, RMA inadvertently acknowledges that it has neither the accounting expertise to evaluate proposed plans nor the resources to monitor their implementation. The commenter states that penalizing an approved insurance provider for proposing a plan that accounts for the many state-, crop- and

policy-related variables, as opposed to one that merely is easily verifiable, burdens the approved insurance providers with RMA's shortcomings. The commenter states that adequate oversight and the availability of resources, not the dumbing-down of proposed plans, will ensure the proper regulation of premium reduction plan. RMA deludes itself if it believes that an easy or simple plan will not spawn program abuse.

*Response:* RMA disagrees with the commenter's premise that RMA wanted simplicity simply because it lacked the resources to adequately review, implement or monitor the premium reduction plans that contained state, crop or policy variability. On the contrary, in considering premium reduction plan submissions and developing the interim rule, RMA discovered through its analytical expertise and resources that more complex plans had the general tendency of providing increased opportunities for unfair discrimination and abuse of the premium reduction plan. In keeping the premium reduction plan relatively simple, therefore, RMA was led by a desire to avoid abuse under the premium reduction plan, not by a fear of complexity.

From its evaluation of public comments, RMA acknowledges that the proposed rule did not adequately meet this goal. This is one of the reasons it adopted the alternative proposal in the interim rule. RMA also realized that a one-size fits all approach would not be fair to approved insurance providers with different business operations. Under the alternative proposal, approved insurance providers can now tailor their premium discounts to better meet their business operations. While there may be a single formula used to calculate the amount of premium discount that can be paid in a state, this formula is flexible enough to encompass a broad range of different business operations. It allows approved insurance providers to select states in which they want the opportunity to offer premium discounts. It also allows for variability in the amount of premium discount between states. Variability between crops and policies is still precluded because of concerns regarding unfair discrimination.

Further, because premium discounts are based on actual cost savings determined from information that is already submitted to RMA and verified with statutory accounting statements, an approved insurance provider's opportunity to manipulate or hide costs is drastically reduced.

*Comment:* An interested party commented that the proposed rule has some standards but they are not adequate enough to protect the delivery system.

*Response:* RMA agrees that the proposed rule may not have contained sufficient standards to implement and regulate the premium reduction plan. However, adoption of the alternative proposal removes the need for many standards because the premium discount will be based on actual cost savings, not projected. This means the only standard that is necessary is how to determine whether there has been an efficiency and the amount of premium discount that can be paid in each state. For the former, RMA will be reviewing the Expense Exhibits provided with the Plan of Operations. Since the manner in which such Expense Exhibits are to be prepared has already been provided, no new additional standards are required. As stated above, in determining the amount of premium discount, RMA has developed a formula that will be provided to approved insurance providers through procedures. Because the formula uses only information contained on these Expense Exhibits, additional standards are not required.

With respect to other standards, the interim rule contains provisions regarding the ability to compare the composition of approved insurance providers' books of business to determine whether there is an indication of unfair discrimination that may warrant further investigations. There are also explicit limitations on advertising and the meaning of reduction in service has been clarified to incorporate the requirements that currently exist in the SRA and approved procedures. Therefore, RMA believes that the interim rule contains sufficient standards to allow it and the approved insurance providers to implement the premium reduction plan.

*Comment:* An interested party commented that approved insurance providers can achieve cost reductions in a variety of ways, such as training costs, etc. The proposed rules are not specific enough as to how and where the savings will come from.

*Response:* Since each approved insurance provider's business operation is different, it would be impractical and undesirable for RMA to dictate how and where the savings must come from. This must be determined by the approved insurance provider. However, RMA has made it very clear that cost savings cannot come from non-compliance with requirements of the SRA or approved procedures or the approved insurance provider will be subject to the sanctions

contained in the SRA or the interim rule as applicable. This would include the requirements regarding service, training, loss adjustment, etc. This means it is solely the responsibility of the approved insurance provider to decide whether it can attain cost savings while still complying with all requirements of the SRA, approved procedures and this interim rule.

*Comment:* An agent commented that while the proposed rule would authorize RMA oversight of the program there are no standards of measurement for compliance in the proposed rule. The commenter stated that this would leave open the opportunity for abuse, as the judgment for what constitutes a violation would now be very subjective.

*Response:* RMA agrees that there were insufficient standards in the proposed rule, especially concerning service and unfair discrimination. This issue has been evaluated in the light of public comments received and addressed in the interim rule. As stated above, the interim rule makes it very clear that approved insurance providers must comply with all requirements of the SRA and approved procedures regarding the level of service that must be provided. Further, specific standards have been set forth regarding allowable marketing of premium discounts. The use of Expense Exhibits to determine whether there is an efficiency and the amount of any premium discount also sets a very clear standard. Providing a formula to determine the amount of premium discount also sets a very clear standard. In addition, the ability to compare the approved insurance providers' books of business to determine whether there is any indication of unfair discrimination also sets a standard. These standards remove the subjectivity and permit all approved insurance providers to be treated the same.

*Comment:* Several approved insurance providers, agents and interested parties expressed concern over the cost and expense accounting. A commenter stated that it concurred with a quote from a member of Congress to RMA stating that premium reduction plans are fraught with risk to the stability of the crop insurance program and that it is opposed to the program. A commenter asked that since each approved insurance provider has its own method of operation, how RMA will develop a set of accounting standards which will show the actual costs to deliver the program. A commenter stated that most of these costs will be allocated, which creates the possibility to shift costs between states, coverages, crops, plans of

insurance and market segments. This will increase the cost of auditing as the approved insurance providers will understand their individual accounting system better than RMA. A commenter is concerned that RMA is not looking at all costs that an approved insurance provider incurs and all allocations are not being reviewed to determine that they are adequate for an approved insurance provider. Commenters state it will be virtually impossible to accurately determine and verify the cost reductions and make appropriate comparisons between approved insurance providers. A commenter stated that there needs to be consistent expense accounting with respect to executive compensation, benefits, legal fees, and litigation expenses. A commenter stated that there has to be uniformity with each approved insurance provider and that premium reduction plan approved insurance providers must be subject to the same financial and competency evaluations as regular approved insurance providers.

*Response:* RMA agrees that cost and expense accounting procedures vary by approved insurance provider and that consistent principles must be applied to all approved insurance providers participating in the premium reduction plan. To accomplish this goal, RMA will use the Expense Exhibits provided by the approved insurance providers with their Plans of Operations. These Expense Exhibits are required to be audited and certified as to their completeness, accuracy and compliance with the SRA. Therefore, all costs to deliver the Federal crop insurance program should be included. Further, RMA has already provided instructions as to how they should be prepared and there are statutory accounting statements that have specific accounting rules for their preparation that can be used for verification of costs. Failure to comply with one of these requirements would not only jeopardize an approved insurance provider from participating in the premium reduction plan, it would jeopardize its ability to participate in the crop insurance program. In addition, RMA has devised a formula that will allocate costs in a consistent manner for all approved insurance providers for the purposes of determining the amount of any premium discount in a state.

*Comment:* An agent asked who was going to determine the efficiency.

*Response:* As stated above, RMA will determine whether there has been an efficiency for the reinsurance year based on the actual costs reported on the Expense Exhibits provided with the Plan of Operations. It will be relatively simple to compare a total of all of the

costs reported as A&O costs with the amount of A&O subsidy received and to allocate costs across states.

*Comment:* Many agents, approved insurance providers, loss adjusters, and interested parties commented that RMA requires a certain level of service for the insureds. The commenters ask if RMA will require these standards for the premium reduction plan and how will this be audited. Commenters also ask if RMA has developed service standards for the premium reduction plan program and how RMA will audit to determine that the service provided under the premium reduction plan meets those standards. Commenters also asked if RMA can guarantee agents and insureds that the premium reduction plan is the way of the future and that quality and service will not be jeopardized. A commenter asked what RMA's plan of action is if those standards are not met and will more tax payer money be wasted trying to correct the situation.

*Response:* With respect to questions of the commenters regarding the service standard and the premium reduction plan, any approved insurance provider wanting to participate in the premium reduction plan must meet all requirements of the SRA and approved procedures with respect to service. This is the same requirement for approved insurance providers that elect to participate in the premium reduction plan and those that do not. Since this is a requirement of the current SRA, RMA already has the infrastructure in place to audit these service requirements and other SRA requirements through periodic approved insurance provider reviews. In addition, the interim rule also contains a mechanism to allow farmers to report to RMA if they believe they have received a reduction in service. If service requirements are not met by any approved insurance provider, then the SRA provides RMA with a range of actions it can take against an approved insurance provider, up to and including the withdrawal of authority to participate in the crop insurance program. The action that RMA would take would depend on the severity of the violation.

RMA cannot speculate, much less guarantee, as to whether the premium reduction plan is the way of the future. This is up to Congress and whether farmers and approved insurance providers embrace the concept. However, as long as section 508(e)(3) of the Act remains effective, the premium reduction plan will also be in effect.

*Comment:* An agent asked how RMA will monitor qualification for the premium reduction plan. The commenter claims the industry does not

need the negative results of approved insurance providers in financial disarray, especially when it gets to that place with the blessing of RMA.

*Response:* Under the alternative proposal, participation in the premium reduction plan should not adversely affect the financial stability of approved insurance providers because premium discounts are based on actual cost savings, not projected. Further, because the premium discount is no longer guaranteed in advance of a given year, approved insurance providers are in a better position to evaluate their financial condition to determine whether they are in any position to take cost saving measures and whether a premium discount should be paid. Lastly, RMA has added financial reporting requirements to the SRA and has enhanced financial analysis and monitoring of approved insurance providers that allow it to be a better gauge the financial position of approved insurance providers. Based on this knowledge, the interim rule allows RMA to deny the payment of a premium discount if it believes it will adversely affect the financial stability of an approved insurance provider.

*Comment:* An interested party commented that all approved insurance providers should be expected to conform to all guidelines regarding marketing, adjusting, compliance and reinsurance. This is the only way an agent or farmer can be guaranteed the "Service" FCIC is supposedly protecting and supervising.

*Response:* RMA agrees that all approved insurance providers are required to conform to all approved procedures regarding marketing, adjusting, compliance, and reinsurance. The interim rule reinforces this requirement for approved insurance providers that participate in the premium reduction plan.

*Comment:* An agent commented that RMA should have some type of competency requirement for anyone involved in the business. The commenter stated that for those who are only writing the coverage because it was easy to just make sure the client files his acreage reports every year so he can get on with selling life policies and promoting investment products, it may not be so easy anymore. The commenter stated that in the investment field, there are strict rules that dictate what and what not a broker or agent can sell as well as regulations trying to certify their competency to do any thing. These rules and policies are in effect to protect the consumer/client against unscrupulous individuals but most specifically to try and help protect their investments, their

life saving and retirement nest eggs and their very livelihood. The commenter asks why the crop insurance field should be any different.

*Response:* While this comment is not directly applicable to the proposed rule, because the same requirements applicable under the SRA apply to the premium reduction plan, it is relevant. A crop insurance agent is subject to the licensing, reporting, and educational requirements of the state or states in which he or she operates. RMA agrees that some of these requirements vary widely between states. However, with respect to crop insurance, all agents are subject to the training requirements contained in the SRA and if RMA determines an agent is not competent to properly sell and service crop insurance, it can suspend or debar such agent. RMA agrees that standardizing state licensing and competency requirements would be preferable and has recently begun working with the states toward this goal.

*Comment:* An approved insurance provider commented that the first principle of requiring documentation to demonstrate ability to operate within expense reimbursement and to reduce costs below the expense reimbursement received from RMA is related to the second principle of requiring that claimed efficiencies be easily verifiable by RMA. Section 508(e)(3) of the Act requires premium discounts to be based on real efficiencies that reduce an approved insurance provider's costs below the RMA's expense reimbursement and that can be passed through to farmers. The commenter stated that allowing price reductions that cannot be documented or that exceed objectively demonstrable efficiencies likely will invite unfair competition by approved insurance providers seeking to undercut their competition with discounts that cannot be matched through savings. The commenter states that this abuse could threaten the approved insurance provider's solvency and also give rise to market disruption by directing farmers away from the more reputable providers.

*Response:* RMA agrees and shares the expressed concerns regarding the verification of cost efficiencies and the possibility for approved insurance providers to promise premium discounts that cannot be supported by actual savings. RMA elected to adopt the alternative proposal because of some of the very concerns raised by this commenter. Under the alternative proposal, because all premium discounts are based on actual cost savings determined at the end of the

reinsurance year and the payment or amount is not guaranteed, many of the concerns raised have been rendered moot.

*Comment:* An interested party commented that there were no formal rules governing the marketing and distribution of the premium reduction plan and the appropriate procedures were the only way to ensure the fair delivery of crop insurance to all farmers regardless of size or resources.

*Response:* The interim rule now contains specific requirements regarding the marketing and distribution of premium discounts. These requirements include limitations on advertising, and marketing plans that use appropriate media to ensure that all farmers are made aware that the approved insurance provider has been determined eligible for the opportunity to offer a premium discount. Further, there are requirements regarding the distribution of premium discounts payment including the preclusion against placing conditions upon such payment like requiring renewal of the policy or having no loss for the crop year. Further, premium discounts in a state must be provided for all crops, coverage levels and plans of insurance. In addition, all farmers in the state insured with the approved insurance provider paying the premium discount must receive the discount and in the same percentage of net book premium.

*Comment:* An interested party commented that there are no controls in place to regulate false advertising or manipulation. This could result in inadequate or improper coverage, and jeopardize a total farming operation.

*Response:* RMA has added provisions to address these concerns. The interim rule now expressly contains provisions regarding advertising and contains limitations on the content of such advertising. The interim rule also contains provisions allowing consumer complaints regarding false advertising to be made directly to RMA. In addition, the interim rule allows RMA to take action against an approved insurance provider if the state determines that there has been false advertising.

*Comment:* An approved insurance provider commented that there must be better guidelines as to the extent of oversight and regulation by RMA.

*Response:* As stated more fully above, RMA has revised the rule to include better standards regarding the requirements of the program and the oversight of RMA, including those related to advertising, service, unfair discrimination, whether small, limited resource, women or minority farmers are not being given access to premium

discounts, calculating premium discounts, etc.

*Comment:* Many agents, loss adjusters, approved insurance providers and interested parties commented that the proposed rule does not include an enforcement mechanism that would prevent insurers from engaging in unfair discrimination by selecting only agents who primarily service large, low risk farmers to deliver their products. The commenters stated that RMA currently does not have the resources necessary to effectively police unfair discrimination against these farmers. Other commenters ask how RMA will police the unfair discrimination of approved insurance providers only selecting agents who primarily service large, low risk farmers. They also asked whether RMA has the resources to effectively police the unfair discrimination against these farmers. A commenter suggests that necessary cooperative oversight between FCIC/RMA and the state Departments of Insurance (DOIs) is imperative.

*Response:* As defined in the proposed rule, unfair discrimination occurs when an approved insurance provider refuses to provide a premium discount to any farmer because of the size of the operation or premium, loss history, etc. However, RMA also recognizes that there is a risk that approved insurance providers would select only agents that service, large low risk farmers, which happens regardless of whether the approved insurance provider participates in the premium reduction plan. To ensure equal access to the premium discount, RMA requires that approved insurance providers specifically market their participation in the premium reduction plan to small, limited resource, women and minority farmers through the appropriate media designed to reach such farmers. This marketing must be in addition to any solicitation done by the agent. Failure to comply with the marketing plan could subject the approved insurance provider to significant sanctions.

To enforce this requirement to market to small, limited resource, women and minority farmers, RMA will review the marketing plan and may compare the compositions of the approved insurance providers' books of business to determine whether there is a need for further investigation. In addition, provisions regarding consumer complaints have been added that would permit any farmer that thought it was excluded from receiving a premium discount to complain directly to RMA.

Since the preliminary steps to identify whether small, limited resource, women or minority farmers are not being given access to premium discounts can be

done through data mining, the amount of resources to monitor this issue should not be great. Further, RMA currently has staff that is experienced in conducting such investigations regarding discrimination.

*Comment:* An interested party suggested more extensive reporting on marketing would need to be done to prevent cherry-picking, which may make the program prohibitively expensive to administer for RMA and the approved insurance providers.

*Response:* Competition for attractive accounts is not prohibited by the SRA or RMA procedures, but unfair discrimination is. There is no need for extensive reporting on marketing to police unfair discrimination. The 2005 SRA requires certain information regarding the minority status of farmers be collected and, reported and, as stated above, RMA may elect to compare the compositions of the approved insurance providers' books of business to determine whether there are any indications that small, limited resource, women or minority farmers are not being given access to premium discounts. This can be accomplished through analysis of the existing information contained RMA's databases. Therefore, the identification and prevention of unfair discrimination should not be cost prohibitive to RMA or the approved insurance providers. Further, as explained above, the interim rule provides a mechanism for policyholders and others to file direct consumer complaints to RMA.

*Comment:* Many agents and interested parties opposed implementation of the proposed rules until FCIC more effectively addresses the unfair discrimination concerns and RMA establishes a special enforcement office to address the issues that premium reduction plans raise for farmers.

*Response:* There is no need to create a special enforcement office. As stated above, the interim rule now provides RMA with the ability to effectively monitor and address any issues regarding unfair discrimination or whether small, limited resource, women or minority farmers are not being given access to premium discounts. In addition, RMA already has a Civil Rights office that is experienced in investigating such complaints.

*Comment:* Many agents and interested parties commented that RMA states "it was easy to determine if practices were unfairly discriminatory because the approved insurance provider was required to offer the discount to all producers who wanted it." Commenters states that this is a very bold statement to make, similar to an approved

insurance provider saying that it is easy to see if workplace discrimination is occurring because it is against the law. Just because it is outlawed doesn't mean that practices are going to be transparent, yet RMA is making that prediction here. RMA is making a broad generalization assuming that since discriminatory practices are not allowed, then either no one will do so or it will be easy to detect. Commenters state that this is impossible without an enforcement mechanism.

*Response:* In the proposed and interim rules, unfair discrimination is defined as denying a farmer a premium discount because of size, loss history, etc. Therefore, RMA was correct when it said that unfair discrimination would be easy to detect because RMA could examine the approved insurance provider's book of business to determine whether there was evidence of farmers systematically being denied a premium discount. However, as stated above, RMA is also concerned that all farmers have access to premium discounts. This is not as easy to detect but, as stated above, RMA has added provisions that would allow it to analyze the compositions of the approved insurance providers' books of business to determine whether there are any indications that small, limited resource, women or minority farmers are not being given access to premium discounts. Along with the establishment of a consumer complaint process and standards included in the interim rule, this enforcement mechanism will allow RMA to ensure that all farmers have access to premium discounts and apply appropriate sanctions to approved insurance providers that do not comply.

*Comment:* Several agents and loss adjusters commented that RMA does not currently have the assets to investigate more than a small percentage of alleged fraud and abuse instances let alone respond to greatly increased requirements of policing provider discrimination in selection of agents and locales, and ensuring that there is no discrimination against minorities and smaller, high risk farmers. A commenter stated that the primary focus of RMA should be in protecting program integrity. A commenter stated that RMA must be concerned that someone is going to commit fraud, waste or abuse of the premium reduction plan program.

*Response:* RMA does not accept the apparent implication of the commenter's assumption that RMA does not have the resources to properly deal with fraud, waste, and abuse. RMA investigates all allegations of fraud, waste, and abuse. The commenter may be referring to the large number of data

mining results that show anomalies in the program. The commenter is correct that RMA would not be able to investigate all anomalies indicated by data mining. However, RMA has refined the ability to determine when such anomalies are likely indicators of fraud, waste, or abuse and it investigates these cases.

Further, there is no basis to assume that RMA does not have resources to properly enforce discrimination provisions under the premium reduction plan. As explained above, there is a difference between discrimination and selecting only agents that have large, low risk farmers in their books of business. With respect to discrimination, RMA has the resources and ability to enforce all discrimination provisions of the crop insurance program, including those included in the interim rule. With respect to the selection of agents, RMA has included provisions in the interim rule that would allow it to determine whether approved insurance providers have taken such action and to require that approved insurance providers take remedial corrective measures. Much of the work would be done through data mining and responding to consumer complaints, both of which can be handled by existing knowledgeable and experienced RMA staff in collaboration with state regulatory officials.

RMA also disagrees with the commenter's unexplained and unsupported prediction that fraud, waste, and abuse will arise from the premium reduction plan. All current program integrity provisions of the crop insurance program will still apply to approved insurance providers participating in the premium reduction plan under the interim rule. RMA enforcement of these provisions will remain unchanged.

*Comment:* Several agents commented that RMA has very strict guidelines and rules requiring approved insurance providers to do more with less money all the time. The commenter asked how RMA will police this program to make sure it is administered fairly to all insureds and agents, as it is now. A commenter asked if the approved insurance providers will be expected to police this too and where will the funds come from. A commenter stated that the premium reduction plan will increase the cost of RMA monitoring, which must be done fairly and accurately.

*Response:* RMA agrees with the comment that RMA expects approved insurance providers to abide by strict guidelines and rules and that RMA currently attempts to administer these fairly. RMA also agrees that additional

requirements will be imposed on those approved insurance providers that choose to participate in the premium reduction plan under the interim rule. However, as stated above, the provisions in the interim rule will significantly reduce the burden over the requirements contained in the current procedures and the proposed rule. One means to accomplish this is to utilize information already provided to RMA, such as Expense Exhibits and policyholder information, to determine whether efficiencies are attained, the amount of premium discount and whether all farmers are being provided access to the premium discount. Another means is the formula to determine the amount of premium discount, which will standardize cost allocations and calculations across all approved insurance providers. Further, the requirements contained in the SRA will continue to apply to the premium reduction plan, such as those relating to service, training and loss adjustment. This allows for consistent monitoring and the ability to use existing resources.

*Comment:* A few agents and interested parties questioned whether having one training session at one location meets the qualifications of " \* \* \* training and oversight (must) not be compromised." The commenter states that most approved insurance providers conduct training sessions throughout the various areas to allow agents accessibility to these sessions. The commenter asked if an approved insurance provider gains "efficiency" by cutting back on the number of training sessions, but still has them, does it meet the requirement of the provision. A commenter states the premium reduction plan does not further the critical goal of "up-to-date" SRO relationships with RMA to foster a better program. A commenter asks RMA to scrutinize plans to assure that they continue to provide the necessary training for agents and adjusters that is so important for agents' continued education.

*Response:* RMA agrees with the commenter that agent and loss adjuster training is highly important in the ultimate servicing of policyholders and that participation in the premium reduction plan must be monitored with respect to the sufficiency of training. Under the SRA, every approved insurance provider is obligated to conduct training for loss adjusters and agents. Specific training requirements are contained in Appendix IV of the SRA and approved procedures. RMA monitors compliance with these requirements through approved insurance provider reviews and other

methods. The interim rule makes it clear that approved insurance providers must continue to comply with these training requirements. The SRA identifies specific actions RMA can take if an approved insurance provider fails to meet these training requirements. Further, if the approved insurance provider participates in the premium reduction plan, sanctions authorized under the interim rule can also be applied.

With respect to the question asked by the commenter on the sufficiency of one training session at one location, RMA does not have the context in which the commenter asks the question and does not wish to speculate on what the context might be. If all the training requirements in the SRA can be accomplished in one training session, RMA could not preclude this action.

*Comment:* Several interested parties and approved insurance providers commented that RMA must closely monitor the program, including making sure such plans include a complete training program for agents who offer the premium reduction plan to farmers that is similar to current training requirements for all agents.

*Response:* As explained above, approved insurance providers must comply with the same training requirements as required under the SRA. Further, under the SRA, RMA will monitor the training to ensure compliance with all requirements.

*Comment:* An interested party commented that RMA has not complied with its own rules in requiring Crop1 to submit weekly accounting reports verifying their efficiencies and ability to operate under lower A & O contracts.

*Response:* RMA disagrees with the commenter. Two years ago, the FCIC Board directed that RMA receive from Crop1 weekly narrative and statistical reports, more detailed quarterly reports and that RMA conduct semiannual onsite reviews of Crop1. These requirements were to also apply to any other approved insurance provider that RMA might have approved to offer a premium reduction plan. Crop1 has complied with the directive regarding reports, as required by RMA. There were occasions during the annual crop cycle when RMA determined that there was minimal activity and excused Crop1 from this requirement until activity again warranted weekly reporting. Further, for 2003 and 2004, RMA has verified in each mid-year review that Crop1 was on target to achieve the projected cost efficiencies and verified at the end of each year that it achieved those efficiencies. This Board directive, reporting requirements, and the

procedures used to determine efficiencies will be replaced by the interim rule.

*Comment:* Many agents, farmers, approved insurance providers and interested parties commented that Crop1 is engaging in the type of discrimination that RMA purportedly opposes, and RMA is unaware of such activities, which indicates RMA's inability to conduct oversight or it is uninterested in doing so, which indicates an unwillingness to conduct oversight. A commenter states there is abundant anecdotal evidence that FCIC has lacked either the resources or the inclination to ensure that Crop1 conforms to the standards purportedly established by RMA. Commenters stated that if RMA can't or won't police its own activities for one small approved insurance provider, there can be no chance of policing the entire industry under the proposed rule. A commenter states RMA never determined that Crop1 met all the standards set by the Board.

*Response:* It is unclear what the commenters mean by discrimination that RMA purportedly opposes. The commenters do not provide supportive explanation or examples. As stated above, unfair discrimination is defined as denial of a premium discount based on the loss history or size of the farmer. However, it is possible that Crop1, or its agents, targeted its marketing to large, low risk farmers. This occurs throughout the crop insurance program and is not expressly prohibited in any procedures. This means Crop1 was permitted to operate in the same manner as all other approved insurance providers in delivering crop insurance. Therefore, it was not a matter of RMA electing not to enforce a program requirement, it was a situation where the complained of conduct was not in violation of any procedures.

As stated above, RMA recognizes that the program is premised on equal access to the crop insurance program and added provisions to the proposed rule, and revised and refined them in the interim rule, to specifically require that approved insurance providers market to small, limited resource, women, and minority farmers and if such marketing were inadequate, RMA can require remedial measures such as targeted marketing. All approved insurance providers electing to participate in the premium reduction plan, including Crop1, will be subject to the same requirements and scrutiny.

*Comment:* Many agents, farmers, approved insurance providers and interested parties commented that fraud and abuse are rampant. Commenters

stated that Crop1 is going against all the rules of fairness and equality and stretching the law beyond limits. A commenter states that this failure to enforce the program requirements will likely destroy the crop insurance program as we know it, including some approved insurance providers and reinsurance sources.

*Response:* With respect to the allegation that fraud and abuse are rampant with Crop1, the commenter provides no support for this allegation. RMA's own data, and independent information from outside oversight bodies such as the Office of Inspector General, agree that fraud and abuse, while troubling in any amount, nevertheless represent a small fraction of all crop insurance business and Crop1 does not have a disproportionate amount of fraud or abuse. If anyone has specific information on fraud, abuse, or discrimination with respect to any approved insurance provider, RMA encourages such persons to bring this specific information to RMA's attention.

Further, RMA is stringently enforcing program requirements but it cannot enforce requirements that do not exist. That was one purpose of the decision to use rulemaking, to identify weaknesses in the current and proposed program so concerns could be adequately addressed. This process has worked, RMA has received many valuable comments and has addressed these in the interim rule.

*Comment:* Many agents, farmers, approved insurance providers and interested parties commented that if someone in the hearing process were to pursue the question vigorously, new and unwanted answers would undoubtedly surface and it definitely should be done by the committee. Commenters suggested that these problems combine to justify the indefinite extension or termination of the comment period and rulemaking procedure for the proposed rule.

*Response:* With respect to the comment that RMA should extend the comment period indefinitely or terminate rule making because of the allegations of these commenters, RMA notes that it is obligated under section 508(e)(3) of the Act to operate the premium reduction plan. Extending the comment period or terminating the interim rule would simply force RMA to operate the premium reduction plan under current or revised procedures, which the FCIC Board has already determined to be unsatisfactory or revised procedures.

Further, the purpose of this rulemaking process is to identify problems with the current program and

create a rule that addresses these problems and protects the interests and integrity of the crop insurance program. Given the significant number of substantive comments received during the 60-day comment period for the proposed rule, it is apparent that the public including all interested parties had sufficient time to provide comments to identify problems and concerns. It is unlikely that an extension of the comment period would yield any additional comments or concerns that have not already been presented. Based on the comments received, the process has worked and the interim rule includes many significant changes that should provide a framework for a fair, sound, and stable premium reduction plan. Therefore, RMA does not find that there is a rational basis for extending the comment period.

*Comment:* An approved insurance provider commented that it had alerted RMA to misleading statements made by a Crop1 agent in conjunction with advertising of Crop1's premium discount plan and stated that but for its letter, RMA would have been unaware of these misrepresentations. The commenter asked how many other instances of false advertising have escaped the notice of RMA and if RMA cannot police the marketing practices of one approved insurance provider, how RMA proposes to monitor the conduct of seventeen approved insurance providers and thousands of sales agents.

*Response:* There is no way for any agency to monitor the activities of all participants in a program the size of the crop insurance program. There may be only a limited number of approved insurance providers but there are also thousands of agents and loss adjusters and hundred of thousands of farmers, FSA county committees and state insurance regulators.

RMA relies on a variety of ways to monitor approved insurance providers with respect to the SRA and the premium reduction plan. The commenter has highlighted one of the most valuable and powerful, the assistance of the crop insurance participants to report instances where there may be violations of the SRA, policy provisions or procedures. Even before the premium reduction plan was ever implemented, it was not uncommon for approved insurance providers or agents to report to RMA instances where competitors may be engaged in rebating or false advertising. The fact that RMA assessed the information it received from the commenter and took quick action demonstrates its willingness to enforce the premium reduction plan and SRA

requirements with Crop1. Further, because the crop insurance participants are in the best position to detect any wrongdoing, RMA has and will continue to rely on their assistance in identifying program violations. However, this does not mean that RMA is not continuously monitoring the conduct of the approved insurance providers. Finally, the interim rule added a mechanism for the receiving consumer complaints, which is another means for RMA to monitor the implementation of this rule.

*Comment:* A few agents commented that the agent contract with Crop1 is very restrictive and is really weighted to the approved insurance provider side. For instance, there is no commission paid until the farmer pays the premium. The commenter asked when RMA pays the approved insurance provider and does Crop1 get paid after the farmer pays the premium. The commenter also stated that the contract states that the agent can only write a discount plan with them and agents would be liable to Crop1 if they did not meet the RMA expense requirements, which they have no control over, and all this for a 20 to 40 percent decrease in commission revenue. Since they are the only approved insurance provider allowed to write a discount plan in 2005 it was not an issue. The commenter asked if RMA is aware that this is in Crop 1's contract.

*Response:* As explained above, the contract between an approved insurance provider and an agent is a voluntary arrangement and RMA does not regulate such contracts, including such terms as the timing of commission payments. As with all agent contracts, provided that there are no violations of the requirements of the SRA or approved procedures, agents and approved insurance providers are free to negotiate the terms of their contracts. Terms like exclusivity and paying the commission after the farmer pays the premium do not violate any requirement in the SRA or approved procedures. Therefore, RMA cannot prevent their inclusion in the agent contracts.

As stated above, the market will determine the appropriate terms and conditions in such contracts, including the timing and amount of commission payments. Approved insurance providers will always have the incentive to retain agents and their books of business because such business provides the potential for underwriting gain.

*Comment:* An interested party asked: (1) Why RMA rejected all other plans offered by other approved insurance providers and still kept Crop1's plan; (2) if RMA looks into the types of plans,

coverage levels and size of farmers for all approved insurance providers, including Crop 1; (3) how RMA monitors compliance with the regulations and the Act; (4) how often approved insurance providers are penalized for not serving all farmers within a given state; (5) how many "specialty crop" policies does Crop1 write, such as tomatoes, apples, nurseries etc., and (6) how many small farmers are served by Crop1.

*Response:* There was never an intent to allow Crop1 to operate the only premium reduction plan. It happened that it was the first approved insurance provider to submit such a plan and the procedures were developed in response to the Crop1 submission, under the direction of the FCIC Board, and were designed to allow all approved insurance providers to make application. With respect to the premium reduction plans submitted by other approved insurance providers for the 2005 reinsurance year, RMA extensively reviewed each of the proposals individually under the procedures and determined they could not be approved because they did not meet the requirements. In notifying them of this fact, the approved insurance providers were provided with detailed information regarding the specific terms of the premium reduction plan and the procedures RMA determined the applications did not comply with. It should be noted that it took Crop1 over a year and multiple submissions to obtain the required approvals to begin offering its premium reduction plan. During the time its plan was under consideration, it went through a number of changes and reviews.

With respect to analysis of Approved insurance providers' books of business, RMA does routine analyses from its extensive data base. However, prior to the implementation of the premium reduction plan, such analysis did not focus on the types of plans, coverage levels of size of policies because, prior to the 2005 reinsurance year, the SRA only required that approved insurance providers sell insurance to all eligible farmers. The procedures only required that approved insurance providers not unfairly discriminate against farmers.

RMA did receive allegations that Crop1 was only marketing its premium reduction plan to large farmers. However, there was no specific requirement in the premium reduction plan procedures or the SRA that required approved insurance providers to market its products and services, including the premium reduction plan, to all farmers. Therefore, RMA could not

hold Crop1 to a higher standard than other approved insurance providers. It was not until the 2005 SRA that RMA affirmatively required all approved insurance providers to market and sell crop insurance to all farmers. With the inclusion of this provision in the SRA, and the inclusion of this requirement in the interim rule, RMA will have to conduct such analysis. If it reveals that approved insurance providers are not in compliance with this requirement, RMA can take the appropriate action under the SRA or require remedial measures under the interim rule.

With respect to RMA monitoring, RMA engages in a variety of activities such as an extensive analysis of each approved insurance provider's Plan of Operations before the beginning of the reinsurance year; quarterly statutory financial reviews; periodic financial and operational reviews; compliance reviews; ad hoc investigations of specific operational issues; civil rights reviews, and indemnity estimates; just to name a few.

With respect to frequency of penalties for approved insurance providers not serving all farmers, RMA would view a refusal to provide insurance to an otherwise eligible farmer as a serious violation of the SRA and take the appropriate action. However, such occurrences are rare. With respect to the issue of marketing to all farmers, this requirement only became effective for the current reinsurance year and not all policies have been reported. Therefore, it is not yet possible for RMA to conduct a review.

With respect to the number of specialty crop and small farm policies carried by Crop1, such information is protected by the confidentiality provisions in the SRA and other privacy statutes. RMA can say that it has such information for all approved insurance providers in its extensive data base and periodically analyzes such data for approved insurance provider monitoring purposes.

*Comment:* A few agents and interested parties asked whether the approved insurance provider who has delivered premium reduction plan policies has been held to the same adjusting, education, and quality standards as the balance of the industry.

*Response:* All approved insurance providers that are eligible to participate in the premium reduction plan under the interim rule and those authorized under existing procedures, including Crop1, must first and foremost abide by the terms of the SRA. These are standard for all approved insurance providers. In addition, Crop1 must abide by additional terms and standards

established by the FCIC Board and by existing premium reduction plan procedures. These would include the service, training, loss adjustment, quality control, etc. requirements of the SRA and approved procedures.

c. Uniform Service and Unintended Effects

*Comment:* Several farmers and agents commented that with the current premium reduction plan there has been no reduction in benefits or service. Commenters state they are satisfied with the service they received from Crop1, its agents and loss adjusters. A commenter stated it received as good, if not better service than with other approved insurance providers. A commenter stated it was satisfied with the prompt accurate adjustment during the year when losses occurred due to drought. The commenter stated this not only strengthened Crop1's reputation but helped the agency to provide value and service as well. The commenter stated that every client has renewed their crop insurance since offering the premium discount.

*Response:* RMA has monitored service provided by Crop1 and all authorized approved insurance providers under the exactly the same standards, which are the requirements of the SRA and approved provisions, as all other approved insurance providers and has not found evidence that service to farmers was reduced. Further, such monitoring for compliance with the requirements of the SRA and approved procedures will continue under the interim rule. As stated above, provisions have been added to the interim rule clarifying these applicable standards.

*Comment:* An agent commented that whether the premium reduction plan is kept in place or not, it intends to continue providing the existing policyholders with the best service that it can. However, the commenter asks that RMA understand that the crop insurance program was designed for all farmers, not just large farmers, but the medium and small farmers.

*Response:* RMA hopes that all agents share the desire of this commenter to provide the best service possible to policyholders. Further, RMA is in total agreement that the premium reduction plan must provide access to all farmers in the states in which it is available. To accomplish this, RMA is requiring that approved insurance providers develop marketing plans designed to reach all farmers, including small, limited resource, women and minority farmers, through the appropriate media and implement the marketing plan. RMA will monitor performance and if it

determines that any segment of farmers is not adequately being reached, it can require the approved insurance providers to take remedial corrective measures, including targeted advertising.

*Comment:* Many agents, interested parties, approved insurance providers, and farmers commented that the premium reduction plan will reduce services to farmers. Some reasons include stricter regulations, crop insurance is labor intensive, the inability to make changes to honest paperwork mistakes or keying errors by approved insurance providers or agents, and reductions in agent commissions. Commenters stated that their business is built on service. Commenters state that farmers need the assistance from their agents. A commenter stated that crop insurance is an increasingly complex subject and requires at least the level of service afforded now. A commenter stated that if approved insurance providers are cutting service then farmers will not buy the product. A commenter stated reduced service will mean poorer risk management decisions by farmers. A commenter stated that lesser service at a good price is not always a good bargain.

*Response:* RMA agrees that crop insurance is a complex, labor intensive program and that many farmers may need the expertise provided by the agents in selecting the best risk management tool for their operation. However, the service requirements under the SRA and approved procedures will not change and all approved insurance providers and agents are required to comply with these requirements irrespective of whether the agent or approved insurance provider participates in the premium reduction plan. Failure to comply with these requirements regarding service will not only subject approved insurance providers to sanctions under the SRA, it may subject agents and approved insurance providers to sanctions under the interim rule. Given the significance of the consequences, RMA does not believe there will be a reduction in service.

RMA understands that agents may be providing services over and above that which is required by the SRA and approved procedures. RMA does not require such extra service and cannot preclude a reduction in such services. This is strictly a matter between the agent and the farmer. As long as such service at least meets the requirements of the SRA and approved procedures, RMA will not interfere.

With respect to strict compliance with regulations, there are few additional

requirements imposed on agents under the interim rule. The only significant requirement is the limitation on marketing practices in the promotion of premium discounts to existing and prospective policyholders. There should not be any additional paperwork burdens because premium discounts are now based on the actual cost savings achieved by the approved insurance provider.

*Comment:* Many agents, interested parties and farmers commented that reductions in service would be particularly true for small or limited resource farmers because they will be unprofitable to serve. Commenters stated small farmers require as much time, effort, and expense to service as large farmers. The commenters stated that if all of the larger accounts are switched to the discount plan, then agents will barely survive on the large accounts and will lose money on the smaller accounts, which they already do, meaning that overall they would be losing money and would have to go out of business due to a marketing scheme. The commenters state that they are able to serve small farmers partly because the larger farmers' policies help with the low or non-existent profits from the smaller farmers. A commenter stated that he or she could not still service areas with farmers in high loss ratios the way they deserve, if the premium reduction plan takes place. Commenters stated that these small farmers could be left without service.

*Response:* For the reasons stated above, it is unlikely that there will be any reduction in service to any farmer, including small or high risk farmers, from the requirements in the SRA and approved procedures. Approved insurance providers are not going to pay a commission so low that selling crop insurance is no longer economically viable for the agent and risk their going out of business. This would result in approved insurance providers not having sufficient agents to properly service their policyholders. In addition, approved insurance providers are not going to risk losing the agent or their book of business to a competitor thereby decreasing the potential for underwriting gains. The marketplace will determine the fair and equitable commission for the agent.

In addition, RMA has taken steps to ensure that service to small farmers is available and is not reduced. One step is to clarify the requirements regarding service in the interim rule. Another is to specifically require that approved insurance providers develop and implement a marketing plan designed to reach small, limited resource and



minority farmers. Provisions have also been added to allow farmers to complain directly to RMA if they feel they have been denied access to the premium reduction plan or have received reduced service. In addition, failure to comply with either the service or marketing requirements could result in the imposition of significant sanctions under the SRA or the interim rule on the approved insurance provider and agent.

*Comment:* An approved insurance provider commented that state variability could adversely affect the level of service to some farmers, which is directly contrary to the fundamental requirement of the crop insurance program that all farmers are entitled to the same level of service, regardless of their size or loss history.

*Response:* As stated above, service cannot be reduced below the level required by the SRA and the approved procedures. Further, as stated above, approved insurance providers and agents have a strong incentive to maintain at least the required level of service. Permitting state variability does not change these requirements. Further, as stated more fully below, after consideration of the comments regarding the inequity of creating a one size fits all program when the approved insurance providers have different business operations and may incur significantly different costs from one state to the next, the adoption of the alternative proposal which bases premium discounts on actual savings, the use of existing Expense Exhibits to determine efficiencies and the amount of a premium discount in a state, and the use of a formula to allocate costs and determine the amount of premium discount, there was no reason to refuse to permit state variability. However, this means that any approved insurance provider seeking state variability must do so while maintaining the required level of service.

In addition, the interim rule expressly contains provisions that preclude conditioning the payment or amount of a premium discount on the loss history or size of the farm. Violation of one of these requirements could also result in the imposition of significant sanctions under the interim rule.

*Comment:* Many agents, interested parties and farmers commented that if the premium reduction plan proposal stays intact as written, it would cause many of the personal services and consulting offered by the agent to not be available to the average farmer. Commenters stated that they meet several times each year with each farmer and reduced commissions would mean

spending less time and a product that is now successful would again take a step backward with reduced time spent educating the farmer on risk management. Commenters state that the amount of work required increases each year. Commenters state that they need the ability to pay office expenses and do not deserve to have to attempt to continue to provide superior services at reduced compensation. A commenter stated that the amount of commission will not cover the amount of work. A commenter stated that crop insurance policies will take a back seat to other lines of insurance when the revenue generated decreases to a point that the investment of time is not feasible. Commenters stated that farmers do not mind paying if they get quality service. A commenter stated that the complexity of the program has increased the time spent servicing each client tenfold, leaving less time each year to solicit new accounts and new accounts that are necessary each time a commission reduction is passed down.

*Response:* As stated above, the SRA and approved procedures contain specific requirements regarding service and all approved insurance providers and agents must comply with these requirements or be subject to the sanctions in the SRA and interim rule. Therefore, it is unlikely that approved insurance providers will reduce commissions to the point that agents can no longer afford to comply with these requirements. Further, as stated above, it is not in the approved insurance provider best interest to cut commission to the point that agents stop selling crop insurance. As with all competition, the market will generally strike a balance with respect to the reductions in compensation the market can bear.

RMA understands that based on the comments there may be agents that are providing services in excess of those required. RMA also understands that some farmers find these services invaluable. However, since these services are not required by the SRA or approved procedures, RMA cannot require that they be maintained. This is a matter between the agent and the farmer. Further, the approved insurance provider may want to encourage such services in order to retain these farmers in its book of business. This would provide another incentive for approved insurance providers not to cut commissions to the point that agents cannot provide these additional services. RMA's obligation is to ensure that the requirements of the SRA and approved procedures regarding service are complied with and to sanction those

agents or approved insurance providers out of compliance.

*Comment:* Many agents and farmers commented that when discounted pricing brings along with it discounted service, the farmer is not educated nor guided effectively through all his options. Commenters state that this program has become much more labor intensive, complex and convoluted by the addition of plans of insurance as well as more individual crop policies are offered and the premium reduction plan will cause reduced services. A commenter stated that the farmer needs the agent to assist them in making sound risk management decisions. Agents spend many hours keeping updated on changes. Commenters state that farmers want quality service. A commenter stated that the farmer relies on the agent to educate them. A commenter stated that there is barely enough time in the day to farm, to market, to keep records and to do everything else required to stay in business and that the premium discount is not worth losing the personal attention from the agent. Commenters state that farmers would be harmed without uninterrupted service.

*Response:* RMA agrees that farmers want quality service and that the agent's knowledge and experience is important to the success of the crop insurance program and the farmer. However, this does not mean there is no room for competition. It is the approved insurance providers that are in the best position to judge where efficiencies can be obtained without jeopardizing their compliance with the SRA and approved procedures or their book of business. Therefore, approved insurance providers are not likely to request the opportunity to offer a premium discount in states where it is not economically feasible to reduce agent commissions or other administrative costs. Further, approved insurance providers are likely to only propose cuts in commission that will still permit agents to receive a fair and equitable commission as determined by the agent and approved insurance provider. It is not in the approved insurance provider's best interest for the agent to lose customers because the agent can no longer serve its customers.

*Comment:* Many agents and farmers commented that given the complex, labor-intensive nature of crop insurance, any agent faced with a reduced commission will be forced to take on additional farmers to make up the difference, plus do all the other lines of insurance that they have to do just to stay in business. A commenter stated that in order for an agent to operate on less commission they would have to

gain new customers, which means taking clients from another agent. End result, someone gets hurt and it could lead to loss of integrity in the program. Commenters state that taking on new clients would reduce service because all of the marketing energy goes into generating the higher volumes.

*Response:* It is not uncommon for agents to want to expand their client base. Given that the number of potential new insureds is limited, agents typically attempt to attract clients from another agent. This occurred in the crop insurance program even before the implementation of any premium reduction plan. However, as stated above, it is unlikely that there will be the severe cuts in commission anticipated by the commenters because it is not in the approved insurance provider's best interest to lose agents or policyholders.

Further, what the commenters are describing is competition between agents and price will simply be a new component of that competition. However, as is currently occurring, service is still another means of competition and in some cases may be more valuable than the potential of a premium discount several years in the future. The premium discount simply provides another tool to be used by agents to attract clients and, under the alternative proposal adopted in the interim rule, one which is not so overwhelming that agents who provide superior service would not be able to compete on a level playing field.

*Comment:* An agent commented that self service insurance is a disaster waiting to happen for anyone who assumes that simply signing up will take care of business.

*Response:* There is no expectation that crop insurance will become self service. As stated above, agents provide too valuable a service to farmers and many farmers could not assess and meet their risk management needs without the assistance of the agent. However, as occurs in many aspects of life, there will be farmers that are more knowledgeable about crop insurance than others and may not need the same level of service to meet their risk management needs. As long as the service provided to all policyholders at least meets all the requirements of the SRA and approved procedures, any service provided above that level is totally within the discretion of the agent and approved insurance provider. This is true today and will remain true under the interim rule. As explained above, agents have always and will continue to compete based on the service they provide. It is the agent and approved insurance provider who

are in the best position to know the level of assistance required by their customers.

*Comment:* Several agents and interested parties commented that they are concerned that a premium reduction plan environment will force approved insurance providers and agents to cut funding for training, support, and farmer education. Commenters state that the premium reduction plan will lead to less knowledgeable or qualified agents. A commenter states that this will erode the confidence in the crop insurance program. A commenter stated that RMA should not undervalue the knowledge, expertise and service the agent provides the farmer.

*Response:* All agents and approved insurance providers are still required to comply with all requirements of the SRA regarding training and the interim rule reinforces this position. Failure to comply with such requirements would subject the approved insurance provider to sanctions under the SRA. Therefore, participation in the premium reduction plan should have no effect on the knowledge or qualifications of agents.

With respect to support and farmer education, to the extent that reduction of these would lead to non-compliance with any service requirement in the SRA or approved procedures, such reduction would be prohibited and could lead to sanctions against the approved insurance provider. To the extent that the support and farmer education may not be required by the SRA or approved procedures, RMA cannot require that approved insurance providers continue these activities. However, as stated above, approved insurance providers have the incentive to retain customers and to the extent that such activities are needed for such retention, it is unlikely that approved insurance providers will cut them.

*Comment:* An agent commented that the small farmers will more than likely remain loyal to approved insurance providers and agencies that have done their very best to service their accounts over the years, such as developing record keeping systems, acreage mapping, educational updating, and constant reminders about proper reporting and compliance with the FCIC program. In general, the large farmers work on economies of scale and these farmers will be the accounts solicited.

*Response:* Large accounts were always the most attractive to solicit even before implementation of the premium reduction plan because they allowed the most opportunity for agents to profit. The implementation of the premium reduction plan does not change this dynamic. However, RMA believes that

all farmers value superior service and are likely to remain loyal to the agent providing valuable service regardless of size. The addition of price competition simply gives the farmer a choice to decide what it values the most and, since the premium discount can no longer be guaranteed at the time of sale, the competition is on a more level playing field.

*Comment:* Several interested parties and agents commented that reductions in service and use of the internet will result in increased mistakes and misunderstandings. A commenter stated that farmers need personal contact with their agent to prevent these mistakes.

*Response:* As stated above, approved insurance providers and agents are required to comply with the service requirements in the SRA and approved procedures and such requirements, when followed, would preclude mistakes and misunderstandings. Therefore, because approved insurance providers would be subject to sanctions if service failed to meet the requirements, there should not be any increase in mistakes or misunderstandings under the premium reduction plan. Further, no approved insurance provider can sell and service insurance solely over the internet. The Act requires such sales to be made through licensed agents. Further, it is unlikely that an approved insurance provider could meet all the service requirements in the SRA and approved procedures remotely. Therefore, some personal contact between the agent and farmer is likely to occur.

*Comment:* An agent asks what exactly is service to the farmers. The commenter states that if RMA means, timely claims payment, make sure they get their bills, etc, the approved insurance providers will do this fine but unfortunately, that is not what the farmer considers good service. The farmer considers good service to be when his agent helps him decide the best coverage, when the agent reminds him that acreage and production reports are due and then looks it over to make sure it is not missing anything. The entire program has grown because there is a committed sales force of agents pushing the program. The approved insurance providers cannot and do not make sure that kind of service is taking place (except for captive agents). The best they can do is make sure agents are fulfilling the obligations of integrity, deadlines, and non-discrimination and they do a good job of that. But a commitment to servicing the farmer lies with the agent. Some do it well (and they grow their business) and others do not (and they lose the business to the

better agent). It is the agent/agency's responsibility to service the customer. That is how the farmer defines service.

*Response:* As stated above, service requirements are contained in the SRA and approved procedures. RMA agrees the service required by the SRA and approved procedures do not include the many personal touches that individual agents employ in the course of conducting business with clients. RMA further agrees that these factors can play a significant role in determining whether an agent is successful or not and that it is the agent that determines this level of service as a means to compete with other agents.

Nothing in the interim rule changes this dynamic. Agents provide a valuable service and farmers are the best judge of the service they want. This competition to retain or obtain new customers will still exist under the interim rule. However, a new component, price, has been added to the competition and agents will have to determine how best to compete because commenters are correct that some farmers will value the service more and others will value the premium discount.

*Comment:* Several agents commented that commissions are being reduced by a half or a third. Commenters state that if commissions were reduced only the amount of the discount the farmer received, it could still deliver the program with the same service. A commenter asked where the rest of the savings are going.

*Response:* There is no requirement in the interim rule that dictates that agent commissions be cut or the amount of commissions to be paid. This is a matter solely between the agent and the approved insurance provider. Market forces will determine if any cut in commission is appropriate and any amount because, as stated above, approved insurance providers have the incentive to retain agents and their books of business. Further, as stated above, RMA has made revisions to the premium reduction plan, such as the selection of states, which will provide the maximum flexibility for approved insurance providers to make sound, reasoned decisions regarding where they can achieve savings in their operations without jeopardizing their book of business and potential profitability.

RMA is not in a position to comment on the extent of the reductions in commission or where the savings are going. RMA only examines A&O costs and A&O subsidies to determine whether there is a savings. Further, there is no requirement in the premium reduction plan that all cuts in agent

commission be used to fund the premium discount. If the approved insurance provider experiences higher costs in other parts of its operation, it may be using savings from the reduction in agent commissions or other efficiencies to offset such costs. This is totally within the discretion of the approved insurance provider.

*Comment:* An agent commented that in order to adequately serve all customers as they should be served, the reductions in cost of delivery should be made at the approved insurance provider level, not at the agent level.

*Response:* As stated above, the goal of the interim rule is to provide the approved insurance providers the maximum flexibility to evaluate their business operations to determine where savings can be achieved. The approved insurance providers are in the best position to determine whether agent commissions or other costs can be reduced while still maintaining their potential profitability. As stated above, this is a free market issue between the agent and the approved insurance provider because if commission cuts are too deep, agents are likely to move their books of business to competitors. Further, if RMA were to dictate the manner in which savings could be achieved, as suggested by the commenter, it could have a detrimental effect on the financial stability of the approved insurance provider because each has a different business operation, which means different areas where savings could be attained.

Further, as stated above, based on the information reported by the approved insurance providers on their Expense Exhibits provided with their Plans of Operation, agent commissions represent an overwhelming percentage of the total cost to the approved insurance provider to deliver crop insurance. To exclude the ability to use commissions to achieve savings even though the approved insurance provider has determined that this is the most appropriate place to achieve savings based on its evaluation of its operation would be arbitrary and capricious. However, the interim rule retains the requirement that approved insurance providers cannot achieve all of their cost savings from agent commissions. To participate in the premium reduction plan, approved insurance providers will have to achieve some savings from other aspects of their operations.

*Comment:* An agent commented that it is concerned that reductions in commissions will lead to fewer loss adjusters available to provide claims servicing.

*Response:* RMA is unsure of why a reduction in agent commissions will lead to fewer loss adjusters. Under the SRA, both functions are separate and distinct from one another. Further, under the interim rule, approved insurance providers must still comply with all the requirements of the SRA and approved procedures regarding loss adjustment. Failure to comply with these requirements will subject the approved insurance provider to sanctions under the SRA.

*Comment:* Several agents commented that RMA has stated that an agent cannot accompany a loss adjuster on a loss as they have in the past. A commenter stated that this goes against the whole principle of having an agent, which is service. A commenter asks whether the agent is considered part of the approved insurance provider and, therefore, can't cut any services that were provided in the past. The commenter stated that a large majority of the farmers don't understand the adjusting procedures and are being forced to rely on a stranger they just met and can only assume that adjuster is qualified to complete their loss instead of having someone they know and trust to be there to help them know they are being treated fairly. The commenter stated that many adjusters fill out papers and say sign here without explaining what they have done.

*Response:* These comments do not address a matter covered by this rulemaking and, therefore, were not considered relevant to the consideration of the proposed rule. However, this is an important issue that RMA would like to address.

The role of agents in the adjustment of claims is provided for in the SRA. For a number of years, the SRA has prohibited agents from being involved in the loss adjustment process. So this is not a new requirement and is necessary because in many cases of fraud, waste, and abuse, there has been collusion between the agents and loss adjusters. In addition, the concerns raised by commenters occurs in most lines of insurance, such as auto insurance, where if there is a claim, the insured works with the claims representative, who is usually a stranger and must assume that the stranger is qualified to complete their loss. Many persons are in the same position as the farmer in that they know little about the adjustment process. However, the need has been long been recognized to separate sales and loss adjustment because of the inherent conflict of interest in the position. Agents inherently want to keep their clients satisfied so they will remain with the

agent. However, loss adjusters work for the approved insurance provider, who has an interest in containing losses. Therefore, as with other lines of insurance, this provision is necessary to protect the integrity of the crop insurance program.

*Comment:* An agent commented that RMA should consider a premium modification philosophy that provides a savings where it can be applied without affecting customer service and it prevents applying a discount where it will reduce customer service.

*Response:* All approved insurance providers must provide the level of service required under the SRA and approved procedures. Since approved insurance providers and agents already compete based on the service they provide, it would be inappropriate for RMA to require as part of the interim rule that an approved insurance provider not be allowed to adjust the service provided so long as it meets the requirements of the SRA and approved procedures. RMA believes that decisions by approved insurance providers regarding the level of service beyond the minimum should be based on competition in the market. Which means policyholders will decide the level of service beyond the minimum approved insurance providers and agents must provide. To adopt the commenter's suggestions would require RMA to try to determine for policyholders the types and level of service that each approved insurance provider must provide regardless of its relationship to the requirements in the SRA and approved procedures. RMA does not believe that such regulation is in the policyholders' or the approved insurance providers' best interests.

*Comment:* Many agents and interested parties commented that it is unrealistic at best to expect to see true realized savings and efficiencies through the use of the internet. The commenters stated that the complex nature of crop insurance, coupled with recent history from the approved insurance provider currently offering the premium reduction plan having no success whatsoever with the internet as a delivery tool demonstrates this fact. A commenter stated that farmers do not have the time or equipment to input the data so agents must still do the work. Commenters state that the premium reduction plan provides an incentive to use the internet to the detriment of agents. Commenters state that farmers need the agents to assist them in making their risk management decisions.

*Response:* There is no requirement in the interim rule that cost savings must be attained through the internet. In fact,

RMA agrees with the commenters that it is unlikely an approved insurance provider could comply with all the service requirements in the SRA or approved procedures if it offered crop insurance solely through the internet. However, the internet does provide a means where savings can be achieved and there are farmers who are willing and able to use the internet. Since the premium discount is now based on actual cost savings, not projected, approved insurance providers no longer have to mandate the use of the internet but could make it available and use any savings achieved to justify paying premium discounts.

*Comment:* Several agents, interested parties and farmers commented that if price is a factor, it seems to become the "only" factor when discussing a product. A commenter states that crop insurance is a valuable asset to any farming operation these days and does not need "pricing games" to become a factor. A commenter stated that agents should continue to provide coverage to policyholders based more on service and quality than cutting prices. A commenter stated that farmers don't go looking for the cheapest rate, they go looking for the person who can explain the program and offer the best service. The commenter stated that the premium reduction plan is going to make it where farmers look for the cheapest plan, and who cares if they know what they are buying. A commenter states that if the premium reduction plan proposal goes through, agents will water down their competitive advantage and have to resort to selling price. A commenter stated that others can be trendy and look to the bottom line but agents should be motivated by providing the best service they can.

*Response:* The commenters seem to suggest that competition on price and competition on service are mutually exclusive and that is unlikely to be the case. In a complex program where service is so important, it is unlikely that price competition, especially the kind included in the interim rule, would have the dominating effect on competition that commenters seem to suggest. The whole premise of price competition is to be able to provide the same product or service for less money. Therefore, farmers are still going to want the best risk management tool and advice they can get. If they find out they did not receive it from one agent, they will move on to another agent because of paramount concern to farmers is whether they receive the benefits they are contractually entitled to receive under the policy in a timely manner. The potential for a premium discount

will not override this immediate interest. These market forces will always permit competition based on service.

Nothing in the interim rule is intended to minimize the role of the agent or change the service received. The interim rule is intended to allow price competition when and where the market will bear and the approved insurance providers, agents, and farmers are the best determinant of these factors.

*Comment:* Several agents commented that under the premium reduction plan, farmers suffer lack of service, access to all plans of insurance, and knowledge of the crop insurance program. A commenter states that only those farmers that can educate themselves will benefit. A commenter also stated that the access to the premium discount must be applied across the board to all types of policies and that farmers participating only in catastrophic risk protection (CAT) policies must be informed about the reduced premiums in other programs.

*Response:* All approved insurance providers must provide access to all plans of insurance under the terms of the SRA. The interim rule does not change this requirement. Further, the requirements for service are also contained in the SRA and approved procedures and all approved insurance providers and agents must comply with these requirements or risk sanctions under the SRA or interim rule. If the commenters know of instances where approved insurance providers or agents have not complied with these requirements, they should report such non-compliance to RMA.

Promoting certain insurance products is not the same as denying access to an insurance product. RMA has not regulated such promotion because generally the market forces take care of this issue. For instance, if an agent promotes a Group Risk Protection plan of insurance and the farmer later discovers that the indemnity payable under policy did not meet the farmer's risk management needs and that purchase of another product would have, the farmer is likely to go to another agent to obtain the coverage. Therefore, it is in the best interest of the agent to tailor the insurance coverage to best meet the needs of the farmer.

Regarding the statement that only farmers that can educate themselves will benefit, RMA expects that agents participating in the premium reduction plan will continue to be motivated to provide crop insurance education to farmers in order to remain competitive. Further, with respect to the requirement that agents inform their farmers of the

potential for a premium discount if it buys up, there is no need to specifically include this requirement in the rule. Agents already have an incentive to suggest to their farmers who purchase CAT coverage to buy higher coverages because of the higher commissions the agents can receive. The potential for a premium discount would provide an additional incentive the agent can use to convince the farmer to buy-up to higher coverage levels.

*Comment:* Several agents commented that there is currently a competitive marketplace with several approved insurance providers' agents still competing for new business based on service. If the government interferes with the marketplace to the degree that there are only one or two providers, the incentive to compete is lost and the level of service will certainly decline. A commenter stated that the system isn't broke now so why go out of the way to fix something that is working fine.

*Response:* There is nothing in the interim rule that suggests that implementation of the premium reduction plan will result in only one or two approved insurance providers. However, RMA has taken measures to minimize potential disruption to the marketplace. One is basing premium discounts on actual costs savings, instead of projections that may be unrealistic or unrealized. Further, the potential for a premium discount in the future will be much less disruptive to the market place than a guaranteed premium discount at the time of sale. Allowing approved insurance providers to select the states in which they will participate in the premium reduction plan also eliminates potential adverse effects in those states where margins are much less.

Under the interim rule, agents will still have the ability to compete on service. In a complex program, there will still be farmers that will value service more than the potential for a premium discount. Further, service is not likely to decline such that the requirements in the SRA and approved procedures are not met.

As stated above, RMA has no choice but to implement the premium reduction plan. However, it has tried to do so in a manner that maintains the best attributes of the crop insurance program, service and choice, and minimizes the potential for adverse effects, such as financial instability and approved insurance providers pulling out of states. As a result, RMA believes it has developed a premium reduction plan that can benefit all participants in the crop insurance program.

*Comment:* An agent commented that farmers who opt for a discounted plan should expect and receive some differentiation in service, to offset the cost savings, *i.e.* earn the discount. Example would be to complete the required reporting in some electronic format, which would speed up the process for the agent and approved insurance provider involved. The commenter also stated a discount may also make sense if the policy size were taken into consideration. The commenter stated that the time spent by an agent on farmer education, counseling, and processing can be just as involved for a 100 acre policy, as a policy for 1,000 acres. Consideration for the amount of insurance may be in order, and justify some further discount beyond the administrative fee alone.

*Response:* It is possible that farmers who participate in the premium reduction plan will not receive the same level of service as before. However, these farmers will still receive the level of service required by the SRA and approved procedures. Any service over and above that standard is strictly between the agent and the farmer. The interim rule does not require that extra service be eliminated.

Further, the amount of any premium discount takes into consideration the size of the policy. A farmer with a 1,000 acre policy would likely receive more dollars of premium discount than a farmer with a 100 acre policy because of the difference in premium. However, as the rule makes very clear, there can be no difference in the percentage of discount between the two if both farmers are located in the same state. To allow the application of different percentages of premium discount in the same state could lead to unfair discrimination. There could be different percentages of premium discount paid between states, *i.e.*, state variability. However, there is no unfair discrimination as long as all farmers within each state are treated the same. Such state variability may simply be a function of the differences in savings that can be achieved among the states.

*Comment:* Several agents and interested parties commented that although lower premiums would be beneficial to farmers, they question how approved insurance providers will be able to maintain their efficiency in servicing the customer. This in the long run will defeat the benefits of good crop insurance.

*Response:* As explained above, the interim rule requires that all farmers must still receive the level of service required by the SRA and approved procedures. Therefore, when

determining whether an efficiency can be achieved, the approved insurance provider must evaluate its business operation to determine where savings are possible while still maintaining the required level of service and complying with the other requirements of the SRA. These requirements limit the actions of approved insurance providers and protect the integrity of the crop insurance program.

*Comment:* A few interested parties and agents commented that service centers would not be able to continue working with agencies because the approved insurance providers would have no "room" in their commission structure to offer enough for both a service center and the agent. The commenter stated it would drive many service centers out of business immediately. The commenter stated that service centers offer a valuable service to both agencies and approved insurance providers by acting as a buffer for the agent in turning in correct forms, information, etc. and reducing the workload of approved insurance providers. Without service centers, approved insurance providers would have to hire more underwriters at much more expense than a service center costs.

*Response:* There is nothing in the SRA or approved procedures that require approved insurance providers to use service centers. It is up to the approved insurance provider to determine whether or not to use service centers and how much to invest in such activities. Nothing in the interim rule changes this. While RMA does not doubt that service centers provide a valuable service, it is up to the approved insurance provider to evaluate its operation and decide where to achieve efficiencies. RMA has no rational basis to interfere with this relationship.

*Comment:* Several interested parties and agents commented that the proposed rule would cause an even greater burden on the approved insurance providers requiring vast accounting reports, particularly ones that are state specific. The A & O was just recently cut for the 2005 crop year and further cuts are not warranted. The commenters state that the proposed rule would require further commission cuts to agents in order for the approved insurance providers to comply with the premium reduction plan requirements at the same time that RMA continues to require more and more paperwork and contacts with its insured's.

*Response:* As stated above, RMA revised the proposed rule to require premium discounts to be paid on actual cost savings. Therefore, the accounting

reports necessary to determine the projected efficiencies have been eliminated. Actual costs savings must still be determined at the end of the reinsurance year but the proposed rule was revised to use existing Expense Exhibits provided with the Plan of Operations. Further, state accounting reports will not be necessary. RMA has developed a formula that will be used for each state to determine the premium discount. RMA has developed a formula that will be used for each state to determine the premium discount to the state level. Apart from the requirement to have these expense statements audited, there is no additional burden on approved insurance providers.

RMA disagrees with the comment "that the proposed rule would require further commission cuts to agents \* \* \*" Participation in the premium reduction plan is voluntary for any approved insurance provider. If an approved insurance provider chooses to participate in the premium reduction plan, agent commission reductions are not required. Approved insurance providers are free to evaluate their operations to determine where cost savings can be achieved while still allowing them to be in compliance with all requirements of the SRA and approved procedures, including service, loss adjustment, training, etc.

*Comment:* Several agents and interested parties commented that many existing Crop1 agents are promoting only the Group Risk Income Protection (GRIP) product partially because it requires less work and expertise than individual products but also because its very structure causes claims to be overpaid. A commenter asked how much money could be saved if GRIP claims were not overpaid. A commenter stated such promotion may be to the detriment of the insured, who may be better served by an individual plan tailored to the farmer's risk management needs.

*Response:* It is impossible for RMA to determine the motives behind the promotion of one insurance product over another. However, the allegations by the commenter are not the first time such allegations have been made. Several years ago there were allegations that agents were promoting CRC to farmers who did not need that level of risk protection in order to increase their commissions. In these types of situations, it is impossible for RMA to determine the appropriate plan of insurance for a farmer or require that agents specifically promote certain insurance products or stop promoting another. As with the situation with CRC, agents should be advising farmers of the

insurance product that best meets their risk management needs and if the agents are not, farmers will likely take their business to an agent that will.

Further, RMA is unsure of what the commenter means by the statement that GRIP by its very structure result in overpaid claims. If the commenter is referring to the fact that GRIP may pay an indemnity even if the farmer has not suffered a loss because the county suffered a loss, payment for this type of loss is specifically authorized by the Act. Further, the flip side is also true in that farmers with GRIP who suffer losses may not receive an indemnity because the county may not have suffered the requisite amount of loss.

*Comment:* Several agents and interested parties commented that Crop1 uses very deceptive marketing to try to convince people they will receive a 10% discount on their premiums. Commenters state that this is not the case for all levels of insurance coverage or plans of insurance. Commenters asked what happens in the event that the farmer would have a claim. The commenter stated the farmer already did not receive the discount he was expecting, and asked about the service. A commenter stated that farmers do not learn they have been misled until loss time.

*Response:* While such misunderstanding might have been possible under the process established in the proposed rule because approved insurance providers were required to project costs savings and such projections could be unreasonable or unattainable, the adoption of the alternative proposal precludes such conduct. Under the interim rule, premium discounts are based on actual cost savings determined after the end of the reinsurance year and all approved insurance providers and agents will be precluded from advertising that a premium discount will be paid or promising an actual or projected amount. Approved insurance providers will only be able to advertise actual premium discounts paid and even these must be accompanied by prominent disclaimers that past results do not guarantee future payments. If RMA discovers that an approved insurance provider or agent is not complying with these limitations, sanctions will be imposed.

Regarding the comment about farmers being led astray about the premium discounts, RMA has investigated several cases where local marketing information from Crop1 and its agents, though not conclusively false, could be perceived by some farmers as misleading. In such cases, RMA directed Crop1 to cease and

desist and Crop1 complied. RMA has no evidence that widespread false or misleading marketing information about Crop1's premium reduction plan was disseminated. Any person with specific information coming from Crop1 or any other approved insurance provider that is false or misleading is encouraged to provide such information to RMA and RMA will take appropriate action.

*Comment:* Several agents and interested parties commented that Crop1 does not have an adequate number of loss adjusters. A commenter asked that if Crop1 did decide to hire more adjusters where they could find ones with enough experience to handle such a large number of losses in a short amount of time. A commenter stated that Crop1 is trying to hire loss adjusters that from other approved insurance providers who have already gone to great expense to train them. A commenter stated that Crop1's adjuster force is small. A commenter stated that Crop1 has an advantage of no training for agents or loss adjusters.

*Response:* Regarding the comment alleging that Crop1 lacks loss adjusters, Crop1 has advised RMA that, like nearly every other approved insurance provider, it employs a combination of salaried loss adjusters, contracted loss adjusters on retainer, and extra contracted loss adjusters when needed. RMA has no evidence that Crop1's claims service is inferior to other approved insurance providers and has not received any more complaints from farmers regarding Crop1's loss adjustment than it received about the loss adjustment of other similarly sized approved insurance providers.

Regarding the comments alleging a lack of training of Crop1 agents and loss adjusters, the SRA and Appendix IV contain the requirements regarding training and all approved insurance providers are required to be in compliance with these requirements or face sanctions under the SRA. RMA monitors the training of all agents and loss adjusters and, through its monitoring activities, RMA has documented training logs and materials that confirm that Crop1 conducts training activities for agents and loss adjusters that are in compliance with the requirements of the SRA and Appendix IV.

*Comment:* Several agents commented that the premium reduction plan approved insurance provider is seeking people who are not professional agents, such as seed dealers and elevators, and have not worked and know very little about the realm of crop insurance and that this was unfair. A commenter stated the agents were new and inexperienced.

A commenter claims that one of the people involved with the premium reduction plan program stated he knew very little about crop insurance, but his job was to sign up "agents" willing to sell this type of insurance. A commenter claims their selling pitch has nothing to do with the integrity of the crop insurance program nor the service and hard work that goes with the professional standard of most MPCCI agents, but only with the fact that "we can save you 10% on premium." A commenter states that because of these unprofessional people involved with the premium reduction plan program, all agents who have worked so hard to improve the program over the years are now going to suffer because of these few bad apples. A commenter states that farmers will suffer by not getting quality service. A commenter asked how RMA can expect a Crop1 insured, a coop employee, or a seed dealer to perform policy underwriting with absolutely no experience or training in crop insurance.

*Response:* Regarding the general comments that Crop1 has relied heavily on people who are not professional agents, such as seed dealers, etc., Crop1 is required to comply with the same requirements in the SRA and approved procedures as all other approved insurance providers regarding the licensing and training of agents and service provided to farmers. RMA has monitored Crop1's sales activities and has not discovered that is in violation of any of these requirements. While Crop1 may use persons such as seed dealers to sell crop insurance, these persons are licensed and trained agents.

Further, there is nothing in the SRA that precludes the use of inexperienced, trained and licensed agents. New agents are constantly entering the crop insurance program and there is no basis to exclude their participation. Inexperienced does not mean unprofessional and it is up to the approved insurance provider to make sure these new agents gain the experience to go along with their training. Further, inexperienced does not mean that agents cannot determine the risk management needs of the client and properly advise them of the insurance product that will meet that need. No agents are authorized to sell insurance until they receive this training.

Further, the fact that agents are selling insurance based on "price" competition instead of service is also not precluded. As stated above, the whole purpose of section 508(e)(3) of the Act was to introduce price competition into the program. Further, as commenters have

stated, there will be farmers that will value premium discounts over service and those that do not. This allows for a balanced competition.

Crop1 is in the business to make money and as such, it will ensure it has the proper personnel to conduct underwriting, sell insurance, and conduct loss adjustment. Further, under the interim rule, Crop1 will operate under the same requirements as all other approved insurance providers. The market will determine whether Crop1 can successfully compete with its alleged inexperienced personnel and agents.

*Comment:* An agent commented that Crop1's agents were bragging that it only took two days to become certified or eligible to sell its products and asked where the due diligence was and why Crop1 did not have to follow the same rules.

*Response:* All approved insurance providers are required to comply with the same licensing and training requirements contained in the SRA and approved procedures. As stated above, RMA has monitored Crop1 and has found no violation of these requirements. If the commenter knows of such a violation, it should report it to RMA.

*Comment:* An agent commented that any indication of savings from loss adjustment expenses should cause great concern for RMA and asked how one reduces costs for loss adjustment without reducing service to farmers.

*Response:* RMA reiterates that the loss adjustment process is separate and distinct from the service provided by agents as required by the SRA. Further, all approved insurance providers are still required to comply with all the loss adjustment requirements in the SRA and approved procedures, regardless of whether they elect to participate in the premium reduction plan. However, this does not mean that loss adjustment expenses cannot be reduced. RMA has been offering a Simplified Claims Process, that is intended to reduce the burden on approved insurance providers and use of such claims process could result in savings. However, given the importance of the claims process to the financial welfare of the crop insurance program, RMA will carefully scrutinize situations where there has been a reduction in loss adjustment expenses to ensure that such reduction does not violate the loss adjustment requirements of the SRA and approved procedures.

*Comment:* Several agents commented that if anyone has purchased a policy through Crop 1 they have problems getting hold of anyone to answer

questions in regards to their policies and are constantly calling and coming into its office to get the answers to their questions. A commenter asked if this is another one of their efficiencies. The commenter states that Crop1 will write the business but they are not around to service it and let other approved insurance provider's agents do the work for them.

*Response:* Without additional information, RMA cannot determine whether the service requirements in the SRA and approved procedures have been violated. However, if farmers are not satisfied with the service they are receiving, they can complain to RMA or move their business to another agent. This is the free market choice of farmers. Further, this situation would appear to provide a great marketing opportunity for the commenters because they can point out the benefits of continuous access over possible price discounts. This is one of the purposes of the program so that farmers could determine which they value most. Finally, the interim rule provides a new process to allow farmers with complaints to directly report these complaints to RMA.

*Comment:* An agent commented that approved insurance providers will divide their book of business into additional corporate entities if there is a competitive advantage. Such division could allow the manipulation of the SRA. The commenter stated that this will also create a significant challenge to verify savings as it will allow the potential to shift cost allocations between the entities.

*Response:* RMA shares the concerns of the commenter—that an approved insurance provider could potentially divide a book, create opportunities to manipulate allocated costs and, thereby, abuse the premium reduction plan. However, to do so, the approved insurance provider must create two separate and distinct entities and both entities would have to independently qualify for a SRA because RMA does not permit an approved insurance provider or its managing general agent to operate under multiple SRAs.

Further, the use of the Expense Exhibits provided with the Plan of Operations and the formula to determine the premium discount would mitigate any potential manipulation of costs. However, now that approved insurance providers have the flexibility to select the states in which to participate in the premium reduction plan, can elect whether to pay a premium discount in a state, and can vary the amount of premium discounts between states, there is much less

incentive for approved insurance providers to divide their books of business.

### 3. Discrimination

In the preamble to the proposed rule, RMA stated that one of the principles that must be met to comply with the requirements of section 508(e)(3) of the Act is that no premium reduction plan can unfairly discriminate against farmers based on their loss history, size of operation, or the amount of premium generated. RMA has tried to address this issue in the proposed rule by: (1) Requiring that the premium reduction plan be provided to all farmers insured by the approved insurance provider; (2) requiring approved insurance providers to provide marketing plans for how they will reach these farmers; (3) denying approval for premium reduction plans with inadequate marketing plans; and (4) allowing for withdrawal of approval by RMA for failure of the approved insurance provider to follow the marketing plan. RMA sought comments on whether these provisions should be modified or additional provisions added to ensure that all farmers have access to all premium reduction plans offered in their state. The comments received and FCIC's responses are as follows:

#### a. General

*Comment:* An interested party commented that if an approved insurance provider is to offer a premium reduction plan, they should be able to choose who they offer it to. The commenter states that with the wide variety of management skills of today's farmers, why offer a premium discount to someone who claims a loss every year. The commenter asks if they are truly worthy of having their premium reduced and why should a well managed farm pay the same amount of premium as one that is poorly organized. The commenter suggests that an insured should demonstrate that it is a better risk than a neighbor, and deserving of a premium discount.

*Response:* Under section 508(e)(3) of the Act, premium discounts are based on whether the approved insurance provider can reduce costs under the amount of A&O subsidy that is paid by RMA under the SRA. There are no other criteria stated in the Act and there is no rational basis to adopt the criteria proposed by the commenter. If RMA were to permit approved insurance providers to select which farmers receive the premium discount based on whether they have a loss, it would permit the very discrimination that RMA is trying to avoid.

Further, well managed farms already do not pay the same premium as a poorly managed farm. Premium rates are based on the risk of loss and the risk of loss would be greater with a poorly managed farm so more premium would be required to cover these losses. Therefore, the requested change has not been made.

*Comment:* An approved insurance provider commented that approved insurance providers who apply and receive approval to offer a premium reduction plan should be required to offer the savings to all their farmers and that in advance of making the offering, the approved insurance provider should be required to prove within their marketing plan how they expect to reach these farmers. Thus, the commenter states it is supportive of the fourth principle, non-discrimination, and would be addressed by: (1) Requiring premium reduction plans to be provided to all farmers insured by the approved insurance provider, (2) requiring the submission of marketing plans to show how the approved insurance provider will reach small and limited resource, women and minority farmers; (3) denying approval of premium reduction plans not supported by an adequate marketing plan, and (4) allowing for the withdrawal of approval of a premium reduction plan for failure to implement the approved marketing plan.

*Response:* RMA understands the basis for the commenter's position that approved insurance providers participating in the premium reduction plan should be required to offer premium reductions to all producers. This principle was the basis for provisions in the proposed rule. However, as stated above, RMA, after reviewing the comments, has concluded that this position would give a significant competitive advantage to small or regional approved insurance providers that may not write in states with marginal or high loss ratios.

RMA believes that approved insurance providers would withdraw from certain states if they are required to provide a premium discount to all policyholders. Given the higher costs associated with such states and the difficulty or impossibility that approved insurance providers could reduce costs sufficiently to offer a premium discount, an unintended consequence of the proposed rule was that farmers in some states would be left without any approved insurance provider to offer insurance because RMA cannot require approved insurance providers to do business in any particular state. The harm that such withdrawal would cause

to the program and the economic stability of farmers far outweighs the possibility that farmers in some states may not be offered premium discounts. For this reason, RMA is permitting approved insurance providers to select those states in which it will participate in the premium reduction plan. However, if an approved insurance provider selects a state to participate in the premium reduction plan and is approved by RMA to provide a premium discount, all policyholders of the approved insurance provider in the state will receive the same percentage of premium discount.

Further, to ensure that small, minority, limited resource, etc. farmers are aware of the availability of a premium reduction plan in a state, the marketing plan provisions have been clarified to require approved insurance providers to more clearly specify how they will be marketing and that the marketing under the marketing plan is in addition to any marketing that may be done by agents. This should ensure that all farmers have equal access to the premium discounts.

*Comment:* Many agents and interested parties commented that they were opposed to the premium reduction plan will because it will lead to discrimination. Commenters stated that wholesale "cherry picking" will take place in the market. A commenter stated that discrimination will be impossible for RMA to control. Commenters states that the premium reduction plan will lead to discriminatory underwriting. A commenter states the premium reduction plan will lead to adverse selection and abuse. A commenter states that its members are 99% opposed to the premium reduction plan product because of discrimination issues. Commenters state that allowing cherry picking is not fair to the farmer or the integrity of the crop insurance delivery system

*Response:* As stated above, there is a difference between selecting agents that solicit the most potentially profitable policyholders and denying insurance or a premium discount because of the policy size, loss history, etc. The latter is considered unfair discrimination and is prohibited in the interim rule. However, the former is not precluded under the SRA or the interim rule. Agents are currently trying to assemble the most profitable book of business that they can. However, while agents may solicit large farmers, they cannot deny insurance to any other farmer, including small, limited resource, women and minority farmers.

However, to ensure that all farmers know about and have access to the



premium reduction plan, approved insurance providers will be required to design and implement marketing plans to reach all farmers, including small, limited resource, women and minority farmers. One way RMA can use to determine whether all farmers have been provided access to the premium discount is to compare the composition of one approved insurance provider's book of business with another. If RMA determines that the marketing plan is not adequately reaching such farmers, RMA can require remedial measures or impose sanctions under the interim rule.

*Comment:* Several agents commented that the previous premium reduction plan had farmers entering data over the internet to afford a premium discount because of "administrative" efficiencies. Commenter states there is a potential to discriminate against many farmers who are not technically literate and those who could not afford technology to take advantage of the discount.

*Response:* The commenter may be referring to inaccurate accounts of the previously approved premium reduction plan that would restrict premium discounts to only those farmers who applied for insurance through the internet. The premium reduction plan approved by RMA included opportunities for farmers to use the internet, but never proposed restricting premium discounts to those farmers that used the internet.

Further, costs savings are not determined on a farmer-by-farmer basis. As discussed above, since approved insurance providers can now select the states in which to participate in the premium reduction plan, under the interim rule, cost savings for an approved insurance provider are determined on a state basis. Further, to preclude any discrimination against farmers in a selected state, if an approved insurance provider is approved to pay a premium discount, the same percentage amount of premium discount must be paid to all policyholders of the approved insurance provider in the state. This means the percentage of premium discount may vary between states but it must be the same within each state. Therefore, if an approved insurance provider requested approval of a premium discount based on savings attained through the internet and only intended to pay the discount to farmers that used the internet, RMA would have to disapprove the payment of such discount under the interim rule.

*Comment:* Several agents and interested parties asked whether anyone thought about the fact that if agents have a discount plan and every crop

insurance agency/agent signs up for it, all of the customers would have to be switched to the discount plan or face discrimination—not only legally but ethically and morally as well. An agent with a discount plan available would have no choice but to move every single customer to the discount plan. Commenters stated that being able to offer the premium reduction plan to one farmer and a regular plan to another takes on a discriminatory appearance.

*Response:* First, there is no sign-up for farmers under the premium reduction plan. If the approved insurance provider attains an efficiency and elects to pay a premium discount the farmers will receive the premium discount payment from the approved insurance provider. Second, as stated above, the premium reduction plan no longer must be available in all states in which the approved insurance provider does business. Approved insurance providers will select the states in which they will participate in the premium reduction plan. However, RMA agrees that once an approved insurance provider elects to offer a premium discount in a state, allowing approved insurance providers to offer the premium discount to some farmers in the state and not to others could result in unfair discrimination. For this reason, the interim rule requires that an approved insurance provider authorized to offer premium discounts, and its affiliated agents, must automatically apply the same percentage premium discount to all of its policyholders in the state.

However, there may be situations where the agent is writing for more than one approved insurance provider, some of whom may not be participating in the premium reduction plan or not participating in that state. There is no requirement in section 508(e)(3) of the Act, the SRA, or the interim rule that the agent sign up all its customers with the approved insurance provider that participates in the premium discount plan. However, as stated above, the interim rule now contains provisions that require the agent to inform all its customers of the approved insurance providers the agent writes for that participate in the premium discount plan. This will allow farmers to make informed decisions regarding their insurance.

*Comment:* An interested party agrees absolutely that the premium reduction plan must be provided to all farmers as a minimal standard since it reduces the opportunity for inequitable treatment.

*Response:* RMA agrees in part with the commenter that a premium discount must be provided to all producers. However, as stated above, RMA has to

balance the impact of approved insurance providers withdrawing their business from a state with the impact that farmers in a state may not receive a premium discount. RMA has determined that the potential for no crop insurance to be available in the state is more harmful than the lack of a potential premium discount. The most important consideration is that farmers have access to the risk management products they need. However, RMA agrees that once the approved insurance provider elects to offer a premium discount in a state, all farmers insuring with the approved insurance provider must receive the same percentage of premium discount.

*Comment:* An approved insurance provider commented that the premium reduction plan will cause insurance companies to cater only to large farmers because premiums in 2005 will drop due to lower commodity prices which, in turn, will reduce the amount of A&O received, even though an approved insurance provider's costs are rising.

*Response:* The incentive to cater to large farmers exists in the current program, apart from any feature of the premium reduction plan. However, the interim rule helps to create meaningful program opportunities for smaller farmers by requiring that approved insurance providers eligible to offer premium discounts implement marketing plans that specifically target such farmers. This affirmative step helps to offset the natural tendency of approved insurance providers and their agents to seek only the business of larger farmers. Further, RMA will monitor such marketing plans to ensure that they are effectively reaching the small, limited resource, women and minority farmers and require remedial measures or impose sanctions where appropriate.

*Comment:* Several agents and interested parties commented that there is nothing in the proposed rule to prevent an approved insurance provider from advertising a premium reduction plan only to large farmers through direct mail telling past customers that they are offering a discount and they are the only agent they can get the discount from.

*Response:* The interim rule precludes this behavior in two ways. First, as stated above, advertising and promotion is significantly curtailed. No agent or approved insurance provider can advertise or promote the availability or amount of a premium discount. Advertising and promotion is limited to the past premium discounts that have been paid and even they must be accompanied by prominent disclaimers. Second, as stated above, the interim rule requires approved insurance providers

to design and implement a marketing plan that will specifically target small, limited resource, women and minority farmers. RMA would take remedial action or sanction any approved insurance provider that attempted to solicit only large or prospectively profitable farmers. Further, as stated above, all agents must now inform their customers of all the approved insurance providers they write for that are participating in the premium reduction plan in the state. This will reduce the chance of any agent representing that it is the only agent the farmer can get a premium discount through.

*Comment:* Several agents, approved insurance providers, and interested parties commented there is nothing keeping an agent from selling the discount plan from one approved insurance provider and the regular plan from another. Agents will be able to pick and choose who they write with for given farmers. A commenter states that this may lead to market conduct issues regarding the farmers' access to the best deal that the approved insurance providers, states and RMA will not be able to police or monitor. A commenter stated that the agent recommends placing a policy with a given approved insurance provider and the farmer almost always goes along. It is a homogeneous product and the farmer trusts his agent to tell him which approved insurance provider will offer him the best service on timely claims adjustment and payment. The farmer chooses his agent and the agent chooses the approved insurance provider.

*Response:* RMA acknowledges there may be an issue when an agent writes for both an approved insurance provider that offers the premium reduction plan and one that does not. There is nothing in the SRA that would require an agent to inform a farmer of the products offered by a competing approved insurance provider with whom it writes. RMA acknowledges that an agent that represents both an approved insurance provider eligible to participate in the premium reduction plan and an approved insurance provider that does not can strongly influence which approved insurance providers to promote among his or her existing or prospective policyholders. Further, the approved insurance provider recommended to the policyholder by the agent might reflect compensation or other benefits to the agent rather than what might be in the policyholder's best interest. RMA is concerned that the misuse of such influence by agents could result in certain farmers not having an equal opportunity to participate in the premium reduction

plan. To mitigate the situation, RMA requires the approved insurance provider to develop and implement the marketing plan separate from the solicitation done by agents. This way all farmers regardless of size should be informed of the availability of the premium reduction plan in their state. Further, RMA is requiring that all agents to disclose to all farmers the list of all approved insurance providers with which they write that are participating in the premium reduction plan. This, coupled with the marketing campaigns of the approved insurance providers who participate in the premium reduction plan, will allow farmers to make informed decisions.

With respect to the policing of such conduct, RMA will be monitoring the situation and will also rely on state regulators, who have extensive experience in regulating market conduct by agents.

*Comment:* A few agents commented that the crop insurance program (before the premium reduction plan) was easier to promote and keep other agents honest because the agent could tell the customer that the base multi-peril federal subsidized program was the same cost no matter which agent or approved insurance provider they buy it from. The commenter asked how to police that problem in the future other than to make the premium all the same. The commenter said this could lead to accusations of "bid rigging."

*Response:* With respect to changes resulting from the premium reduction plan, RMA would agree that the premium reduction plan may require that agents adjust their marketing methods from those based on the premise that a policyholder pays the same premium regardless of approved insurance provider. Further, RMA shares the concern of the commenter that these changes could pose problems such as misrepresentations of premium discounts by agents. However, provisions have been specifically added to the interim rule that severely limit the advertising or promotion of a premium discount. Approved insurance providers can only advertise actual historical premium discounts and they still must be accompanied by a prominent disclaimer, either contained in the interim rule or approved by RMA.

RMA cannot consider the commenters suggestions of making premium discounts the same for all approved insurance providers because section 508(e)(3) of the Act is very specific that such discounts must be based on the savings achieved by the approved insurance providers are not all approved insurance providers will be able to

achieve savings in all states or achieve the same amount of savings.

With respect to policing of the situation, as stated above, promotions and advertising alleged to be discriminatory will be reviewed by RMA and state regulators and corrective actions required. The marketing concerns raised by the premium reduction plan are similar to other market conduct issues that insurance regulators regularly face especially with respect to the marketing of insurance plans by mutual and other similar types of approved insurance providers that offer payments to policyholders similar to the premium discount. While RMA shares the concerns of the commenter, RMA believes that these concerns can be addressed through cooperation between RMA and state insurance regulators.

*Comment:* Several interested parties commented that they oppose implementation of the premium reduction plan, which opens the door to discrimination and significant program risks because the opportunity for all farmers to obtain coverage with a premium discount, is simply not available, either by state, crop, or approved insurance provider. The commenter states that RMA is assuming that all approved insurance providers will apply for and be approved to offer the premium reduction plan. But since only one approved insurance provider has been approved to offer this type of coverage, a large portion of the farming segment is left without the availability to purchase this coverage, which is itself discriminatory. The commenter also stated that no one or two approved insurance providers could currently handle this volume of business.

*Response:* The commenter suggests that since only one approved insurance provider, with a relatively small client base, is currently authorized to offer premium discounts, that RMA is discriminating against the relatively large segment of policyholders that do not have the opportunity to receive premium discounts. The commenter further implies that RMA is discriminating if it does not approve enough approved insurance providers with sufficient capacity to be able to provide premium discounts to every crop insurance policyholder. The commenters are incorrect.

Participation in the premium reduction plan is strictly voluntary. Further, RMA is obligated to comply with section 508(e)(3) of the Act, which requires approved insurance providers be able to deliver crop insurance for less than the A&O subsidy received to qualify to pay a premium discount.

There never was, nor could there be, a guarantee that all approved insurance providers would request to participate in the premium reduction plan or they would qualify.

The fact that not all approved insurance providers may participate in the premium reduction plan or, as stated above, RMA has elected to permit approved insurance providers to elect which states in which they will participate, does not mean that farmers have been unfairly discriminated against. By definition, unfair discrimination occurs when an approved insurance provider elects to offer the premium discount to certain farmers and elects not to provide it to others when the premium reduction plan is available based on factors such as policy size or loss history.

Within each state the approved insurance provider elects to participate in the premium reduction plan, all farmers in that state will have equal access to the premium discount and to ensure that all farmers are informed about the opportunity to receive a premium discount, approved insurance providers must implement a marketing plan that specifically targets small, limited resource, women, and minority producers. Further, as stated above, all agents must identify all approved insurance providers for which they write that participate in the premium reduction plan. These measures should ensure equal access to premium discounts in a state and if they are not effective, RMA has the authority to require other remedial measures or impose sanctions.

Finally, RMA has attempted to simplify the process for approved insurance providers to request to participate in the premium reduction plan. Based on these changes, coupled with the strong interest by most of the approved insurance providers to participate in the premium reduction plan for the 2005 reinsurance year, RMA believes that the premium reduction plan will be available to an increasing number of farmers over time.

*Comment:* Many approved insurance providers, agents and farmers commented that the premium reduction plans do not support the objective of preventing unfair discrimination. A commenter stated that the reductions in A&O already eliminate any broad based business opportunity for approved insurance providers or agents to offer further reductions in premium. Commenters stated the premium reduction plan is inherently discriminatory particularly based on what has been implemented to date and what is proposed in the new rules.

*Response:* If the commenters are correct in their assessment that reductions in the A&O subsidy remove opportunities to reduce premiums, then approved insurance providers will not request the opportunity to offer a premium discount under the premium reduction plan or submit premium discounts for RMA approval. Participation in the premium reduction plan is voluntary based on whether an approved insurance provider can achieve cost efficiencies that would qualify under section 508(e)(3) of the Act.

Further, the commenters do not provide an explanation to support the conclusion that the premium reduction plan does not support the objective of preventing unfair discrimination and that it is inherently discriminatory. The interim rule addresses the potential for discrimination on several fronts. First, the interim rule requires that the approved insurance provider first meet all requirements to qualify for crop insurance participation under the SRA, including certifying to abide by all Federal regulations prohibiting discrimination. Second, the interim rule requires that an approved insurance provider must automatically provide the same percentage of premium discount to all policyholders in the state if it elects to pay a premium discount. Third, the interim rule requires that for an approved insurance provider to be authorized to offer a premium discount, it must develop and implement a marketing plan which specifically targets small, limited resource, women, and minority farmers.

*Comment:* Several agents, approved insurance providers, and interested parties commented that RMA has further discriminated against the farmer by not allowing all approved insurance providers to offer plans and by allowing one new applicant for an SRA to offer a premium reduction plan as part of its SRA application based upon unpublished procedures and criteria. The commenter claims RMA has now denied all applications for plans based upon the Managers Bulletin No. MGR-03-008, dated May 1, 2003, and apparently it has not applied the same criteria to the only approved insurance provider approved for the premium reduction plan. A commenter claims this has allowed unfair competition in the marketplace to the detriment of other SRA Holders large and small. Commenters have stated the premium reduction plan should not be provided by only one approved insurance provider.

*Response:* Although section 508(e)(3) of the Act allows approved insurance

providers to offer premium discounts, the approved insurance provider must be able to demonstrate that it can deliver insurance for less than the A&O subsidy, that its premium discounts correspond to cost efficiencies in delivery, and that it can meet other requirements established by FCIC. These additional requirements have been contained in several FCIC Board resolutions and Manager's Bulletin MGR-03-008. RMA has applied these requirements evenly across all approved insurance providers submitting premium reduction plans, including the only approved insurance provider that has been authorized to offer a premium reduction plan. In most cases where RMA has not approved an approved insurance provider, it has been because the approved insurance provider has not been able to demonstrate that it can deliver crop insurance for less than the A&O subsidy.

Notwithstanding what has occurred in the past, the interim rule is significantly different from the procedures or proposed rule because now approved insurance providers will not have to demonstrate they can deliver the crop insurance program for less than the A&O subsidy received from RMA before they are found eligible to participate in the premium reduction plan. RMA will simply be evaluating the marketing plan to determine whether it is likely to meet the requirement of reaching small, limited resource, women and minority farmers. If it is likely to be effective, approved insurance providers will be eligible for the opportunity to offer a premium discount to their policyholders. However, no premium discount can be paid until the approved insurance provider can demonstrate it has attained actual cost savings. This means that all approved insurance providers will be on equal footing under the interim rule.

*Comment:* A few agents and interested parties commented that the premium reduction plan is blatantly unfair to the different states it covers. The commenter states that certain states routinely make the insurance industry the profits they are required to make just so they can pay the amount of claims that occur in other states with poor loss history. With the requirement that all the states have to be treated the same the program discriminates against the farmers in those states.

*Response:* Because approval to pay a premium discount is determined by the actual expenses of an approved insurance provider in delivering crop insurance to farmers, underwriting gains or losses in a state should not be a consideration. The proposed rule was

based on that premise. However, RMA now recognizes that many factors, including underwriting gains or losses, may influence an approved insurance provider's decision to enter, remain in, or exit a state. As stated above, RMA has evaluated the consequences of approved insurance providers withdrawing from certain states if it required the approved insurance provider offer the premium reduction plan in all states and has elected to allow approved insurance providers to select those states in which it will participate in the premium reduction plan. Further, as stated above, the fact that some farmers will not have access to the premium reduction plan because one is not offered in the state is not discrimination as long as all farmers in the state are treated the same.

*Comment:* A few approved insurance providers and agents commented that the premium reduction plan discriminates against approved insurance providers that write on a national basis and are not cherry picking by selling on a geographical area basis. The commenter stated that these geographical areas tend to have the best performance. The commenter stated that the premium reduction plan also favors start up approved insurance providers that have no track record of performance.

*Response:* After further reviewing this situation in light of this and other similar comments received on this issue, RMA agrees that the proposed rule tended to favor regional approved insurance providers who generally sell in the lower risk areas. As stated above, RMA was concerned that requiring approved insurance providers to participate in the premium reduction plan in all states in which they do business would encourage approved insurance providers to pull out of states where they could not reasonably cut costs so that they could cut costs and offer a premium discount in other states to remain competitive. As stated above, RMA weighed interest of the farmer in receiving insurance versus the potential to receive a potential premium discount in the future and determined the former was much more important. For this reason, RMA revised the rule to allow approved insurance providers to select the states in which they will participate in the premium reduction plan.

*Comment:* An approved insurance provider commented that the current proposed rules do not provide adequate public disclosure to assure non-discriminatory program delivery in the future. As a result, these problems will inevitably persist.

*Response:* Much of the information provided by approved insurance

providers is confidential business information which is protected from public disclosure. However, RMA has taken other measures to assure non-discrimination in the delivery of the program. One measure is the marketing plans that specifically targets small, limited resource, women and minority farmers. To ensure that such marketing plans are working, RMA may compare the compositions of the approved insurance providers' books of business. RMA can take remedial actions or impose sanctions if there is evidence that small, limited resource, women, or minority farmers are not being provided access to the premium discount. Another measure implemented in the interim rule is the consumer complaint provisions. These allow farmers to complain directly to RMA if they believe they have not been provided access to the premium reduction plan or have been unfairly discriminated against.

*Comment:* An interested party commented that the premium reduction plan should be implemented only with the strictest caution only for those approved insurance providers who have already demonstrated the capacity to fairly serve all farmers and that the final rule should include specific provisions designed to guarantee equitable services to minority farmers.

*Response:* The interim rule requires that approved insurance providers eligible for the opportunity to offer premium discounts first meet all requirements of the SRA. The SRA and approved procedures includes provisions regarding the service requirements to fairly serve all farmers. Further, the interim rule specifically requires approved insurance providers to market to all farmers, including small, limited resource, women, and minority farmers. In addition, since the premium discount is determined based on actual savings achieved during the reinsurance year, RMA will be able to evaluate the service provided and whether small, limited resource, women, and minority farmers were adequately served before approving any premium discount.

#### b. Crop1

*Comment:* Many agents, farmers, and other interested parties claimed that Crop1 is selecting only large farmers to offer the discount to and not all of their customers. A commenter stated that a marketing mailer from Crop1 seemed to be sent only to customers who had at least 750 acres. A commenter stated that Crop1 agents misrepresent quotes in order to mislead another agent's clients. Commenters state that they cannot make

a living if they lose their large customers. A commenter stated that Crop1 only advertises to large farmers. Commenters stated that Crop1 was not being forced to market with equal resources to all farmers. A commenter stated that approval of Crop1 was irregular, discriminatory and illegal because it ignored the civil rights statutes and the provisions of the SRA requiring approved insurance providers to sell to all farmers.

*Response:* Under existing RMA procedures, any approved insurance provider authorized to offer premium discounts, including Crop1, must automatically provide the discount to all of its policyholders. RMA has no evidence that any Crop1 policyholder has ever been denied the appropriate premium discount. As part of its premium reduction plan monitoring effort, RMA monitors the marketing materials and practices of Crop1. As far as RMA has been able to determine, none of these marketing activities, including advertising, have been directed to farmers of a certain size. RMA does not regulate agent solicitation activities and, therefore, cannot eliminate the possibility that agents representing Crop1 may target larger farms through their mailings or through other means. Such conduct by agents is not precluded in the SRA or the existing procedures.

Further, to the extent that such conduct has occurred in the past, the interim rule has provisions to mitigate such conduct, such as requiring approved insurance providers to design and implement their marketing plan to specifically reach small, limited resource, women and minority farmers and to require agents identify to farmers all approved insurance providers for which it writes that participate in the premium reduction plan. Further, RMA can compare approved insurance providers' books of business in the states in which participate in the premium reduction plan to identify when small, limited resource, women and minority farmers may not be receiving access to the premium discount and take the appropriate action.

*Comment:* Several agents and an interested party commented that the premium reduction plan agencies do not offer nor advertise to their current customer base the availability of the premium reduction plan unless they specifically ask about it and only use the premium reduction plan to attract new business. A commenter states that agents are only pushing the premium reduction plan in the one area where it does not have much business but where

the agent has a lot of business, farmers are being told the premium reduction plan is a bad thing and that they do not want to use it. A commenter stated the reason they do not offer it aggressively to their current customer base is that it will reduce their commissions by as much as one-half. A commenter concludes that the agents who have signed on with Crop1 use it only as a tool of last resort to capture business from other agents who do not offer it, while at the same time trying to make sure their current customers do not hear about it. A commenter stated that farmers do not receive real service just so Crop1 can have a competitive advantage. Commenters stated the premium reduction plan is being used as a predatory tool.

*Response:* Under the existing premium reduction plan procedures as well as under the interim rule, if an agent represents an approved insurance provider authorized to offer the premium reduction plan, then all policyholders of that approved insurance provider through that agent will automatically receive the premium discount that has been authorized. RMA is not aware of any cases where a policyholder of an approved insurance provider that is authorized to offer the premium reduction plan has been denied the premium discount. Moreover, agents routinely solicit the most profitable farmers under the existing crop insurance program. As stated above, RMA does not regulate the solicitation activities of agents. It regulates the marketing of the approved insurance provider to ensure that small, limited resource, women, and minority farmers receive access to the premium discount and these requirements have been strengthened and clarified in the interim rule.

The commenter appears to be describing a situation in which an agent represents both an approved insurance provider eligible for the opportunity to offer a premium discount as well as one or more other approved insurance providers. The commenter seems to believe that the requirement of the approved insurance provider to offer the premium reduction plan to all of its policyholders is implicitly extended to agents. This is not the case. However, to ensure that all farmers are made aware of the opportunity to participate in the premium reduction plan, agents are now required to inform all of their customers of all the approved insurance providers they write for that participate in the premium reduction plan. Lastly, any advertising by agents and approved insurance providers prior to being approved to pay a premium discount

has been significantly curtailed because premium discounts are now based on actual, not projected savings. Therefore, no agent can advertise that a premium discount is available in order to obtain new policyholders.

*Comment:* An agent commented that because Crop1 is limited as to how much insurance it can write and can only write in certain states, the premium reduction plan is not available to all farmers, which contradicts RMA's statements regarding discrimination.

*Response:* RMA is obligated to comply with section 508(e)(3) of the Act regardless of how many approved insurance providers qualify to be able to offer premium discounts, how many states they write in, or how much premium they are authorized to write. Only approved insurance providers that have actual A&O costs less than their A&O subsidy can pay a premium discount. However, under the alternative rule, this burden does not have to be proven up front and any approved insurance provider can qualify for the opportunity to offer a premium discount based on the marketing plan and other standards contained in the interim rule. The payment of any premium discount will still be conditioned upon a showing of the requisite savings.

Further, as stated above, as long as all farmers are treated the same where a premium reduction plan is available, there is no discrimination. It is only where farmers in a state where the premium reduction plan is available are treated differently is there discrimination.

#### c. Small, Women, Minority Farmers

*Comment:* A farmer commented that they had heard agents comment that small farmers will be hurt by not being serviced. The commenter stated that the agent's definition of a small farm may be more like a 10 or 20 acre special farm (i.e. organic or other), not USDA's definition of gross income of \$250,000 or less. The commenter asked that when RMA is confronted by the approved insurance providers' reasons against the premium reduction plan that RMA is on the same page with the terminology. The commenter asserted that it is illegal to NOT sell to a farmer customer, no matter how big or small and that one would think the agent would not risk an E&O claim.

*Response:* RMA agrees that the SRA prohibits an approved insurance provider or its agents from refusing to provide crop insurance to an otherwise eligible farmer, regardless of size. Approved insurance providers can be sanctioned for non-compliance. Nothing

in the interim rule would change this requirement and would extend sanctions in the interim rule to agents as well as approved insurance providers that violate this prohibition.

Moreover, the interim rule contains features that help ensure that service to small farmers will be adequate, in contrast to what the commenter had heard from certain agents. Under the interim rule, all approved insurance providers are required to comply with the service requirements of the SRA and approved procedures for all policyholders, both small and large or be subject to sanctions. Further, the marketing plan requirement is designed to ensure that small farmers have access to any premium discount. Unless otherwise provided for in procedures, RMA will be relying on the definition of "small farm" issued by USDA. However, RMA wants the flexibility to adjust the definition if the need arises.

*Comment:* Several agents commented that they had not seen unfair discrimination against farmers as noted in the proposed rules. The commenters stated they were servicing the small and large farmer just as other agencies did prior to the premium reduction plan, with no decline in claims servicing and it does not matter if our grower is male or female; if they are insuring as little as 25 acres crop or up to 27,798 acres. A commenter states that when given the option to buy insurance at the usual price or a premium reduction plan price, farmers chose the premium reduction plan. A commenter states this is one area where farmers were able to secure a savings that they could show their lender; that gave them an opportunity to buy-up; or assisted with off-setting increased input costs. Knowing their savings up-front provided an offense against the many unknown factors that confront them every year when they go into the field. A commenter stated that the premium reduction plan is of extra importance to smaller farmers that don't have the financial strength to purchase the coverage that they really need. Although the total savings to a small farmer seems negligible, the per acre savings is significant.

*Response:* RMA would agree with the commenters that unfair discrimination provisions are being effectively enforced, that service requirements under the SRA and approved procedures are being maintained, and that small farms are receiving premium discounts. However, although RMA agrees that knowing the amount of premium discount up front can be beneficial, as stated more fully above, the ability to effectively regulate the

program will be difficult. Therefore, RMA has elected to base premium discounts on actual savings, not projected savings, thereby reducing the burden on approved insurance providers in becoming eligible for the opportunity to offer a premium discount and on RMA and approved insurance providers in determining the amount of any premium discount, if any, that is available for the reinsurance year. RMA anticipates that this will effectively give more farmers the opportunity to receive such premium discounts. Further, when evaluating the possibility that an approved insurance provider may leave a state versus the payment of a premium discount, RMA determined that the former was more critical and have given approved insurance providers the option to select states.

*Comment:* Many agents, approved insurance providers, loss adjusters and other interested parties claim that new or small farming operations, women, minority, and limited resource farmers will be harmed the most. Commenters stated these groups will have more difficulty competing with larger, lower risk farmers and farms in high risk areas will end up without service. They claim FCIC's proposed rules concerning administration of the premium reduction plans do not adequately protect small and minority farmer from unfair discrimination on the basis of size and risk of loss. Commenters stated approved insurance providers will target farmers considered to be the most profitable based on their acreage size, the loss ratios of the counties they are in—particularly whether the county or state is in a favorable or unfavorable loss area—and whether farmers can afford to pay higher premiums for higher coverage levels. A commenter stated that these are the farmers crop insurance was intended to protect. The commenters also claim the agents will have to accept less commission and, therefore, spend most of the time servicing only the larger farmers in their agencies. One commenter claims it would not be fair to small farmers nor to loyal agents who have represented FCIC well in this part of the country. A commenter states that typically, smaller farm operations tend to have higher loss ratios, so again small family farmer clients will suffer the most. A commenter stated that the premium reduction plan will put many of the smaller farmers at risk for a catastrophe.

*Response:* RMA disagrees with the comments that high-risk areas will lose service and that the interim rule does not protect against unfair discrimination on the basis of size and risk of loss. Any approved insurance provider that is

eligible to participate in the premium reduction plan must qualify under the terms of the SRA, which prohibits an approved insurance provider from denying insurance to any eligible farmer, regardless of size or loss history, and establishes specific requirements for policyholder service. The interim rule adds a further restriction that an approved insurance provider cannot deny a premium discount to any existing or prospective policyholder on the basis of size or loss history. It is doubtful that an approved insurance provider would risk sanctions under the SRA and interim rule by allowing service to fall below SRA and approved procedure requirements or by denying insurance or premium discounts to otherwise eligible farmers.

The interim rule further prevents an approved insurance provider from ignoring the risk management needs of small, limited resource, women, or minority farmers because to qualify for the opportunity to offer a premium discount, an approved insurance provider must develop and implement a marketing plan, which specifically targets such farmers. Further, RMA will be closely monitoring the situation to ensure such farmers are not denied access to premium discounts.

With respect to an approved insurance provider targeting only the most profitable areas based on their loss history, a strong incentive to do this exists currently and has existed ever since the delivery of Federal crop insurance was transferred to private approved insurance providers. However, as stated above, the interim rule does require the approved insurance provider to also target small, limited resource, women and minority farmers and RMA will be monitoring their efforts. With respect to agents' shifting service away from smaller policyholders to better service larger policyholders because, the commenters assume, commission rates would decline, an approved insurance provider and its affiliated agents are obligated to maintain a required level of service under the terms of the SRA and approved procedures for all policyholders, both large and small. If a group of policyholders fail to receive the required level of service, the approved insurance provider risks sanctions under the SRA and interim rule. In any event, as stated above, the interim rule contains provisions specifically designed to protect the interests of small, limited resource, women, and minority farmers and RMA has added teeth to its sanctions to provide the incentive to comply.

*Comment:* An interested party commented that RMA spends millions each year in educational outreach and maybe it should take some of that money and contract for a study of the impact of this education on small, limited resource and medium-sized family farms.

*Response:* Although the commenter's suggestion may have some merit, it does not address issues concerning the proposed rule.

*Comment:* A few agents commented that farmers can currently purchase CAT coverage for very minimal expense and in some cases free for limited resource farmers but they don't participate in the crop insurance program now. The commenters asked how the premium reduction plan would benefit them or increase participation.

*Response:* The commenter may be correct that some farmers may not avail themselves of the benefits of crop insurance regardless of the incentive that might be provided by premium discounts. The legislative history of section 508(e)(3) of the Act suggests that increased price competition among approved insurance providers is the major objective and increased participation may be the result of such competition.

*Comment:* Several agents and an approved insurance provider commented that as the large accounts are "cherry-picked" by the premium reduction plan, the smaller farmers will be left to bear alone the overhead and cost of the traditional plans. A commenter stated it will be financially challenged to continue servicing smaller accounts. A commenter stated that the premium reduction plan is NOT being used as a beneficial option to farmers but is instead being used to "cherry pick" the existing policies of big farmers who are current customers of other agencies. A commenter also stated that premiums for smaller farmers will necessarily increase, thus exacerbating the current deplorable situation that is rapidly destroying this nation's family farms. Some approved insurance providers are discriminating against small farmers by cherry picking large farmers and offering to bundle other services at reduced prices at the expense of small farmers.

*Response:* RMA has investigated the marketing activities of the approved insurance provider currently authorized to offer the premium reduction plan and has found no evidence that the approved insurance provider is specifically and exclusively targeting large farmers. However, RMA accepts the possibility that some agents of the approved insurance provider currently

authorized to offer the premium reduction plan might be targeting larger and more profitable policyholders of competing agents. As stated above, such practices are not be prohibited by the Act or the SRA. RMA does not regulate the conduct of agents in the solicitation of business.

However, to mitigate such conduct by the agent, the interim rule puts the burden on the approved insurance provider to ensure that the premium reduction plan is adequately marketed to small, limited resource, women and minority farmers. As stated above, RMA will be able to monitor the situation and determine whether approved insurance providers' marketing plans were successful before it approves any premium discount. Further, market forces are the best means to control the conduct of agents because approved insurance providers are unlikely to be the recipient of only the potentially unprofitable policies while competitors get the potentially more profitable policies.

With respect to the comment that agents that do not offer the premium reduction plan will be left to service only smaller accounts, the commenter is describing a situation that is possible regardless of whether the premium reduction plan is operating or not. However, the interim rule has taken measures to mitigate potential problems. Now approved insurance providers will be allowed to select the states in which to participate in the premium reduction plan. This would allow approved insurance providers to elect not to participate in states where its cost margins are low.

Further, as stated above, approved insurance providers have the incentive to ensure that agents are provided a fair commission. However, the determination of what constitutes fair compensation is strictly between the approved insurance provider and agent. In addition, commenters have pointed out that some farmers will value superior service over any premium discount, especially when such discount is no longer guaranteed. Therefore, even those agents that do not participate in the premium reduction plan could still compete.

With respect to the comment that premiums for smaller farmers will necessarily increase, the commenter does not indicate why the premium reduction plan would cause this to happen. Premiums are determined by a rating methodology based on the frequency or severity of losses and are not related to premium discounts. The amount of premium paid each year to cover losses is not changed under the

premium reduction plan. The only thing that is changed is that the approved insurance provider now pays to the farmer a discount based on cost savings expressed as a percentage of the total premium.

With respect to the comment that some agents will use the premium reduction plan to bundle crop insurance with other products offered by the agent, this is an issue that also is outside the interim rule. Such conduct is prohibited by the SRA and agents are under the scrutiny by both RMA and the states with respect to market conduct and illegal rebating through bundling. Nothing in the interim rule would make it more attractive to engage in such illegal practices.

*Comment:* An agent commented that the areas it serves have a number of limited resource, socially disadvantaged, and minority farmers. The commenter asked that once it is forced out of business due to the proposed marketing scheme, who will service this segment.

*Response:* The commenter predicts that he or she will be forced out of business as a result of the premium reduction plan. However, as state above, approved insurance providers have an incentive to retain their agents and their books of business to maximize profits and ensure that customers are receiving the required level of service. Further, the interim rule now bases premium discounts on actual savings and severely limits advertising or promotions. Therefore, the impacts on the program should be significantly decreased and effectively phased-in over time because the discounts will be paid after the end of the reinsurance year. Even if the commenter is correct and some agents go out of business, under the SRA, it is the approved insurance provider's responsibility to assign other agents to provide the required service to these policyholders.

However, RMA understands the agent's concerns that approved insurance providers may withdraw from states if they are forced to offer a premium discount in all states in which they do business. As stated above, RMA has elected to allow the approved insurance provider to select which states to participate in the premium reduction plan. While this may mean that some farmers may not be able to receive a premium discount, it assures that these same farmers will have continued access to crop insurance.

*Comment:* A few agents commented that back in the late 80's agents wanted to give cash discounts to farmers who paid their premiums early, but RMA said they could not because it favored

the larger farmers. The commenter stated that now RMA is trying to give the larger farmers an unfair discount. The ones (family farms) that need the help are not receiving it.

*Response:* The commenter does not make the distinction between an unauthorized initiative of certain agents to offer discounts according to their own terms and section 508(e)(3) of the Act, which permits approved insurance providers to offer premium discounts. Under section 508(e)(3), RMA is obligated to provide approved insurance providers with the opportunity to pay premium discounts, subject to the limitations it establishes. As stated above, one of the limitations is that premium discounts have to be specifically marketed to small, limited resource, women, and minority farmers. Therefore, RMA is not trying to give larger farmers an unfair discount.

*Comment:* Several agents and other interested parties commented that crop insurance was designed to give all farmers protection from natural disasters and that all farmers means large and small. They claim that RMA tells them that they must service all farmers equally and rightfully so. They claim that it is ironic that RMA is proposing just the opposite and that if the premium reduction plan is approved then the civil rights laws and regulations applicable to federally assisted programs must be amended to require removal of the "Justice for All" poster because the premium reduction plan will not be providing justice for all.

*Response:* RMA would agree with the commenters that the benefits of crop insurance are intended for both small and large farmers and that those that participate in the program are expected to treat all farmers equally. However, RMA disagrees with the comment that RMA is proposing the opposite to this. In any state that an approved insurance provider participates in the premium reduction plan, it must make any premium discount available to all farmers large and small. To ensure this occurs, RMA requires the design and implementation of a marketing plan for all farmers, including small, limited resource, women and minority farmers. As long as all farmers within a state are treated equally, there is no discrimination. If RMA determines that not all farmers have been treated equally, it can impose sanctions. Further, RMA can make this determination before any premium discount is approved. Finally, under the interim rule, farmers who believe they have not been treated fairly have a means of bringing their complaints directly to RMA.

*Comment:* Many agents, interested parties, approved insurance providers and loss adjusters commented that the premium reduction plan could encourage selective "red-lining" of specific states, crops and agencies without federal oversight. They claim the approved insurance providers will only write in areas that are profitable. A commenter states that the requirement that national approved insurance providers provide premium reduction plan discounts in the unprofitable states creates an incentive for these approved insurance providers to withdraw from these areas in order to concentrate on the more profitable states. A commenter is concerned that some farmers with poor loss histories in certain states will be excluded by certain approved insurance providers because the approved insurance providers would not be willing to write in those states. A commenter stated that due to the danger of a "domino effect" on approved insurance provider participation, farmers in these states could be left without an opportunity to obtain protection for their farm operations. A commenter states that this jeopardizes the national characterization of crop insurance, which is necessary to its future.

*Response:* Selective redlining of states can occur now. RMA does not require approved insurance providers to offer crop insurance in all states. The approved insurance provider selects the states in which it will do business. Presumably, this selection process is based on the potential profitability of the state in light of the terms provided under the SRA. Even considering profitability, approved insurance providers are currently participating in high risk states.

However, as stated above, RMA acknowledges that if an approved insurance provider is required to offer a premium discount in all states in which it does business, it may withdraw from certain states, leaving farmers with no coverage. To prevent this, RMA has elected to allow approved insurance providers to select the states in which it will offer a premium discount. While this may exclude farmers in a particular state from receiving a benefit that others in an adjoining state may receive, at least these farmers will still have access to crop insurance even if they do not have access to a premium discount. Within a state where a premium discount is being paid, all farmers insured with the approved insurance provider making the payment will receive the premium discount regardless of their loss history.

*Comment:* An interested party commented that the requirement in section II.A.2 of the SRA that approved insurance providers offer the premium reduction plan in all states they do business makes it clear that cherry picking is not acceptable.

*Response:* RMA disagrees with the commenter that section II.A.2 of the SRA states that an approved insurance provider must offer the premium reduction plan in all states. Section II.A.2 of the SRA obligates the approved insurance provider to provide insurance to all farmers who make application unless such farmer is ineligible. The requirement that approved insurance providers offer a premium discount plan in all states arose in the proposed rule and, as stated above, RMA has reconsidered this position and will now allow approved insurance provider to select the states in which it will participate in the premium reduction plan. In those states where the approved insurance provider elects to participate, the approved insurance provider must make pay any premium discount to all farmers or it will be in violation of the interim rule and subject to sanctions.

*Comment:* A few agents commented on the potential ability of approved insurance providers to offer discount and non-discount insurance in the same state. The commenter claims this goes against everything that the current crop insurance delivery system stands for. The commenter states that letting approved insurance providers' offer both discount and non-discount insurance in the same state would lead to the biggest case of "Cherry-Picking" the crop insurance industry has ever seen.

*Response:* RMA agrees completely with the commenter. Both the proposed rule and the interim rule require that an approved insurance provider must automatically pay any premium discount to all policyholders in a state in which the approved insurance provider is participating in the premium reduction plan and it is approved to pay a premium discount. Approved insurance providers that only pay the premium discount to certain farmers in a state will be subject to sanctions under the interim rule.

*Comment:* An approved insurance provider commented that FCIC appears to have understated the extent of this problem in the Federal Register release when it states, "it would be easy to determine if practices were unfairly discriminatory because the approved insurance provider was required to offer the discount to all producers who wanted it." However, approved insurance providers can pay different

agent commissions and agent profit-share levels based on the state or agency to which it is marketing. The commenter stated that an approved insurance provider would be more likely to emphasize marketing of the premium reduction plan in a state or part of a state where it can produce a superior underwriting gain, leaving less profitable regions underserved. The commenter stated that such an outcome would directly undermine the principle that "no premium reduction plan can be unfairly discriminatory against producers based on their loss history, size of operation, or the amount of premium generated within the program."

*Response:* RMA questions the commenters' assumption that an approved insurance provider would be more likely to market premium discounts in areas where the approved insurance provider expects underwriting gains and to ignore them in high risk areas. The ability to be approved to pay premium discounts depends on the approved insurance provider's ability to deliver crop insurance for an amount less than the A&O subsidy, not underwriting gains. Further, RMA's experience with the premium reduction plan to date indicates that an approved insurance provider is not necessarily averse to marketing the premium reduction plan in a state with large historical loss ratios.

Nevertheless, RMA is concerned with the number of comments it has received that high risk areas might be underserved and that requiring an approved insurance provider to participate in the premium reduction plan in all states could lead to a decision to leave certain states by approved insurance providers. Therefore, the interim rule allows an approved insurance provider to select those states where it elects to participate in the premium reduction plan. This change should help ensure that farmers in certain areas do not lose their opportunity to obtain crop insurance protection. Further, RMA cannot require that approved insurance providers pay premium discounts in states where the achieving of cost efficiencies put the program in that state at risk. Therefore, while loss experience and premium size may play a role because of the amount of expense required to service such policies, RMA has determined that the continued availability of crop insurance is more important than the possibility of receiving a premium discount in the future.

*Comment:* Several agents, approved insurance providers and interested



parties commented that USDA can ill-afford more discriminations suits. A commenter suggested the premium reduction plan will cause ill feelings toward the government.

*Response:* RMA disagrees with the implication that the premium reduction plan will generate discrimination litigation. As stated above, discrimination only occurs when farmers in the same state are treated differently. As stated above, RMA has taken measures to ensure this does not happen, including the ability to evaluate whether discrimination has occurred before approving a premium discount. Therefore, the potential for discrimination litigation should not be any greater than under the current crop insurance program.

#### 4. Expert Reviews

*Comment:* Many agents, approved insurance providers, interested parties, and a loss adjuster commented that RMA chose not to seek independent review by parties with expertise in the marketing, selling, and operations conducted by insurance agents in the delivery of crop insurance. They state RMA should revisit agent compensation by seeking review by qualified insurance agency sales and management experts—and get knowledge-based advice regarding the negative impact that reduction in agent compensation will have on the crop insurance delivery system, and the economy of our rural communities. A commenter also states that RMA should conduct a study to anticipate what effects widespread adoption of the premium reduction plan might have on the public/private partnership that has been so successful in reducing farmers' reliance on ad hoc relief.

*Response:* While commenters may disagree with the expert reviewers selected, their input was only to assist in creating the proposed rule. When creating the interim rule, RMA has sought the opinions of the very people that would be most affected by the rule, agents, farmers and approved insurance providers through the notice and comment rulemaking process. Through these comments, RMA has been able to more accurately determine the impact of the premium reduction plan. As a result of these comments, as stated above, RMA has made considerable changes to the proposed rule to address the commenters concerns.

However, RMA agrees that additional input may be valuable so it has decided to implement this rule as an interim rule so that additional comments may be sought during the initial implementation of this regulation.

*Comment:* Many agents, farmers, interested parties and approved insurance providers stated that the independent reviewers commissioned by RMA found that premium reduction plan proliferation will only result in a modest increase in participation in the crop insurance program. The commenters stated that only those already insured will participate, which will do nothing to contribute to a reduction in ad hoc disaster relief and that the premium reduction plan will do nothing to promote new participation by those who are currently not purchasing crop insurance.

*Response:* The commenters assume that objectives of the premium reduction plan are to increase participation and to reduce the need for ad hoc disaster aid. However, from its legislative history, the stated objective of the premium reduction plan is to allow for price competition in the market for crop insurance. Any increase in participation would be an effect, not the objective. Therefore, regardless of whether there is any increase in participation, RMA is obligated to implement section 508(e)(3) of the Act.

*Comment:* Several agents and interested parties commented that they disagreed with the independent reviewer's assessments of the impact of the widespread use of the proposed premium reduction plan. One commenter stated the assessments were devoid of facts or statistics. One finding in particular estimated that there would be an increased use of the crop insurance program by farmers. The estimated increase on a nationwide basis was a total of 3,312,934 row crop acres. The commenter asks how the experts arrived at these figures and stated the experts should show their work. A commenter stated fewer agents will make it harder for farmers to participate. A commenter stated that the premium reduction plan has not brought any of the uninsured acreage into the crop insurance program.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmers to benefit.

Further, as stated above, it is unlikely that the premium reduction plan will result in a substantial reduction of the number of agents. Approved insurance providers have the incentive to retain their agents and their books of business to maximize profitability and ensure a

stable workforce that will provide farmers with the service required by the SRA and approved procedures. In addition, as stated above, RMA has revised the proposed rule to reduce the incentive for approved insurance providers to make drastic cuts to agent commission or cause market disruptions.

*Comment:* An agent commented that RMA's independent reviewers seemed to believe that the premium reduction plan would increase farmer participation in the program. The commenter claims this is an incorrect assessment. The insurance program is complicated enough. Taking a complicated process into more of a self-service mode is not likely to increase program participation to any measurable degree.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, as stated above, there is nothing in the interim rule that would require insurance be self service. In fact, the interim rule makes it very clear that approved insurance providers and agents are required to comply with the service requirements in the SRA and approved procedures or risk the imposition of sanctions. In this respect, RMA believes that even with the participation in the premium reduction plan of another agent, many farmers will choose to remain with their agent based on the service provided by that agent. The premium reduction plan will introduce price competition as an element in the decision making of farmers. However, it will not be the only factor and frequently will not be the deciding factor.

*Comment:* An interested party commented that when increasing levels of coverage costs over 50% in premium from one level to the next, a 5% or 10% reduction will not do anything to increase participation by the farmer. What it may create, is a rate war between the approved insurance providers until no one can afford to service the policies the way you expect them to be serviced.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the

program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, as stated above, RMA has revised the proposed rule to remove the incentive for approved insurance providers to engage in premium discount wars and instead has developed a process that allows the approved insurance provider to conduct a reasoned analysis of its business to determine where costs savings may be appropriate and allows RMA to ensure that all SRA, approved procedures and the premium reduction plan requirements have been complied with and that the financial stability of the approved insurance provider will not be adversely affected before approving the payment of any premium discount. Therefore, insurance agents should not be driven out of business and farmers still should be adequately served.

*Comment:* Many agents, approved insurance providers and farmers commented that farmers who want crop insurance are already buying it so participation will not increase under the premium reduction plan. Commenters stated that if farmers are not buying crop insurance with a 38% to 67% subsidy, the 5–10% premium reduction plan discount will not make them buy it. A commenter stated that program participation is nearly 80% now so it is clear that the premium reduction plan has not been necessary to achieve current participation levels. A commenter stated that most farmers saved about \$1.00 per acre with the premium reduction plan and that if the \$1.00 savings meant that much to a farming operation as far as the farmer being able to farm in the future, than that operation has other factors that will keep him in or out of business in the future.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, if the commenters are correct and that the typical policyholder will not be motivated much by premium discounts, then there should be minimal impact on the crop insurance program by the implementation of the interim rule.

*Comment:* An agent commented that currently, participation in crop insurance is at about eighty percent and that there is not an agent alive who wants those last twenty percent. The commenter stated that those that make up that twenty percent are very non-

government and would rather live without crop insurance.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

*Comment:* A few agents and interested parties commented that the argument that more farmers will buy crop insurance if it is cheaper is false. The commenter stated that if RMA wants more farmers to buy crop insurance, make crop insurance mandatory to get a farm payment. Another way would be to reduce disaster payments and put that money towards more subsidies of higher levels of crop insurance. Make farmers responsible for their own operation.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

Further, commenters suggestions regarding the use of disaster payments or a requirement that farmers purchase crop insurance to receive farm payments is outside the scope of this rule. Consequently, RMA cannot consider taking this action.

*Comment:* Several agents and interested parties commented that farmers were unlikely to use the premium reduction plan savings to increase coverage. A commenter stated it sold the premium reduction plan to battle competitors. A commenter stated that those customers that did buy the premium reduction plan, none of them bought higher coverage because of the discount. Another commenter said only a few farmers increased coverage. Commenters state that those participants will most likely redirect their premium savings to another product as opposed to purchasing additional coverage, and it will do nothing to promote new participation by those who are currently not purchasing crop insurance.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

*Comment:* An agent commented that he or she hoped that the available discount would entice more local customers to join the agency but the only customers he or she gained were smaller farmers who actually were not engaged in farming on a full-time basis.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

*Comment:* A few agents and interested parties commented that the premium reduction plan will not increase participation. A commenter suggested that the premium reduction plan would negatively impact the delivery system. Commenters stated that the crop insurance program needs to be simple. A commenter suggests making it an entire farm income program. A commenter stated that farmers don't like all of the plans to choose from and all they want is a policy based on a flat dollar amount of protection per acre. A commenter suggests that this should be looked at before RMA lowers premium and find it only did just that. A commenter suggested making the delivery system more efficient.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

However, RMA agrees that simplification is beneficial to the crop insurance program and it has taken considerable measures to simplify the premium reduction plan and the process under the interim rule. In addition, RMA is always looking at ways to simplify the delivery of crop insurance, such as the combination of policies, simplifying the claims process, etc.

The commenter also implies that in the premium reduction plan, RMA is lowering premiums. This is not correct. The amount of premium stays the same. What is occurring is that approved insurance providers can pay premium discounts to farmers to help them, if they so choose, to defray their premium costs.

*Comment:* An interested party commented that there will likely be a decrease in participation because agents will drop out of the business and

farmers will drop out because there are no agents nearby to service them.

*Response:* As stated above, it is unlikely that the premium reduction plan will result in a substantial reduction of the number of agents. Approved insurance providers have the incentive to retain their agents and their books of business to maximize profitability and ensure a stable workforce that will provide farmers with the service required by the SRA and approved procedures. Failure to meet those requirements could result in the imposition of sanctions. In addition, as stated above, RMA has revised the proposed rule to reduce the incentive for approved insurance providers to make drastic cuts to agent commission or cause market disruptions.

*Comment:* An interested party commented that the premium reduction plan will increase participation in the program the longer it is available.

*Response:* As stated above, the purpose of the premium reduction plan is not to increase participation. It is to allow price competition. If one effect of this price competition is to increase participation, the program benefits. However, regardless of whether the program benefits, premium discounts to farmers will allow the farmer to benefit.

*Comment:* An agent commented that the expert reviewer was incorrect when he stated that a cozy relationship between the agent and farmer suggests fraud. The commenter stated that the agent needed to be well grounded with farmers to be able to serve them.

*Response:* The comment is unrelated to the interim rule. Nothing in the interim rule would change the relationship a farmer has with his or her crop insurance agent.

*Comment:* Several interested parties and agents commented the five experts have the opinion that crop insurance agents are overpaid. A commenter suggests they get their license and try delivering crop insurance to the farmer. A commenter stated that agent commissions have been in a steady and consistent decline since the first SRA was put in place by RMA. In fact they had dropped between 40–50% from original levels. A commenter states that agent commissions are at rock bottom levels NOW and that between the 2004 and 2005 insurance years, net income will be reduced by about 15% due to cuts in the A&O from the renegotiated SRA.

*Response:* As stated above, RMA only sought the opinion of the expert reviewers to assist it in the development of the proposed rule. However, with respect to the interim rule, RMA has sought and received comments, through

the notice and comment rulemaking process, from the parties most affected by the rule and it has examined these comments and made appropriate changes to the proposed rule to minimize the adverse impact on agents, farmers, approved insurance providers and the integrity of the program.

*Comment:* Several interested parties and agents commented that RMA, in its exuberance to implement the premium reduction plan program, purchased 5 opinions and most of the five opinions made many points about the premium reduction plan, bringing to light the many flaws in trying to deliver crop insurance on a cut rate basis. A commenter asked why RMA does not get a true “expert” opinion from someone working directly in the system in a rural area and not from a high priced consultant based in Washington, DC. A commenter stated that three of the purchased opinion providers then have the audacity to give a summary that flies in the face of many of the flaws they had previously stated in their report. It should be noted that there is no research to back the purchased opinions. A commenter disagreed with an expert opinion that it costs “about \$50 to write a new client.” A commenter states that the actual annual cost per farmer client to maintain all agency systems and do the job in keeping with its responsibility level is about 10 times that amount.

*Response:* As stated above, RMA only sought the opinion of the expert reviewers to assist it in the development of the proposed rule. However, with respect to the interim rule, RMA has sought and received comments, through the notice and comment rulemaking process, from the parties most affected by the rule and it has examined these comments and made appropriate changes to the proposed rule to minimize the adverse impact on agents, farmers, approved insurance providers and the integrity of the program.

## 5. Other

### a. For the Premium Reduction Plan

*Comment:* An approved insurance provider commented that the proposed rule strikes the correct balance between the various interests at stake, including the interests of farmers in obtaining crop insurance at the lowest possible cost. The balance struck in this proposal ensures a stable, competitive crop insurance market, and protects the industry delivery system as approved insurance providers compete for agents. The commenter states that the fundamental purpose of section 508(e)(3) was to offer farmers more

choices while saving money on crop insurance, by increasing competition in the crop insurance market through offering crop approved insurance providers the opportunity to compete on price. The introduction of the premium reduction plan into the market allows approved insurance providers to compete on price and service to farmers, rather than simply on who pays the highest commissions. The commenter also states that the proposed rule promotes the interests of the American farmer by institutionalizing the premium reduction plan approval process into a permanent rule that will enable approved insurance providers to pass along cost savings to farmers.

*Response:* RMA agrees that the proposed rule attempted to implement 508(e)(3) of the Act in a manner that strikes a balance that allows for a competitive market place between approved insurance providers with respect to price, protects the delivery system, and promotes the interests of farmers. Further, the interim rule built on that framework and addressed the concerns of adverse impacts on the program.

*Comment:* Many farmers, agents and interested parties commented that the premium reduction plan helps farmers. Commenters stated that in today’s farm economy, farmers are faced with rising costs of almost all inputs and that farmers constantly have to look for ways to keep farms efficient, cost effective, and competitive in a world market and getting a discount on crop insurance is a step in that direction. A commenter stated that farmers are viewing crop insurance more and more like an input such as seed, fuel and fertilizer. Commenters stated that as farmers have little to no control of commodity prices, discounts on any farm related expenses are appreciated. One commenter states that while there has been opposition to the discount plan within the insurance industry in the past, agents and approved insurance providers, like farmers, need to look for efficiencies as well.

*Response:* RMA agrees that the premium reduction plan was intended to ultimately benefit farmers by allowing approved insurance providers to compete for their business on the basis of price as well as service, like the other vendors with which the farmer does business. RMA also agrees that the premium reduction plan will result in approved insurance providers examining their operations to find cost efficiencies.

*Comment:* Many farmers and agents commented that with the premium reduction plan farmers are able to

increase coverage levels at a discount, which has helped to better control risks. Commenters claim farmers saved significant savings on premiums. Commenters stated that current insureds enrolled in the premium reduction plan would be very disappointed if the program was discontinued.

*Response:* RMA agrees with the comment that the premium reduction plan allows farmers to consider increasing coverage for better protection and that some farmers may receive a significant premium discount. However, as stated above, such cost savings under the interim rule will not directly reduce the cost of premiums because the premium discount will not be paid to the farmer until after the premium is due. Therefore, there is no guarantee that farmers will receive premium discounts. However, for those approved insurance providers that can achieve efficiencies, they have the incentive to pass those efficiencies on to their customers.

*Comment:* Several interested parties, farmers, and agents commented that the idea of giving the farmer more for less is a good idea. A commenter stated that if the customer did not benefit, the discount would go away on its own. A commenter said it is great that Crop1 is willing to abide by government rules, and be able to offer the same coverage for a better value to the farmer.

*Response:* RMA agrees that the premium reduction plan generates benefits for farmers. RMA also agrees that, because participation by approved insurance providers in the premium reduction plan is voluntary, approved insurance providers and farmers would not participate if they did not perceive a benefit. The commenter is also correct that based on the reviews conducted by RMA, Crop1 did operate in compliance with the requirements of the SRA and approved procedures, including the premium discount plan procedures.

*Comment:* An agent commented that many farmers are seeking a more knowledgeable crop insurance agent and that is exactly what the agent is offering. The commenter stated that the "new generation" of agents truly understands risk management for farmers. The commenter stated that with a background of providing marketing advice and hedging strategies, more and more farmers are seeking services. Being able to offer them a discount allows clients to manage their overall risks at less cost.

*Response:* RMA agrees that many farmers are seeking more knowledgeable crop insurance agents, including those that offer other risk management tools. RMA does not believe that the premium

reduction plan will reduce that interest or that agents will stop competing on the basis of superior service.

Competition on price and service can only benefit the crop insurance program.

*Comment:* A few farmers and agents commented that they were impressed with Crop1's technology. The commenters stated they liked the internet access because with the world becoming more technologically advanced it is nice to see an approved insurance provider stepping up to the plate and becoming a leader, rather than waiting until everyone else does it first. A commenter stated that with the Crop Saver analysis by Crop1, it was able to accurately show the comparative premium for the different levels of coverage and the total revenue farmers would receive with multiple peril versus coverage with Revenue Assurance and that Crop1's technology is allowing the agency more time to service clients and also prospecting for new clients.

*Response:* Increased use of beneficial technology by farmers and agents is one of the possible outcomes from the premium reduction plan. The cost savings that may accrue through the use of such technologies will be considered when determining whether to approve the amount of premium discount.

*Comment:* A farmer commented that several other approved insurance providers have also applied, but have not been granted access and that there seem to be enough approved insurance providers filing for bankruptcy. The commenter stated that it is great that those approved insurance providers that can operate efficiently can be rewarded for doing so.

*Response:* The commenter is correct that other approved insurance providers applied to offer the premium reduction plan under RMA's existing procedures but were not approved. An important qualification for an approved insurance provider to be able to offer the premium reduction plan is that the approved insurance provider's expenses are less than the A&O subsidy. This qualification exists to ensure that the payment of premium discounts do not stress the financial capabilities of the approved insurance providers. For this reason, premium discounts under the interim rule are paid on actual, not projected, cost savings and RMA will have the opportunity to determine the financial condition of the approved insurance provider before it approves the payment of any premium discount.

*Comment:* Several agents, interested parties and farmers commented that with the current premium reduction

plan program, there is a choice to offer the same insurance with a discounted program and with any program this is strictly voluntary, not a requirement and no strings attached. A commenter stated it is important to offer a discounted insurance program as a way to manage risk in today's environment. A commenter stated that because such a program is strictly the farmer's choice there is no reason to discontinue this program.

*Response:* RMA agrees that participation in the premium reduction plan by an approved insurance provider is strictly voluntary and that a farmer can freely choose between an approved insurance provider that offers a premium discount and one that does not. RMA further agrees the merits of the premium reduction plan can ultimately be determined by the choices made by approved insurance providers and farmers in a competitive marketplace. In addition, the adoption of the alternative proposal and allowing approved insurance providers to determine when it is appropriate to pay efficiencies out as premium discounts allows the decision to be made based on the prevailing market forces, as is the case in most business settings.

*Comment:* An agent commented that Crop1 has been a pleasure to work with due to the fact they really understand the business from an agent's perspective. The commenter stated that when the premium reduction plan first came out, agents screamed that the premium reduction plan would come out of commissions and that the agent would be replaced by direct selling over the internet. The commenter stated that this was not the case because Crop1 sent letters and postcards to farmers, increasing the growth of the business. The commenter stated that Crop1 does offer lower commissions, but they have great paper and software. The commenter also stated that if acres or production are reported on time, agents can receive a bonus so Crop1 is making it possible for agents to make, or better, the commissions than with other approved insurance providers.

*Response:* The premium reduction plan, as regulated through the interim rule, allows the approved insurance provider to structure a range of cost efficiencies within the context of the approved insurance provider's business plan, including those identified by the commenter. RMA agrees with the commenter's assessment that agents are unlikely to be replaced as a result of the implementation of the interim rule. Further, the proposed and interim rules clarify many concepts that were not

included in the existing procedures, including the treatment of bonuses, etc.

*Comment:* Several agents and farmers commented that agents do not want to sell the premium reduction plan due to the simple fact that they do not want to take a cut in commissions, even though the premium reduction plan would save farmers. Commenters state that this is the only reason for resistance to the premium reduction plan and that the premium reduction plan saves farmers money, which enables them to put more back into the local economy. A commenter stated that if the approved insurance providers really cared about the farmer, there would be more approved insurance providers involved in developing new policies and projects for the good of the farmer, not just the concern to preserve the agent's commission. A commenter states that the farmer wants the discount, but many are apprehensive to participate because of mistruths and intentional misinformation from the agent not willing to offer the discount.

*Response:* RMA agrees that much of the controversy surrounding the premium reduction plan comes from the perception that agents' commissions will necessarily be reduced and the impact this would have on agents and farmers. RMA cannot voice an opinion with respect to the motives behind the concerns regarding agent commissions but recognizes that the concerns expressed in the comments to the proposed rule are real and legitimate and have been addressed in the interim rule.

RMA would also agree that the benefits a farmer receives from premium discounts would extend to the local economy. However, without more specific information from the commenter, RMA cannot address the allegation that certain agents present mistruths to discourage some farmers from seeking to buy insurance from an approved insurance provider eligible for the opportunity to offer a premium discount.

*Comment:* An approved insurance provider commented that agent compensation is a large component of the expenses that are incurred in the delivery of crop insurance (currently seventy percent), and thus its reduction is a common, if not universal, component of the premium reduction plan. The commenter stated that just as agents are free to find the approved insurance provider that will enable them to maximize their income, farmers should have a similar option enabling them to maximize profit by reducing their premium cost and that such a choice for the farmer can strengthen the

crop insurance delivery system. The commenter stated that without a strong premium reduction plan, the crop insurance industry will simply fall back to the cycle of increasing commissions to gain new business that in the long-run endangers the delivery system.

*Response:* RMA agrees that agent compensation is the single largest component of approved insurance provider expenses and, consequently, it is a prime candidate for consideration when approved insurance providers seek cost efficiencies. However, the changes to the proposed rule reflected in the interim rule increase the flexibility of approved insurance providers to enable them to make a measured evaluation of their operations and determine the most appropriate places to achieve efficiencies. Such changes include allowing approved insurance providers to select the states in which they participate in the premium reduction plan and allowing the payment of variable premium discounts between states.

RMA also agrees that competition between agents and approved insurance providers as well as price competition for farmers are forces that can strengthen the delivery system. To the extent that the premium reduction plan can provide a competitive incentive to maintain the balance of these forces, RMA would agree that the premium reduction plan may contribute to the long run financial health of the delivery system.

*Comment:* An agent commented that while a greater number of farmers have not taken advantage of the premium discount, there has been respectable growth in the numbers of farmers who want to take advantage of the discount. The commenters stated that some of the reasons farmers have not taken greater advantage of the premium reduction plan are: (1) They have been insured with and have developed a relationship with their current agent and they trust the agent "to take care of them," (2) Many farmers do not totally understand crop insurance and have relied on their agents deceptive, misinformed or ignorant reasons for discrediting the premium discount; (3) Agents have put their own selfish interests (loss of customers or commissions) ahead of the benefit to farmers and have failed to promote the premium discount with ANY approved insurance provider; and (4) Many farmers buy their crop insurance from their lender and it has either been insinuated that they must buy their insurance from the lender or the farmer feels he is jeopardizing his ability to obtain credit if he doesn't buy crop insurance from them.

*Response:* RMA would agree that many factors can potentially influence a farmer to choose to buy insurance from an approved insurance provider offering a premium discount or from another approved insurance provider, including some of the factors identified by the commenter. However, since RMA is unaware of the specific "deceptive, misinformed or ignorant" reasons cited by the commenter, RMA is unable to respond. Further, lending institutions are prohibited from conditioning their loans on the purchase of crop insurance with them. If the commenter knows of a specific case where this is occurring, it should report it to RMA. Eventually, there will be competition on service and price and it will be up to the farmers to determine which is more valuable to them.

*Comment:* A few agents commented that RMA will receive an overwhelming, positive response from farmers who would like to see the premium discount continue. The commenter stated that farmers may not so respond because in addition to this being a very busy time of the year for them, they expect their insurance agent to "take care of them." By their very nature, farmers aren't "letter writers." The commenter stated on behalf of every crop insurance customer they all want the premium discount to continue to be made available.

*Response:* RMA would agree with the commenters that the range of comments received under the proposed rule may not be proportionate to or fully representative of the views of farmers. By the same token, RMA cannot agree with the commenter who states that he or she represents every crop insurance customer in voicing a desire for the premium discount to continue. In any case, the rulemaking process does not represent a referendum on the premium reduction plan but rather the development of a framework that allows participation from all interested parties regarding the implementation of this Congressionally mandated option for approved insurance providers.

*Comment:* An agent commented that selling the premium reduction plan has resulted in growth to the book of business each year.

*Response:* RMA recognizes that growth in a book of business may be a result of the price competition created by the premium reduction plan.

*Comment:* An interested party commented that it supports the premium reduction plan for all crops in all states. The commenter claims it balances the interests of the farmers and the agencies providing it, for the

betterment and furtherance of agriculture.

*Response:* The rulemaking process does not represent a referendum on the premium reduction plan but rather the development of a framework that allows participation from all interested parties regarding the implementation of this Congressionally mandated option for approved insurance providers. However, RMA agrees that it is in the best interest of the crop insurance program and farmers to require the same premium discount for all crops but as stated above, in response to the significant concerns raised by commenters, RMA has elected to allow approved insurance providers to select states in which to participate in the premium reduction plan and will allow variability of premium discounts between states.

*Comment:* An agent commented that without price competition, RMA leaves the program open for various types of non-price competition and there have been a lot of crazy plans by approved insurance providers to compete with various non-price service offers (mapping, agronomy services, etc). The commenter asks why RMA does not keep it simple and direct for the customer. The commenter stated that price competition works for everything else (including other insurance, utilities, phone service, airlines and others that are traditionally thought of as natural monopolies) and asks why it isn't good for crop insurance.

*Response:* The purpose of section 508(e)(3) of the Act was to introduce price competition into the crop insurance program. In response to comments, RMA has developed an interim rule that make the program much simpler to administer. Now approved insurance providers and agents can compete on service and price, maximizing the potential benefits to farmers.

*Comment:* An interested party stated that they have seen grave changes within the program as well as availability of delivering approved insurance providers. Overpayment of agents in the Midwest and impractical use of the funds available have crippled and dissolved some approved insurance providers as they pursue business with commission payments above the A&O reimbursement. The commenter stated that the approved insurance providers were also tied to underwriting and multiple years of loss in both A&O and underwriting, which also crippled their financials. The commenter stated that agents in the Midwest have been paid above the A&O while other agents in higher loss ratio states have been paid

minimally. The commenter stated it is a much greater burden for agents in higher loss ratio areas. The commenter stated that with the current limited plan under the premium reduction plan there still may be disparity, however it is not as great as in the regular system.

*Response:* The commenter's assessment of certain practices, economic forces, and geographical disparities in the crop insurance delivery system is basically consistent with several studies that investigated the financial failure of American Growers in 2002. RMA also agrees that to the extent that there is disparity in the payment of agent commissions between states, now allowing approved insurance providers to select the states in which they will participate in the premium reduction plan will not exacerbate this problem and may reduce some of the disparity.

*Comment:* An interested party commented that it is not opposed to the concept of the premium reduction plan for crop insurance, but is concerned about the proper and complete implementation of such a program. Full consideration must be given to the impact of a premium reduction plan program on the availability and viability of the delivery and service of crop insurance to America's farmers. If the premium reduction plan is not structured, administered, regulated and implemented with careful thought and planning it could have the unintended result of lower service quality and less effective cost controls for the farmers who rely upon crop insurance protection.

*Response:* RMA agrees the interim rule must reflect a careful consideration of the viability and service of crop insurance to farmers. Through the rulemaking process, RMA has been able to receive input regarding the impact of the premium reduction plan on agents, farmers, and approved insurance providers, who will be the parties most affected. Further, RMA has carefully considered all comments and structured a program that minimizes the administrative burdens while still protecting the integrity of the program, such as requiring agents and approved insurance providers to comply with all the requirements of the SRA and approved procedures regarding service, loss adjustment, quality control, etc.

*Comment:* An agent commented that although it opposed the premium reduction plan, it would offer it to stay competitive in the marketplace if it looks like it will become a significant offering.

*Response:* Under the interim rule, it is expected that all agents and approved

insurance providers will assess their business situation to determine whether it is economically feasible to participate in the premium reduction plan. However, even those that choose not to participate in the premium reduction plan will still have the opportunity to compete based on service, if not price. Farmers are the ones who will ultimately determine what is most valuable to them.

*Comment:* A few agents commented that the timing could be better and asked that the premium reduction plan not be implemented now. A commenter stated that if the premium reduction plan is in the future, all approved insurance providers involved in crop insurance need to be able to provide the exact same product and the industry as a whole needs more time to implement that type of change. With more time and input from everyone involved in this business a fair and equitable policy should be possible.

*Response:* RMA understands that there may be parties that want to delay implementation of the premium reduction plan but that is not an option. Section 508(e)(3) of the Act requires that RMA give approved insurance providers the opportunity to apply to provide a premium discount. Further, it would be impossible for RMA to structure the premium reduction plan so that approved insurance providers all provide the same product and remain in compliance with the Act. Under section 508(e)(3), premium discounts are based on the efficiencies attained by the approved insurance providers. Since all approved insurance providers operate differently, they would not attain efficiencies in the same manner or in the amount. The interim rule allows flexibility for such difference in business operations.

Further, through this rulemaking process, RMA has provide all interested parties the opportunity to provide input and has carefully considered such input when developing the interim rule.

#### b. Against the Premium Reduction Plan

*Comment:* An approved insurance provider commented that the General Accounting Office is conducting an audit of the premium reduction plan to evaluate how the one approved plan is operating and the impact on the nation's farmers and the integrity of the Act. The commenter states that the results of this audit should be reviewed before any final rules are promulgated.

*Response:* As stated above, section 508(e)(3) of the Act obligates RMA to consider any request by an approved insurance provider to offer a premium discount. If RMA were to postpone

implementation of the interim rule to wait for information from one or more studies, RMA would need to operate the premium reduction plan under existing procedures which the FCIC Board of Directors has determined to be inadequate or revised procedures. Consequently, RMA cannot adopt the suggestion of the commenter to postpone the interim rule.

Further, through this rulemaking process, RMA has been able to obtain comments from all interested parties regarding the impacts of the premium reduction plan and, given the significant number of comments received, has a good understanding of the concerns. In response to these comments, RMA has made significant changes to the proposed rule to make the premium reduction plan much simpler, less burdensome, and less likely to cause any significant market disruptions. In addition, RMA has elected to implement this rule as an interim rule to allow it to collect additional comments so it can better understand, and make adjustments if needed, the impact of the premium reduction plan as contained in the interim rule.

*Comment:* An interested party suggested that the Board should insist on a contractor review of the existing the premium reduction plan program before implementing any rule. The commenter states that the existing program has no protection against discrimination or adequate disclosure to the Board.

*Response:* As state above, RMA is obligated by law to operate the premium reduction plan. If RMA were to postpone the interim rule to await information from one or more studies, RMA would need to operate the premium reduction plan under existing procedures which the FCIC Board of Directors has already determined to be inadequate or revised procedures. Consequently, RMA cannot adopt the suggestion of the commenter to postpone the interim rule.

Further, RMA disagrees that the existing program has no protection against discrimination or inadequate disclosure to the Board. As stated above, all approved insurance providers are required to sell insurance to all interested farmers as long as they are eligible. Further, approved insurance providers are required to comply with all anti-discrimination provisions in the SRA. This requirement did not change under the existing premium reduction plan or under the interim rule.

However, RMA acknowledges that the existing program did nothing to change the longstanding practice of allowing agents to only solicit large farmers.

However, the interim rule rectifies this matter and requires that the approved insurance provider solicit small, limited resource, women and minority farmers through its marketing plan.

Further, disclosure to the Board under the existing program has been adequate. Crop1 has submitted regular reports to RMA, who provides an update to the Board at every Board meeting. Further, RMA has conducted periodic reviews of Crop1's operations and reported to the Board its findings. In addition, RMA briefed the Board on all new requests to provide premium discounts for the 2005 reinsurance year and sought the Board's input on the proposed and interim rules.

#### i. Procedural

*Comment:* A few approved insurance providers commented that the premium reduction plan is providing burdens on the state without providing funding. A commenter states this could raise the issue of state premium taxes. A commenter stated that while the standard of what constitutes "sufficient implications" under Executive Order 13132 to warrant consultation with the states is not known nor are the intergovernmental consultation standards set in Executive Order 12372, prior premium reduction plan experience and the requirements of the proposed rule itself create potentially significant burdens on state government—specifically state insurance departments—such that some detailed analysis and potential consultation under these Executive Orders appears warranted. The commenter stated RMA should ask the insurance departments in the states where the premium reduction plan is approved by FCIC for the 2003–2005 crop years whether that program created an "insignificant" burden. Furthermore, the proposed rule requires any premium reduction plan-participating approved insurance provider to file its marketing strategy with each state in which the program will be offered "for its [the state's] review to determine whether the licensing of agents and the conduct of agents in the solicitation and sale of insurance under the proposed premium reduction plan is in accordance with applicable state insurance laws". The commenter asks where RMA proposes the state is going to get the resources to conduct the above review. This review alone, along with all implementation aspects of the plan and its potentially discriminatory impact both at the agent and consumer level, will undoubtedly constitute a significant impact on state insurance departments and would presumably warrant consultation with

the states prior to the implementation of any final rule. The commenter suggested the proposed rule may even need evaluation, contrary to the conclusion reached above, under the Unfunded Mandates Reform Act of 1995.

*Response:* RMA recognizes that the provisions in the proposed rule that required state approval of the premium reduction plan submissions and marketing plans may have created unnecessary burdens on states. Consequently, these provisions have been removed from the interim rule. However, states remain involved in monitoring market conduct to ensure farmers are not misled but this is not a new burden. States have always been responsible for monitoring such market conduct since they license approved insurance providers and agents. Therefore, there are no unfunded mandates in the interim rule.

Further, with respect to Executive Order 13132, RMA agrees that the premium reduction plan had Federalism implications because it is regulating certain conduct relating to marketing and allowing premium discounts that some states may construe to be illegal rebates. However, the crop insurance program is a national program and there needs to be uniformity in the application of its requirements. In addition, section 4 of that Executive Order authorizes agencies to preempt state law where there is a Federal statute that contains an express preemption provision. As stated above, section 506(l) of the Act is an express preemption provision. Therefore, RMA is authorized to take promulgate regulatory provisions that preempt state law.

With respect to the consultation requirement in Executive Order 13132, RMA maintains contact with the National Association of Insurance Commissioners and actively participates in its crop insurance working group. Through this relationship, RMA is able to consult with the State Departments of Insurance of any actions it proposes to take and obtain the necessary feedback.

*Comment:* An approved insurance provider commented that it disagreed with RMA's assessment that, with respect to the Regulatory Flexibility Act, the proposed rule will not have a significant economic impact on a substantial number of small entities. The commenter stated that the proposed rule would affect the sales strategies, sales techniques and income of thousands of agents, most of whom qualify as small entities. The commenter stated that since the prime effect of the rule is likely a reduction in

commissions, the effect is likely to be direct and immediate.

*Response:* RMA disagrees with the comment. As stated above, the purpose of the premium reduction plan is to provide the potential for greater benefits to farmers, agents and approved insurance providers through free market competition. As stated above, participation in the premium reduction plan is strictly voluntary. Therefore, if agents feel that they would be harmed by participating, they can elect not to.

In addition, neither the proposed nor the interim rule mandates that agent commissions be reduced. Commission rates are freely negotiated between the agent and the approved insurance provider. In addition, as stated above, approved insurance providers have an incentive to pay agents a fair commission and only the agents and approved insurance providers can be the judge of that. Further, as stated above, RMA has revised the proposed rule to minimize the potential for market disruption. Therefore, the interim rule will only have a significant economic impact on the agent if the agent elects to receive such impact. This is a matter solely up to the agent. Therefore, RMA was correct in its assessment that no Regulatory Flexibility Act analysis is required.

ii. Current

*Comment:* Several agents and interested parties commented that it has taken many years to develop the current delivery system of providing insurance to the farmers. That was accomplished in part with the partnership of independent agents across rural America. Commenters state that under the current system the government receives an efficient and effective delivery system and the farmer receives a good product at a fair price with equal access to the approved insurance providers. A commenter stated that farmers like it and approved insurance providers and agents have been knowledgeable and expert distributors. A commenter states that no farmer has ever complained that premiums are too high. A commenter stated that when used as a risk management tool, crop insurance works well. A commenter states that the program has made many improvements over the years, new products and new crops have been added, and participation and value to the farmer has continued to improve.

*Response:* RMA generally agrees that the current crop insurance program provides a system that can claim many successes in helping farmers protect their livelihood and demonstrates a successful partnership between the

private sector, including approved insurance providers and their agents, and the Federal government. RMA agrees that crop insurance appears to be working well for many farmers and has steadily improved, as evidenced by growing participation at increasing coverage levels. RMA also recognizes the vital role that the agent plays in providing information and service to farmers in the current delivery system.

RMA strongly disagrees with the claim that no farmer has ever complained that crop insurance premiums are too high. Whenever RMA meets directly with farmers, they often argue that crop insurance premiums are too high and are a major concern.

Notwithstanding these concerns, the purpose of the premium reduction plan is to improve the crop insurance program by allowing price competition. The assumption is that the crop insurance industry will respond as have most competitive industries with a better product, better service, at a better price.

Further, as stated above, RMA has revised the proposed rule to minimize potential market disruptions so that the crop insurance program can continue to provide valuable risk management to farmers long into the future.

*Comment:* Several agents and interested parties commented that when crop insurance was solely a government project 72 cents of all premium was for administration and the balance for losses. As private enterprises, only 23.5 cents is paid for administration. A commenter states that this shows the private enterprise should not be kicked out of the current program. You get what you pay for, and cheap is not always the answer.

*Response:* RMA agrees that the private sector has a well established and valuable role in the delivery of Federal crop insurance. However, RMA disagrees with the implication of the comment that the interim rule somehow seeks to replace the private sector role. On the contrary, the stated objective of the premium reduction plan is to foster price competition in the program. The whole premise of price competition is to be able to provide the same product or service for less money.

Further, cheap is not the goal. As stated above, as with all competition in the business world, the goal is to allow approved insurance providers and agents to provide a better product, better service, at a better price.

iii. Program Harm

*Comment:* Several approved insurance providers, farmers, interested parties and agents commented that the

Crop Insurance Reform Act of 2000 [Agricultural Risk Protection Act of 2000] helped the American farmer out the most by giving them a higher subsidy for their premium. A commenter stated that since the 2000 Reform Act; the policy count has gone upward every year. A commenter stated that the legislation to allow for the premium reduction plans was approved at a time (1993) [1994] when there were approximately sixty four (64), and there are now seventeen (17) approved insurance providers, when premium subsidies to farmers were much lower, and the subsidy for administrative and operation expenses to approved insurance providers was approximately thirty-three percent (33%) higher. The intent of the legislation was to encourage approved insurance providers to develop efficiencies in their operations and pass the savings on to the farmers in the form of reduced premiums for them and the 2000 Reform Act accomplished this goal and approved insurance providers have already had to reduce their costs.

*Response:* RMA agrees that the additional premium subsidy in the Agricultural Risk Protection Act of 2000 contributed to an increase in crop insurance participation. RMA also agrees that the premium reduction plan was legislated when there were more approved insurance providers, lower premium subsidies, and a higher A&O subsidy rate. However, the primary stated objective of the premium reduction plan, as reflected in the legislative history of section 508(e)(3) of the Act, was to foster price competition in the crop insurance marketplace. This objective has yet to be accomplished and the presumption is that such price competition will further benefit farmers because it will allow approved insurance providers and agents now to compete on service and price, which can benefit the farmer and the crop insurance program.

*Comment:* Several agents and interested parties commented that if the premium reduction plan program is not rescinded and stopped, it will cause the current crop insurance program to fail in its ultimate goal to replace disaster programs. A commenter stated that ad hoc disaster programs would be needed on even a greater scale. A commenter stated that crop insurance has the ability to eliminate ad hoc disaster and that the current farm program, with loan deficiency payments, counter-cyclical payments, fixed-direct payments, etc., is less productive and provides less true protection to the American farmer than does the crop insurance program.



*Response:* RMA is unsure of why the commenters predict that the premium reduction plan will cause the failure of crop insurance to replace ad hoc disaster aid and that ad hoc disaster aid demands will increase as a result of the premium reduction plan and the commenters provide no information to support these predictions. In fact, the premium reduction plan does not affect the coverage provided to the farmer. Therefore, it should not have any impact on the need for ad hoc disaster programs.

If the commenters are premising their statements on the fact that agent commissions will decrease to the point that agents can no longer serve farmers, who will then have no access to crop insurance and require ad hoc disaster programs, these issues have been addressed above. As with all competition, prices will only change by an amount the market will bear. This includes agent commissions. Approved insurance providers have the incentive to retain agents to maximize their potential underwriting gains and to service their customers. Therefore, approved insurance providers and agents will negotiate a fair commission rate. Further, as stated above, RMA has built in safeguards into the interim rule to ensure that farmers receive the required level of service. In addition, adoption of the alternative proposal will slow down price competition and allow it to proceed in an orderly, managed manner, without market disruptions.

With respect to the benefits of other farm programs, such programs are outside the scope of this rule and RMA is not in any position to comment.

*Comment:* Several agents commented that it is common knowledge in the industry today that every approved insurance provider, with the exception of one, opposes any premium reduction plan. However, these approved insurance providers must develop a plan in order to compete and hold their share of business. A commenter states this will ultimately require the approved insurance providers to cut cost, which will lead to less service, less value, and possibly less products available to the farmer regardless of size.

*Response:* RMA acknowledges that the commenters may be correct in asserting that there may be resistance among approved insurance providers with respect to the premium reduction plan concept. However, Congress has enacted section 508(e)(3) and RMA must respond to approved insurance providers who wish to take advantage of this provision, which does benefit farmers.

RMA does not agree with the implication that the introduction of cost efficiencies by approved insurance providers will necessarily lead to a deterioration in service, less value, or fewer products available to farmers. The purpose of price competition is to provide a framework whereby the participants in the market will try to provide a better product, better service, for less money. However, to ensure that service is not reduced, RMA has added provisions to provide sanctions in the event service fails to comply with the requirements of the SRA and approved procedures. In addition, the requirement to sell all insurance products offered by RMA contained in the SRA still applies. Further, adoption of the alternative proposal will allow price competition to proceed in an orderly, managed manner, without market disruptions.

*Comment:* A few agents and interested parties commented that, nationwide, the program would not be as profitable. A commenter stated this would certainly reduce the financial strength of the industry and affect the ability of the RMA to meet its intended goal of a 1.075 national loss ratio. A commenter stated it may actually result in an increase in premiums.

*Response:* It is unclear to RMA why the premium reduction plan will adversely affect expected underwriting gains of approved insurance providers, RMA's ability to maintain a national loss ratio of 1.075, or crop insurance premium rates. Any premium discounts are paid through savings achieved in the operations of the approved insurance providers. The amount of premium paid to cover losses and the potential underwriting gains of the approved insurance provider will remain unchanged. Therefore, there should not be any negative impact on the financial strength of the industry, the ability of RMA to hit its targeted program loss ratio, or premium rates.

*Comment:* Many agents, approved insurance providers and other interested parties commented that they opposed the premium reduction plan.

Commenters stated that the premium reduction plan will cause significant damage to the federal crop insurance program and harm farmers, agents and approved insurance providers, and the credibility and delivery of the program. Commenters state that there are too many disruptive problems with the premium reduction plan at a time when the program is more complex, with more products and less income. Commenters stated that the federal crop insurance program is one of the most successful public-private partnerships. Commenters state that while there are

limited tangible economic benefits associated with the premium reduction plan implementation, these benefits are small relative to the risks to farmers, and the political and economic costs that will be required to achieve them. Commenters state that the premium reduction plan risks the most fundamental principle of crop insurance—universal access by all farmers, regardless of size.

*Response:* RMA disagrees with the commenters' assessment that the premium reduction plan will cause significant damage to the crop insurance program; harm farmers, agents, and approved insurance providers; and impair program delivery. The crop insurance industry is not the first to have price competition and for the most part, industries thrive under such competition and there is no reason to believe the crop insurance program would respond any differently. Further, as stated above, RMA has built in safeguards into the interim rule to ensure that farmers receive the required level of service. In addition, adoption of the alternative proposal will allow price competition to proceed in an orderly, managed manner, without market disruptions.

Commenters also point to the complexity of the current program, the success of the public/private partnership; limited benefits of the premium reduction plan relative to risks; and the threat to universal access by all farmers as the principle factors supporting this assessment.

RMA agrees that the current program is complex but, as stated by commenters, approved insurance providers and agents are doing a superior job in delivering that program to farmers. Further, the complexity of the program will remain unchanged under the interim rule. In addition, as stated above, it is up to farmers to determine whether the premium reduction plan will benefit them. Under the premium reduction plan, farmers will be able to determine what is the greatest value to them, service or price, or a combination of the two. Lastly, as stated above, RMA has taken steps to ensure universal access to the premium reduction plan by requiring approved insurance providers to specifically market it to small, limited resource, women and minority farmers.

*Comment:* Several interested parties commented that the premium reduction plan would disrupt the delivery of crop insurance to many farmers and this would negatively impact many banks that strongly urge farmers to purchase crop insurance as a backstop to help

farmers repay their loans in the event of a disaster or significant loss.

*Response:* RMA assumes that the commenters are referring to the possibility of reductions in agent commissions causing agents to leave the business and farmers to be left without insurance. These issues have been addressed above. As with all competition, prices will only change by an amount the market will bear. This includes agent commissions. Approved insurance providers have the incentive to retain agents to maximize their potential underwriting gains and to service their customers. Therefore, approved insurance providers and agents will negotiate a fair commission rate. Further, as stated above, RMA has built safeguards into the interim rule to ensure that farmers receive the required level of service. In addition, adoption of the alternative proposal will allow price competition to proceed in an orderly, managed manner, without market disruptions. Therefore, the premium reduction plan should not adversely impact banks or other lenders.

*Comment:* A few interested parties and agents commented that the federal crop insurance program has been highly successful in the past primarily because of the larger subsidies passed on to its customers the last few years.

*Response:* RMA agrees that larger subsidies provided under the Agricultural Risk Protection Act of 2000 resulted in farmer participation at higher levels of coverage. However, as stated above, the primary purpose of the premium reduction plan is not to increase participation, even though that may be one of the effects. The purpose is to stimulate price competition so that farmers receive the benefits of competition for both price and service.

#### iv. Alternative cost cutting

*Comment:* An interested party stated that if RMA is trying to regulate what the agents are getting paid, then RMA should put in the SRA what the maximum all approved insurance providers can pay an agent. The commenter stated that by using a ceiling on what all approved insurance providers can pay an agent will almost guarantee no more bankrupt approved insurance providers.

*Response:* The purpose of the premium reduction plan is not to regulate agent commissions. An agent's compensation is freely negotiated between an agent and an approved insurance provider and nothing in the proposed or interim rule would change or preclude it. Further, approved insurance providers are in the best position to examine their operations and

determine the appropriate amount of commission and other expenses. Moreover, approved insurance providers can fail because of any number of factors, possible excess agent compensation being only one.

*Comment:* An agent commented that if RMA wants to save money, get rid of the Crop Revenue Coverage or Revenue Assurance as they are almost identical. The commenter stated RMA could save millions in not having to support both systems.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond. However, RMA has considered such cost saving measures, agrees with the commenter, and has announced its intent to merge the CRC and RA policies.

*Comment:* A farmer commented the agriculture budget is roughly 1/2 of 1 percent of the Federal Budget but the agricultural industry is responsible for 15 percent of the nation's gross domestic product, and provides for 25 million jobs. The commenter stated the President needs to increase the subsidies by 20% to give all farmers better coverage at the higher levels at a lower rate.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* Several approved insurance providers and interested parties commented that premium reduction plan should be implemented only with the strictest caution only for those economically viable approved insurance providers who have already demonstrated the capacity to fairly serve all farmers. Commenters stated it seems somewhat risky to be offering reduced premiums through a start up approved insurance provider in a weak financial condition. If a widespread disaster were to occur, the approved insurance provider may not survive and there may be problems with everyone getting paid without a considerable infusion of cash from the federal government.

*Response:* There are guidelines in place to ensure the financial stability of approved insurance providers through the approval process when an approved insurance provider submits an application for an SRA or its annual Plan of Operations. Nothing in the premium reduction plan changes these requirements. Therefore, no approved insurance provider that was not economically viable would be approved for a SRA, much less be eligible to participate in the premium reduction plan.

However, RMA does share the concern that even though approved

insurance providers may have achieved efficiencies, they may also sustain significant underwriting losses in years where there are multiple widespread disasters. The payment of premium discounts under such circumstances could stress the financial condition of the approved insurance provider. RMA has addressed this issue in the interim rule in two ways. The first is to only require approved insurance providers to pay premium discounts if the approved insurance provider makes a request to pay such discounts and it is approved. Therefore, if the approved insurance provider determines it is not in the financial position to pay the premium discount, it could not request approval to pay any discounts. The second is to give RMA the authority to deny the payment of a premium discount if there is evidence it may weaken the financial condition of the approved insurance provider.

*Comment:* An agent commented that RMA should not offer both the existing multi-peril program and the proposed premium reduction plan. The commenter states there is no reason to complicate crop insurance more than it already is. The commenter suggested finding a level of subsidy that keeps the insurance affordable to the farmers and still provides a fair return to the approved insurance providers and the independent agents that write for them.

*Response:* The commenter appears to assume that the premium reduction plan will complicate the crop insurance policy. However, this is not the case. The obligations of the parties and the coverage remain the same under the policy regardless of whether the premium reduction plan is in effect. Further the requirements regarding service, loss adjustment, etc. remain the same. The premium reduction plan will simply provide the farmer with the opportunity to receive a payment if the approved insurance provider achieves the requisite level of cost savings for the reinsurance year.

With respect to the issue of subsidy, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* A farmer commented that the problem with the crop insurance program is not the amount of subsidies, it is the low yields.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* An agent commented that any farmer that has any quantity of land carries crop insurance, and has done so for the past 15–20 years. The reason there are “large” farmers is that they know the programs inside and out. The

commenter stated that these large farmers form new "entities" and move one or two extremely high yielding pieces (APH) of ground into these new "entities" and then "add land to an existing unit" and transfer their high yielding "new entity" land to all the ground they just took away from their neighbors. The commenter claims this is one of the processes destroying family farms. Large farmers know the programs inside and out, and will do anything and everything to have the advantage in our so-called free market. The commenter claims this has crippled the concept of free enterprise by a program designed to do good. Over the last ten years, land prices have tripled and cash rents have also tripled while small farmers continue to go out of business. Meanwhile the taxpayer funds an average of 55% of the crop premium. Adding an additional 3%–5%–8% discount to this program will again be greeted by smiles from the people that benefit the most—large farmers. The commenter stated that if RMA wants to save money and positively impact agriculture, change the practice that only large farmers use—multiple entities. These educated farmers will find ways to circumvent changes unless it is plain and simple.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* Several agents commented that the premium reduction plan is being used to cut program costs. A commenter stated to save costs, either the farmer should pay more premium or the approved insurance providers receive less A&O, which will result in agents getting paid less commission. A commenter stated this goal was already met when A&O was reduced in the 2005 SRA and the large reduction in A&O that has occurred between 1994 and today. The commenter stated that if savings is the goal, keep the premiums the same for all approved insurance providers in all states and cut the reimbursement and cut the paperwork requirements. A commenter stated that if RMA wants to cut back in spending get rid of all the subsidy programs and force all farmers to buy crop insurance if they want any government assistance or take the farm program payments and put them into the crop insurance program. This would tell farmers they can protect themselves if a disaster happens but it is their choice.

*Response:* The comments assume that RMA is seeking to reduce program costs through the interim rule. This is not the case. The premium reduction plan is intended to allow approved insurance providers to compete on the basis of

price. Nothing in the premium reduction plan will decrease the overall costs to the crop insurance program because the payment of A&O subsidy will remain the same, or could actually increase if additional levels of coverage were purchased.

With respect to the comments regarding other subsidy programs, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* Several approved insurance providers and agents commented that farmers do not need further reductions to the highly subsidized premiums. A commenter stated that if it is the intent of Congress to further reduce premiums to farmers then it is best to increase subsidies to all farmers uniformly. The commenter stated that any attempt to reduce farmer premium through premium discount plans which cannot reach all farmers in an equitable manner should be abolished.

*Response:* As stated above, section 508(e)(3) of the Act obligates RMA to consider requests by approved insurance providers to provide premium discounts. This obligation was not changed, even when Congress substantially increased the premium subsidy rates. Therefore, RMA has no choice but to implement section 508(e)(3) as written.

With respect to the issue of raising all premium subsidies equally, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

Further, RMA does not agree with the assumption that the premium reduction plan cannot reach all farmers in an equitable manner. As stated above, the interim rule provides specific protections against unfair discrimination and requirements for broad and equitable marketing of the premium reduction plan.

*Comment:* Many agents, approved insurance providers, farmers and interested parties suggested that if RMA wants to increase participation in the program it should increase the percentage of subsidy for all farmers. This would have the same effect to the farmer but would not drive out of business the independent agency. A commenter suggested that it would like to see the subsidies around 60% to help the younger farmers protect their investments.

*Response:* As stated above, the primary purpose of the premium reduction plan is not to increase participation, although that may be an effect. The primary purpose is to introduce price competition into the

crop insurance program so that farmers can benefit from the competition for both price and service.

With respect to the issue of raising all premium subsidies for all farmers, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* An agent suggested that when balancing budget needs and approved insurance provider stability, it made more sense just to reduce A&O and commissions 3.5% and leave crop insurance the same price with less need for additional subsidies.

*Response:* The comment assumes that the purpose of the premium reduction plan is to balance the budget. This is not the case. As stated above, the primary purpose of the premium reduction plan is to introduce price competition into the crop insurance program so that farmers can benefit from the competition for both price and service. In addition, RMA does not regulate agent commissions. Such commissions are determined by free market negotiations between the agent and approved insurance provider.

*Comment:* Several agents commented that it would make sense for discounts be based on loss ratios. A commenter stated that any other lines of insurance operate in this fashion but due to the fear of discrimination federal crop insurance can not operate in this way. This is unfortunate.

*Response:* The commenter is correct that one of the fundamental principles of crop insurance is equal access and equitable treatment. However, crop insurance does operate like other lines of insurance in that the higher the risk of loss, the higher the premium rate, and vice versa. Therefore, in a sense, farmers with good loss ratios do receive a "discount" in the form of lower premium rates. However, in the context of the premium reduction plan, there is no rational basis to tie such discounts to loss ratios because, unlike other lines of insurance, the cost savings are not achieved through underwriting gains. The cost savings are from operational structures or changes that allow the approved insurance provider to operate for less than the A&O subsidy it receives.

*Comment:* An agent suggested that farmers be given a 1% discount for every year they've been in the program, up to 10 years, without breaking continuity. The commenter suggested making the discount standard and available to all farmers.

*Response:* With respect to the issue of giving all farmers a discount based on the length of time participating in the program, this comment is beyond the

scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* An interested party commented that deliberation and implementation of the premium reduction plan requires an allocation of political and economic resources by FCIC, RMA, private industry, and other interested parties. The commenter states that, in lieu of the premium reduction plan, these groups could be working on an alternative set of program endeavors, which have a much greater potential for social return and overall economic benefit to the program, such as successful implementation of the Combo Policy.

*Response:* As stated above, RMA is obligated to consider requests by approved insurance providers to offer premium discounts in accordance with section 508(e)(3) of the Act. RMA has no choice but to implement the premium reduction plan.

*Comment:* Several agents and interested parties commented that RMA should just decrease premium rates. A commenter stated that this new rule is ultimately saying that rates are too high and RMA can afford to step back the rates in certain cases. A commenter stated that this would allow real savings to every farmer. Less premium is generated so less commission is paid. A commenter stated that once again, RMA is choosing to make this much harder than it has to be and if RMA truly cared about whether or not this was a good idea, why have they not asked agents directly for input.

*Response:* This comment assumes that the purpose of the premium reduction plan is to reduce premium rates and this is not correct. Premium rates must be sufficient to cover anticipated losses and a reasonable reserve. The premium discount plan is based on whether approved insurance providers can deliver the crop insurance program for less than the A&O subsidy it receives and will not affect the premium rates. These cost savings can be passed from the approved insurance provider to the farmers to help defray the cost of the premium normally paid by farmers, but premium rates themselves are unaffected. Therefore, RMA cannot reduce premium rates under the premium reduction plan.

Further, through this rulemaking process, RMA has sought the input of agents and has carefully considered their comments when developing the interim rule.

*Comment:* A few agents commented that the current program is a wonderful program, and has worked very well. The commenter stated that if the program needs changing it suggests something as

simple as acreage reporting date for crop insurance to coincide with acreage reporting deadline at the local FSA office. Another commenter suggested that FSA and RMA remove duplicate reporting. The commenter stated that this would result in program savings, which could be passed on to the farmer as reduced premiums.

*Response:* As stated above, the purpose of the premium reduction plan is to introduce price competition to allow farmers to benefit from both price and service competition. As stated above, RMA is obligated to consider requests by approved insurance providers to offer premium discounts. Premium discounts can only be paid if the approved insurance provider's costs to deliver the program are less than its A&O subsidy. In fact, the cost saving measures discussed by the commenter can be the foundation for the cost savings under the premium reduction plan. However, while RMA is always looking for ways to simplify the program and reduce costs to approved insurance providers, it cannot simply pass those savings on to farmers as reduced premiums. Premium rates must be sufficient to cover anticipated losses and a reasonable reserve and are not affected by the premium reduction plan.

*Comment:* A few agents and interested parties commented that if cuts need to be made, eliminating premium subsidies to large corporate farmers would do more for the economic stability of the farmers the premium reduction plans are supposed to help.

*Response:* This comment assumes that the premium reduction plan is intended to cut costs and that it can seek other methods for accomplishing this objective. This is not the case. As stated above, the purpose of the premium reduction plan is to introduce price competition to allow farmers to benefit from both price and service competition.

With respect to the issue of eliminating premium subsidies to large corporate farmers, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* An interested party commented that this plan has no value at all unless it helps the small farmers. The commenter states that large agribusiness should be ineligible for this program because it is clear taxpayers have been funding huge agribusiness conglomerates and American citizens should not be insuring them at all. The commenter recommends RMA restructure this program to help small poor farm families and downsize the rest.

*Response:* RMA agrees that the premium reduction plan should help small farmers. To accomplish this goal, the interim rule will require that approved insurance providers specifically market the premium reduction plan to small, limited resource, women and minority farmers. This should ensure that all farmers, both large and small, have equal opportunity for premium discounts.

With respect to the issue of not allowing large conglomerates to participate in the crop insurance program, this comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* Many agents and interested parties and an approved insurance provider commented that the crop insurance program is a complex program that requires extensive time with each customer if all available options are to be adequately explained and that such requirements continue to increase. They state it takes the same amount of time to sell a small account as it does with the larger one. The commenters stated that if all of the larger accounts are switched to the discount plan, then agents will barely survive on the large accounts and will lose money on the smaller accounts, which they already do, meaning that overall they would be losing money and would have to go out of business due to a marketing scheme. The commenters state that they are able to serve small farmers partly because the larger farmers' policies help with the low or non-existent profits from the smaller farmers. They also claim that if the premium reduction plan becomes a reality, they do not know how they will be able to take care of everyone and provide the service they have done in the past. Commenters claim that this flies in the face of what Congress intended when it passed the Agricultural Risk Protection Act of 2000.

*Response:* RMA recognizes that, because servicing a policy by an agent entails a relatively large fixed cost, certain small policies must currently be serviced at a loss to the agent and the approved insurance provider and that larger policyholders tend to subsidize these small policies. This condition currently exists in the crop insurance program and is not the result of the premium reduction plan.

Further, the commenters predict that reductions in agent commission will make it uneconomical to service small policies. As stated above, it is unlikely that there will be any reduction in service to any farmer, including small or high risk farmers, from the requirements

in the SRA and approved procedures. Approved insurance providers are not going to pay a commission so low that selling crop insurance is no longer economically viable for the agent and risk them going out of business. This may result in approved insurance providers not having sufficient agents to properly service their policyholders. In addition, approved insurance providers are not going to risk losing the agent or their book of business to a competitor thereby decreasing the potential for underwriting gains. The marketplace will determine the fair and equitable commission for the agent.

In addition, RMA has taken steps to ensure that service to small farmers is available and is not reduced. One step is to clarify the requirements regarding service in the interim rule. Another is to specifically require that approved insurance providers develop and implement a marketing plan designed to reach small, limited resource, women and minority farmers. Provisions have also been added to allow farmers to complain directly to RMA if they feel they have been denied access to the premium reduction plan or have received reduced service. In addition, failure to comply with either the service or marketing requirements could result in the imposition of significant sanctions under the SRA or the interim rule against the approved insurance provider and agent.

*Comment:* An interested party commented that RMA was incorrect when it made statements that it is compelled to offer the premium reduction plan unless Congress passes a law instructing them otherwise. The commenter states that section 508(e)(3) of the Act is not in a vacuum and RMA has no authority to implement a program that is contrary to the other requirements of the law and regulation. The commenter also suggests that RMA has shown bias and has determined it will ignore the many issues and legal deficiencies raised by the comments in violation of the Administrative Procedures Act.

*Response:* The commenter states that RMA is not obligated to offer the premium reduction plans because it would be contrary to the other requirements of the law and regulation. However, the commenter fails to identify the laws or regulations to which it is referring. Therefore, RMA is unsure of how to respond except to state that section 508(e)(3) of the Act states that if an approved insurance provider can deliver the program from less than its A&O subsidy it may request the authority to offer a premium discount. This is not a provision that gives RMA

the authority of whether to implement the provision or not. It gives the right to make application to the approved insurance providers.

RMA is also unsure of the basis for the commenter's allegations that RMA has shown bias and will ignore the issues raised by the commenters, in violation of the Administrative Procedure Act. In fact, RMA has carefully considered all the comments received and made numerous, significant changes to the proposed rule as outlined in this Notice.

*Comment:* An agent commented that it would be better for RMA to help the agent by dissolving illegal cooperatives and those that are fraudulently selling crop insurance than by proceeding with the premium reduction plan.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* An agent asked who is the backbone behind the premium reduction plan—large approved insurance providers that pay their staff little to nothing thus creating a profit for themselves. The commenter asked what they are going to propose when they have driven out all the agents that could no longer hold on to their agencies and they have all the farmers insured under the premium reduction plan. The commenter states that the way crop insurance has been for the last two decades will become very attractive to them at that point and they will need the extra commission dollars at that point because they have accomplished what they have set out to do.

*Response:* As stated above, it is unlikely that there will be mass exodus of agents from the program as a result of the premium reduction plan. Approved insurance providers are not going to pay a commission so low that selling crop insurance is no longer economically viable for the agent and risk their going out of business. This may result in approved insurance providers not having sufficient agents to properly service their policyholders. In addition, approved insurance providers are not going to risk losing the agent or their book of business to a competitor thereby decreasing the potential for underwriting gains. Further, approved insurance providers are not going to risk the possibility that they will have insufficient agents to service the business as required under the SRA and approved procedures.

It is generally acknowledged that agents are a necessity in the crop insurance program and, because of this, the marketplace will determine the fair and equitable commission for the agent.

*Comment:* Several agents and interested parties commented that it would be wise for RMA to spend a little more time investigating some lending institutions and other entities that offer rebates to loan customers if they will move their crop insurance to the bank's insurance agent. This is illegal. The commenter states that the premium reduction plan will create the same problem. Some farmers will be offered the plan and some will not and that this is also illegal. A commenter stated that there are a lot of cases where customers of these businesses when approached for their crop insurance say they can't help but feel obligated since they are dependent on these businesses in order to run their farming operations. In some case these farmers are being told they will have to place their insurance with them in order to get a crop loan.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond. However, if the commenter has specific information regarding such practices, it should notify RMA.

*Comment:* An agent commented that the rebating done by cooperative and trade associations is what was authorized or previously approved and that state approval is required but seldom provided.

*Response:* RMA is unsure of what the commenter is referring to since rebating by cooperatives and trade associations are not referred to anywhere in section 508(e)(3) of the Act. It is possible that the commenter is referring to section 508(b)(5) of the Act, which does authorize the payment or all or a part of the premium by cooperative or trade associations. However, that provision is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* Many agents and interested parties commented that RMA outlines 9 pages of historical problems with the premium reduction plan program, but the 4 pages of rules simply do not adequately address them. Commenters stated that RMA should seek additional comments and not approve any premium reduction plan applications. Commenters also state that the premium reduction plan should be shelved. A commenter states that there is precedence because RMA did it with the 1999 proposes rule.

*Response:* RMA agrees that the proposed rule did not address all the concerns raised by RMA in the preamble to the proposed rule. However, through this rulemaking process, RMA has been able to consider these problems and the concerns of the interested parties and has developed an interim rule that adequately addresses

them. The premium reduction plan under the interim rule is simpler, less burdensome, verifiable, is less likely to cause market disruptions, is less likely to adversely impact the financial condition of the approved insurance providers, and guarantees access by all farmers. For this reason, even if RMA could, there is no reason to shelve the premium reduction plan. In addition, although RMA received a considerable number of comments to the proposed rule, RMA acknowledges that it may want additional input and, therefore, has elected to publish this rule as an interim rule in order to obtain more comments as RMA begins the process of implementing this regulation.

Further, although RMA never published a final rule in 1999, the premium reduction plan was not shelved. RMA determined that the Act permitted it to implement the program through procedures. As soon as the first application for the premium reduction plan was received, such procedures were implemented.

*Comment:* A few agents commented that in order to keep up with the daily changes, the agent looks at the RMA website on a daily basis and did not see any mention about the new premium reduction plan and the comment period that ends on 4/25/05. The commenter states it did not know about this proposed plan until it received the Big "I" Agent News Update dated 4/14/05 and then an e-mail from Rain & Hail dated 4/20/05. The commenter asks why the notice of the New Crop Insurance Premium Reduction Plan and the comment period was not put on the RMA Web Site and was the intention to pass this new plan and not let crop insurance agents know about it. An agent also commented that there is no agent representation on the Board so RMA does not know all the facts.

*Response:* An announcement regarding the proposed rule was posted on the RMA website on February 24, 2005, the same day the proposed rule was published in the **Federal Register**. This announcement was prominently displayed on the front page of the website for every day of the public comment period through April 25, 2005. Even though it is only required to publish noticed of proposed rulemaking through the **Federal Register**, RMA announced the proposed rule on its website to ensure that interested parties had notice and an opportunity to comment. The overwhelming number of respondents confirms that this effort was successful.

Although no agent is currently serving on the FCIC Board, an agent has served in the past. Further, RMA is able to

know the facts of the premium reduction plan as it relates to agents and to otherwise obtain the perspective of agents through the many comments provided by agents to the proposed rule.

*Comment:* An interested party commented that the Board makes all kinds of spending decisions on American taxpayers backs without letting American taxpayers know or have any input on any of this excessive bureaucratic boondoggle spending.

*Response:* The premium reduction plan is not a spending decision determined by the Board. Further, it is the approved insurance providers that would be paying for any premium discount and even if approved insurance providers did not pay a premium discount, it could still take whatever action it wanted to cut costs as long as it still complied with all requirements of the SRA and approved procedures and keep whatever savings accrued.

In addition, the public was informed of the proposed rule and provided an opportunity to comment. Such comments were considered when the interim rule was developed. Therefore, the public did have input.

*Comment:* An agent commented that farmers rely on crop insurance and reducing subsidies will set farming back in time. The commenter states that with products like Crop Revenue Coverage and Revenue Assurance, the program is state of the art. The commenter states that farmers are better managers today and one reason is crop insurance.

*Response:* The commenter has the mistaken assumption that the premium reduction plan will reduce subsidies. In fact, the premium reduction plan is intended to benefit the farmer through the payment of a premium discount.

*Comment:* Several agents asked what the intent is of the premium reduction plan, to save money for the government, make crop insurance delivery more efficient or force more agents out of the business of delivering crop insurance.

*Response:* As stated above, the intent of the premium reduction plan is to introduce price competition to allow farmers to benefit from competition on both price and service. The government does not save money through the premium reduction plan. The amount of A&O subsidy paid to the approved insurance provider and premium subsidy paid on behalf of farmers remains the same regardless of whether there is a premium reduction plan in place or not. Further, the goal is not to drive agents out of the business. As stated above, RMA is in agreement regarding the importance of agents to the crop insurance program and has

attempted to minimize any market disruptions as a result of potentially widespread implementation of the premium reduction plan.

*Comment:* A few interested parties and agents stated that hundreds of claims were paid on soybeans in Iowa without any complaints to Congress. The commenter stated that this was amazing for a government program.

*Response:* RMA assumes that the context of this comment is that the claims were serviced by the approved insurance provider currently authorized to offer the premium reduction plan. As stated above, the requirements to provide service, loss adjustment, etc., contained in the SRA and approved procedures continues to apply under the premium reduction plan and approved insurance providers and agents could be subject to sanctions if they failed to comply with such requirements.

*Comment:* A farmer commented that the new rules to protect against fraud are overkill. The commenter stated that most farmers use the program for risk management and realize the need to protect program integrity. The commenter stated that it is only a few who abuse the system and the approved insurance providers are better equipped to detect them than is RMA.

*Response:* This comment is beyond the scope of the proposed rule. Therefore, RMA is unable to respond.

*Comment:* An agent commented that a premium discount has been around since the early 1980's for multi-year policies and good loss experience. The commenter stated that no matter who the farmer insured with, it got the reduction.

*Response:* The commenter is apparently referring to the fact that a policyholder's rates already reflect certain risk factors, including whether the farmer's production history has been maintained and whether losses have occurred. This means the higher the risk, the higher the premium. Nothing in the interim rule would change this system. The premium discount paid under the premium reduction plan is based on the efficiencies of the approved insurance provider, not the risk associated with the farmer.

*Comment:* Several agents commented that they saw a letter from Crop1 asking everyone to write a letter to show they want the premium reduction plan and if the farmer forwards a copy of the letter to RMA, the farmer would receive free leather gloves. The commenters asked if Crop1 is rebating as well as offering a discount to large farmers. A commenter stated that this was a perversion of the rulemaking process.

*Response:* RMA has investigated this case. The precise offer was if the commenter sent a copy of the comment to Crop1, it would receive a set of leather gloves. Nothing in the law prevents an approved insurance provider from offering an item of nominal value to its clients to obtain copies of comments filed with RMA regarding this regulation. It is assumed that such an offer would encourage some to make favorable comments to RMA. However, since the proposed rule was not a referendum, the positive votes did not matter. RMA considered all the comments to determine how it could improve the premium reduction plan and believes the interim rule accomplishes this goal.

*Comment:* Several agents and interested parties commented that the premium reduction plan was someone's idea to gain an unfair marketing advantage so an approved insurance provider could quickly grow. This approved insurance provider could not have had the impact it did without some marketing advantage such as price.

*Response:* As stated above, the very purpose of the premium reduction plan is to introduce the concept of price competition into the crop insurance program. Under the premium reduction plan all approved insurance providers have the opportunity to compete on price as long as their A&O costs for the reinsurance year are below the A&O subsidy they receive. Since all approved insurance providers are subject to the same standard, there is no unfair marketing advantage. The whole premise of price competition is to be able to provide the same product or service for less money.

*Comment:* A few agents commented that many agents selling the premium reduction plan now do not carry errors and omissions insurance and many selling do not have a license to market crop insurance as is required by Independent Insurance Agents.

*Response:* Any approved insurance provider participating in the premium reduction plan, including Crop1, must first meet all requirements of the Act and the SRA, including that all agents must be properly licensed to offer crop insurance in the states in which they write. There is no requirement in the Act, SRA or approved procedures that would require an agent to carry E&O insurance. If the commenter has specific information regarding an agent that is writing crop insurance policies in a state without a license, such information should be provided to RMA.

*Comment:* An agent commented that the current proposed rules have not

been followed or adhered to by either Crop1 or RMA.

*Response:* Any approved insurance provider participating in the premium reduction plan, including Crop1, must first meet all requirements of the SRA and approved procedures. In addition, RMA developed procedures and the FCIC Board resolutions that prescribe the premium reduction plan requirements. Beyond those requirements specified in the SRA, Crop1 has been subject to RMA procedures and FCIC Board passed a resolution that contain requirements for participating in the premium reduction plan. There is no evidence that Crop1 has not complied with the SRA, approved procedures, or the procedures and Board resolution.

Further, there are many requirements in the proposed rule that were not applicable to Crop because that rule is not yet in effect. When the interim rule is published, it will be applicable to all participants, including Crop1.

*Comment:* An agent commented that it took 4–8 weeks for checks to arrive after they were written, which is not good for the survival of the program.

*Response:* RMA has not received any complaints regarding the timing of payments by Crop1. If the commenter has specific information, it should provide this information to RMA or through the procedures for complaints provided for in the interim rule.

*Comment:* An agent commented that until all the issues are resolved, there should not be any more policies written even for the approved insurance provider currently selling the premium reduction plan. The commenter suggested they could leave those policies they have but not be allowed to write any more under the premium reduction plan but could write any new policies the same as all approved insurance providers can write.

*Response:* As stated above, RMA has no choice but to implement the premium reduction plan. However, through this rulemaking process, RMA has been able to consider the issues and the concerns of the interested parties and has developed an interim rule that adequately addresses them. The premium reduction plan under the interim rule is simpler, less burdensome, verifiable, is less likely to cause market disruptions, is less likely to adversely impact the financial condition of the approved insurance providers, and guarantees access by all farmers. For this reason, even if RMA could, there is no reason to shelve the premium reduction plan. In addition, although RMA received a considerable number of comments to the proposed

rule, RMA acknowledges that it may want additional input and, therefore, has elected to publish this rule as an interim rule.

*Comment:* An interested party commented that without the agent force, there is a complete breakdown in the premium reduction plan delivery system for crop insurance. For crop insurance to be of any value, someone will need to perform the agent function.

*Response:* RMA would agree that crop insurance agents perform a valuable and necessary function in the delivery of the crop insurance program. Nothing in the interim rule would change this principle. Further, as stated above, the adoption of the alternative proposal should minimize market disruptions and permit agents to continue to participate in the crop insurance program. Further, as stated above, approved insurance providers have an incentive to retain their agents in order to maximize their potential underwriting gains and ensure that all policyholders receive the required level of service.

*Comment:* Several agents and approved insurance providers commented that the way the system was setup with Crop1 was a person was to receive a discount if they bought through the Internet and this is not the case now. A commenter questioned whether it was possible to show a hard efficiency. A commenter stated that once Crop1 changed the way they administered the purpose of the discounts, RMA should have shut their doors to the discounts. A commenter asked that RMA not make the decision to allow everyone to sell at a discount to cover-up this past mistake.

*Response:* The purpose of Crop1's premium reduction plan was not to deliver crop insurance over the Internet. Use of the Internet was simply the means that Crop1 stated it was using to achieve the cost savings required by section 508(e)(3) of the Act to be able to pay a premium discount. However, there is nothing in the Act that limits the means used by an approved insurance provider to achieve savings, provided such means do not violate existing provisions of the SRA or approved procedures or jeopardize the integrity of the crop insurance program. Therefore, RMA did not have the authority to prevent Crop1 from implementing any other cost saving measures. In fact, approved insurance providers that currently operate under the A&O subsidy do not have to make any changes to their operations to qualify to pay such savings as a premium discount.

This same standard applies to all other approved insurance providers. As long as they can deliver the program for less than their A&O subsidy, they can request to pay a premium discount and under the interim rule, approved insurance providers will not have to report how they intend to achieve their cost savings. This will be solely within the discretion of the approved insurance provider subject to the conditions stated above.

*Comment:* An agent commented that it believed that the Crop1 agents are using the premium reduction plan to transfer customers that may not have a clue to what would happen if Crop1 does not have the funds to pay out indemnities in case of a poor crop year. The commenter also stated that the farmer does not understand that there is a possibility that the premium that they were quoted may not be as low as they expected.

*Response:* To participate in the crop insurance program, all approved insurance providers must satisfy all requirements of the SRA, which includes the financial solvency to withstand several consecutive poor crop years. Nothing in the premium reduction plan changes this fundamental requirement. Therefore, before Crop1 was approved to participate in the premium reduction plan, it had demonstrated the requisite financial ability. If there ever is a situation where an approved insurance provider can no longer satisfy the requirements of the SRA, including the ability to pay indemnities, the SRA contains provisions that allow RMA to ensure that losses are timely and properly paid.

The comment that a farmer's insurance quote may not be as low as expected is unclear. When a farmer applies for insurance, agents can give them a general idea of the amount of premium that may be owed but such premium amount is subject to many factors such as the number of acres insured, the coverage level selected, the actual production history of the farmer, whether any acreage is classified as high risk, etc. If the commenter has specific information where a commenter was actually misled by Crop1 or an agent regarding the amount of premium discount to which the farmer was entitled, the commenter should provide such information to the local RMA office.

*Comment:* An agent commented that it hopes Crop1's problem with its reinsurer does not rub off on other approved insurance providers.

*Response:* Since the commenter did not identify the problem to which it is

referring, RMA cannot provide a substantive response.

#### *B. Program Provisions*

##### *Section 400.701*

*Comment:* An approved insurance provider commented that the definition of "administrative and operating costs" should exclude the costs associated with CAT because CAT policies will not be subject to the premium reduction plan because the farmer pays no premium. The commenter stated it is also not clear what expenses should be included, such as cost of reinsurance, fronting fees, allocated costs, etc.

*Response:* RMA agrees with the commenter that the costs associated with CAT should be excluded and has revised the provisions accordingly. In addition, RMA has clarified that policies insured at the CAT level of insurance are not eligible for a premium discount.

Further, because the costs associated with CAT are removed from the A&O costs, the loss adjustment expense subsidy for CAT policies is removed from the A&O subsidy. To simplify the removal of these costs and ensure consistency between approved insurance providers, RMA has fixed these costs as the amount of the loss adjustment expense subsidy for CAT policies. Therefore, the same amount is reduced from the A&O costs and A&O subsidy.

With respect to which costs must be included, RMA cannot provide a list because each approved insurance provider will have different costs. RMA has included in the definition those costs that are specifically excluded. Further, as the definition states, only those costs associated with the delivery of crop insurance can be included. These are generally the same costs that are annually reported on several of the Expense Exhibits provided with the Plan of Operations.

*Comment:* An approved insurance provider comments that the definition of "administrative and operating subsidies" should exclude the subsidies associated with CAT.

*Response:* As stated above, RMA agrees and has revised the provisions accordingly.

*Comment:* A few approved insurance providers asked if, in the definition of "compensation," this statement should be "will be" rather than "will not" be. A commenter stated that the reference to profit sharing within the "compensation" definition needs to be reviewed and further refined. The commenter states it does not understand the intent of the provision as written or

specifically how it will be used. The commenter also stated the sub points 1, 2 and 3 seem easily manipulated because profit sharing arrangements can be used if they are contractual or triggered by something other than underwriting gains, but yet the underwriting gains are profit. A commenter stated that subpoint 1 is confusing because most profit sharing is contractually obligated if certain conditions are met. The commenter suggested it would be better if it read "1) the payments under such arrangements are guaranteed regardless of the approved insurance provider's overall underwriting performance."

*Response:* RMA agrees with the commenters regarding the omission of the word "not" and has revised the provision accordingly. RMA also agrees that the reference to profit sharing arrangements within the definition of "compensation" needs clarification and has revised the definition of both "profit sharing arrangement" and "compensation" accordingly.

The intent of the reference to profit sharing arrangements within the definition of "compensation" is important because it prevents approved insurance providers from reducing agent commissions to show a reduction in compensation for the purposes of calculating the A&O costs from later making up the difference through an arrangement to classify as a profit sharing arrangement so such costs would not be included as A&O costs. This provision is intended to preclude such manipulation of costs.

The commenter is correct that underwriting gains are profit but only if the whole book shows an underwriting gain. If several states showed an underwriting gain and other states are in a loss situation such that overall, the approved insurance provider is in a loss position, it is hard to argue that the approved insurance provider earned a profit. These definitions are provided to ensure that only profits for the entire book of business is the ultimate determinant for profit sharing arrangements.

*Comment:* A few approved insurance providers and interested parties agreed that in the definition of "compensation" the concept for the underwriting gain for the whole book should be used when determining contingent commissions. The commenter states that if approved insurance providers were allowed to pay contingent commissions on a state basis, it could pay in one state even though the entire book of business had a loss. The commenter stated that this could reduce the financial stability of



the approved insurance provider in a catastrophic year.

*Response:* RMA agrees that, to be considered a profit sharing arrangement, the payment under such profit sharing arrangement must contain the requirement that the approved insurance provider's whole book of business show an underwriting gain, even though other requirements to trigger the payment may also be included, and has clarified the provision accordingly.

*Comment:* An interested party commented that RMA started a program and it is strict in its offering and many approved insurance providers cannot comply with the rules without change. The commenter stated that changing the rules for approved insurance providers and allowing underwriting gains to play a part or allowing payment if they are profitable makes very little sense as there is a system already in place and available to all through stock and cooperatives.

*Response:* RMA agrees with the commenter that allowing the use of underwriting gains to show an efficiency should not be permitted. In fact, such a practice is specifically precluded by section 508(e)(3) of the Act that requires approved insurance providers be able to show they can deliver the program for less than the A&O subsidy. Underwriting gains are not considered, except, as stated above, in the determination of whether certain profit sharing arrangements are considered as compensation.

*Comment:* Several approved insurance providers and interested parties commented that contingency commissions should be included as expense.

*Response:* RMA agrees that there are circumstances where contingent commissions are considered as A&O costs. In its definition of "compensation," RMA identifies situations where contingency commissions or payments may be classified as profit sharing arrangements but they are considered compensation if they are not contingent upon the profitability of the approved insurance provider's whole book of business. The proposed rule was also revised to specify that other conditional payments will be considered as compensation if they are contingent upon something other than underwriting gains, such as bonuses paid for agents turning in their applications, production reports or acreage reports timely, etc.

*Comment:* Several approved insurance providers and interested parties commented that ceding commissions should not be included in

the "compensation" calculation. A commenter stated that ceding commission would reduce the approved insurance provider's direct expenses. The commenter stated that the rule was unclear whether this reduction in expense is included. The commenter stated including ceding commission would be unfair to approved insurance providers that only cede a small amount of their business to outside reinsurers. The commenter asked why approved insurance providers that rely heavily on reinsurance should have an unfair advantage when calculating the premium reduction plan. A commenter states that ceding commission changes each year. A commenter stated that if RMA allows approved insurance providers to consider any other forms of income beyond FCIC-paid expense reimbursement in qualifying for a premium reduction plan, FCIC would open the door to situations where no real efficiency exists and would invite reinsurance schemes designed to artificially inflate an approved insurance provider's ceding commission in order to provide sufficient "income" for the approved insurance provider to demonstrate an efficiency.

*Response:* RMA agrees with all comments that reinsurance transactions should not be a factor in the evaluation of an approved insurance provider's cost efficiencies under the premium reduction plan. Currently, ceding commissions and reinsurance premiums are expressly excluded from the Expense Exhibits provided with the Plan of Operations. One reason is the A&O subsidy is suppose to reimburse approved insurance providers for their selling and servicing of Federal crop insurance policies and these types and amounts of payments from commercial reinsurance transactions would appear to be a cost or income associated with the financial risk management strategy of an approved insurance provider, rather than a necessary expense in the delivery of crop insurance.

RMA acknowledges that the National Association of Insurance Commissioners (NAIC) allows ceding to be offset against the approved insurance providers expenses. However, for the purpose of NAIC, all expenses of the approved insurance provider are reported, regardless of whether such expenses are specifically related to the delivery of the crop insurance program. However, section 508(e)(3) of the Act specifically refers to the costs to deliver the Federal crop insurance program, which is a much narrower definition of the expenses that is allowed by NAIC. As stated above, while ceding commission may be treated as a negative expense by

statutory accounting rules, it is not directly related to selling and servicing the Federal crop insurance program.

Further, the expenses reported for the purpose of the premium reduction plan are required to be compared to the A&O subsidy received. For years, RMA has required approved insurance providers to report the costs that RMA considered directly related to the delivery of the Federal crop insurance program on the Expense Exhibits provided with the Plan of Operations. Ceding commission has not been included as a negative expense on these Exhibits and there is no rational basis to include such negative expenses for the premium reduction plan when they would not be considered for expense reporting purposes under the SRA.

In addition, these Expense Exhibits are used by RMA and its oversight bodies to determine whether the amount of A&O subsidy is appropriate to cover these expenses. When reviewing the issue of ceding commission, RMA's oversight bodies have directed RMA to exclude non-related expenses, such as commercial reinsurance payments. Therefore, RMA has excluded ceding commissions and reinsurance premiums from A&O costs and A&O subsidy.

*Comment:* An approved insurance provider suggested another argument for not including ceding commission as "compensation" is that the reinsurer is paying the ceding commission because they expect an underwriting gain large enough to pay the commission. Therefore, it has nothing to do with expense efficiency.

*Response:* RMA agrees that ceding commissions should not be allowed as an offset to costs included in the expense statement and the provisions are revised accordingly.

*Comment:* A few approved insurance providers and interested parties commented that excess-of-loss reinsurance cost paid by an approved insurance provider should be included as compensation because it applies to the entire book of business and is a cost of doing business. The commenter stated that in many cases it is a necessary expense because approved insurance providers could not afford to absorb catastrophic losses and it is required to be reported on the expense exhibit.

*Response:* As stated above, commercial reinsurance ceding commissions or premiums are not included on the Expense Exhibits that contain the costs for delivering the Federal crop insurance program provided with the Plan of Operations. As stated above, this is because ceding commission or premiums for

commercial reinsurance transactions are not necessary to the delivery of the Federal crop insurance program to farmers. They are expense associated with the management of the approved insurance provider's risks. Further, allowing commercial reinsurance ceding commissions or premiums to be included to offset expenses could also create potential distortions in the commercial reinsurance market. Therefore, no change has been made in response to this comment.

*Comment:* A few approved insurance providers and interested parties commented that approved insurance providers must include all expenses, including general management, underwriting overhead, information systems and allocated and unallocated claims expense, as well as the direct expenses of salaries, commissions, benefits, travel, phones, rent, etc.

*Response:* RMA agrees with the comment that all operational expenses that involve the delivery of the Federal crop insurance program should be incorporated into the Expense Exhibits provided with the Plan of Operations and used to determine efficiencies and premium discounts under the interim rule. These are already required for the Expense Exhibits provided with the Plan of Operations so no changes would be required in the reporting requirements.

*Comment:* An approved insurance provider suggested that the amount of any profit sharing payment under the premium reduction plan should be subject to the same limit as the premium discount. For example, if the maximum premium discount is 4% under the premium reduction plan, the commenter recommends that this be the maximum profit sharing payment allowed in the year covered by the premium reduction plan. In addition, to enhance the stability of the crop insurance program, the commenter suggests that approved insurance providers should not be allowed to pay a "profit sharing bonus" if they have not generated an average underwriting gain of at least 15% of gross premium over the preceding two years.

*Response:* Section 508(e)(3) of the Act is only intended to provide the conditions under which approved insurance providers can pay premium discounts. It is not intended to permit RMA to regulate the general management decisions of the approved insurance providers. RMA has no authority to preclude an approved insurance provider from making profit sharing payments or to limit when such payments can be made. Approved insurance providers are in the best

position to determine whether their financial condition will permit profit sharing payments. Further, RMA monitors the financial conditions of the approved insurance providers as a means to ensure the financial stability of the crop insurance program and can require remedial measures if the approved insurance providers are unable to meet the financial requirements of the SRA and applicable regulations. However, there is no rational basis for RMA to impose the requirements suggested by the commenters when there is no evidence that the approved insurance providers are in financial jeopardy. Therefore, no change has been made in response to this comment.

*Comment:* An agent commented there is no definition in the rule for the term "efficiency". The commenter stated that as presently written, this could allow an approved insurance provider to reduce agents' commissions or lower wages paid to loss adjusters, to name a few, and call it an "efficiency". The commenter stated that while this would be a cost savings, one would be hard pressed to show this as more efficient. The commenter stated this was clearly not the intent of Congress when the Act was written, and is not their intent today.

*Response:* RMA disagrees with the comment. First, there is a definition of "efficiency" in the proposed and interim rules. Second, section 508(e)(3) of the Act specifically states that approved insurance providers can pay premium discounts when approved insurance providers can demonstrate they can deliver the program more efficiently than their A&O subsidy. The use of the monetary term A&O subsidy to determine whether an efficiency exists allows RMA to look at efficiencies as cost savings as well as changes in operations and the interim rule has been clarified to more clearly reflect this position. RMA has deleted those provisions in the definition of "efficiency" that would require a change to an approved insurance provider's operation because this provision unfairly penalized approved insurance providers that were currently operating before their A&O subsidy. However, RMA has retained the requirement that an efficiency must not come exclusively from a reduction in agents' commissions.

*Comment:* A few approved insurance providers and interested parties asked that with respect to the definition of "efficiency," whether the same caveats apply to reductions in compensation. The commenter also stated that it was unlikely that approved insurance

providers would be able to have expenses less than the A&O subsidy and gave the example 21.5% minus (1) reinsurance costs  $\geq 3\%$ , (2) Loss adjustment  $\geq 4\%$ , (3) General & admin  $\geq 5\%$  and commissions  $\geq 10\%$ . A commenter stated that the negative gap between A&O reimbursement and actual approved insurance provider expenses is an enormous hurdle that approved insurance providers would need to overcome in order to qualify for the premium reduction plan.

*Response:* RMA assumes that the caveats to which the commenter refers is the preclusion of the use of cost savings attributable to projected increased sales or proposed reductions in loss adjustment expenses as an efficiency. The caveat regarding the cost savings attributable to projected increased sales has been removed from the interim rule because premium discounts are now based on actual costs not projected costs. Further, because premium discounts are now based on actual cost savings, the limitation with respect to reduction in loss adjustment expenses has also been removed. Since losses vary by year, it would be impossible to verify that cost reductions were the result of the premium reduction plan and now RMA will have an opportunity to determine whether loss adjustment was conducted properly before approving the payment of a premium discount.

The commenter also opines that qualifying for the premium reduction plan would be extremely difficult for an approved insurance provider because of a large negative gap between actual expenses of approved insurance providers and the A&O expense reimbursement. This may be true although the commenter mistakenly includes reinsurance costs, which are expressly excluded in the interim rule. However, section 508(e)(3) of the Act was only intended to provide approved insurance providers with the opportunity to compete on price. The fact that Congress conditioned such competition on the condition that approved insurance providers operate below their A&O subsidy shows that the opportunity is not guaranteed.

*Comment:* An approved insurance provider commented that it supported the complete definition of "efficiency" and felt that RMA's effort not to place specific limits on compensation is appropriate. The commenter states that an approved insurance provider's overall cost of operation is what is most important and that the free market will ultimately determine the appropriate balance between agent compensation levels and service provided. The

commenter states that agents should have the option to seek the most attractive compensation available in a competitive market, just as farmers should be able to seek the most attractive crop insurance program available to them. The commenter states that the most attractive program for agents and farmers will likely require them to consider both associated costs and the level of service provided.

*Response:* RMA agrees that the premium reduction plan should operate within the free market principles expressed. Price competition is premised on the ability to provide the same product or service at a better price, or provide a better product or service for the same price. Therefore, farmers are likely to consider both service and cost when they select an approved insurance provider. However, to protect the integrity of the program and ensure that all farmers have equal access to at least the same level of service, RMA has clarified that a reduction in service means when the agent or approved insurance provider fails to comply with all the requirements of the SRA or approved procedures regarding service. Further, as stated above, RMA had to revise the definition of "efficiency" to reflect that premium discounts will now be based on actual costs, not projected.

*Comment:* An approved insurance provider commented that approved insurance providers should not be penalized because they have a different business philosophy. The commenter states that "efficiencies" currently exclude projected or actual underwriting gains. The commenter states that it does not operate within the A&O paid under the SRA because of its expenses associated with training and oversight, which allows it to minimize fraud, waste, and abuse and outperform other approved insurance providers. The commenter asks RMA to revisit the issue and allow gains when considering efficiencies.

*Response:* Section 508(e)(3) of the Act precludes the consideration of underwriting gains when determining an efficiency. Underwriting gains would be considered an income and the only income that can be considered under the Act is the A&O subsidy. As stated above, it is up to the approved insurance provider to evaluate its operation to determine whether it can attain cost savings and still comply with all requirements of the SRA and approved procedures. However, RMA does recognize that certain profit sharing arrangements can legitimately be considered distribution of profits rather than A&O costs and the definition

of "compensation" in the interim rule reflects that.

*Comment:* An approved insurance provider supported allowing only a portion of the savings come from reductions in compensation, without which the playing field would be tilted in favor of large approved insurance providers over smaller providers. The commenter stated it was a strong believer in free market competition, which requires a fair, level playing field in which small and large providers alike may compete for the benefit of farmers.

*Response:* RMA agrees that only a portion of savings should come from reductions in agents' compensation and has clarified and retained this provision in the interim rule.

*Comment:* An approved insurance provider asked if the efficiency is more than commissions, how RMA will be able to verify the accuracy of such savings. It is easy to verify that the agent's commission has been reduced at no loss of service to the insured by auditing approved insurance provider numbers and calling insureds. The commenter asked how long it takes to verify adjusters are following claim's procedures, agents are following underwriting guidelines, or compliance reviews are being completed thoroughly. The commenter is concerned that when these errors are finally discovered, many millions of dollars may need to be recovered from farmers.

*Response:* As stated above, premium discounts are now based on actual cost savings, not projected. Further, RMA has elected to use Expense Exhibits provided with the Plan of Operations to determine efficiencies and premium discounts because such Expense Exhibits can be verified by the approved insurance provider's statutory accounting reports and must be audited and certified by a certified public accountant experienced in insurance accounting.

Since the premium discount is based on actual cost savings determined after the end of the reinsurance year, RMA can determine an approved insurance provider's compliance with all the requirements of the SRA and approved procedures regarding service, loss adjustment, quality control, etc., before approving the payment of any premium discount. Such requirements will be monitored in the same manner as currently under the SRA.

*Comment:* An approved insurance provider commented that with respect to the definition of "efficiency," the procedural determination of what is to be allowed as A&O income, and what must be accounted for as an A&O

expense, raises several questions. Any departure from the practice of allowing only A&O income from FCIC to be considered when determining an "efficiency" for purposes of the premium reduction plan would contradict legislation and create opportunities for abuse. The commenter stated that allowing any A&O expenses to be excluded from consideration when determining the discount would open the door to creative accounting schemes detrimental to the stability of the approved insurance provider and the delivery system overall as well as RMA's ability to regulate the system.

*Response:* RMA agrees with the commenter that only A&O subsidy paid by RMA can be included as income and all costs directly related to the delivery of the Federal crop insurance program must be included as A&O costs. For this reason, RMA has elected to use the current mechanism for reporting these costs through the Expense Exhibits provided with the Plan of Operations to determine whether there has been an efficiency. As stated above, these Expense Exhibits are verifiable and must be audited and certified regarding their completeness, accuracy and compliance with the SRA. However, as stated above, because the premium reduction plan is not available for policies with the CAT level of coverage, the A&O costs and A&O subsidy associated with such policies have been excluded.

*Comment:* Several approved insurance providers and interested parties commented that the definition of "efficiency" is vague because it is silent as to the meaning of the terms "portion" or "a reduction in compensation." A portion is a vague, nonspecific amount that is "a part of the whole." Webster's Third Internatl. Dictionary at 1768 (Rev. Ed. 1993). A commenter stated that this means a "portion" may vary from one percent to 99 percent and asked if 99 percent of the savings could be predicated on reduced compensation. If not, the commenter asked what "portion" of savings may be associated with "a reduction in compensation." A commenter proposed it should be restated as follows: "Not more than 25% of the approved insurance provider's monetary savings can come from a reduction in compensation, the rest must come from changes in administrative and operating procedures."

*Response:* RMA agrees with the commenter that the term "portion" in the definition of efficiency could reflect a wide range of possibilities. However, it would be impossible to set a specific standard for "portion" because of the

wide variety of business operations of the approved insurance providers. It is the approved insurance provider that must evaluate its operation to determine where it can cut its costs. The proposed and interim rule simply requires that to qualify to pay a premium discount, at least some of these savings must come from changes other than compensation. With respect to a definition for "reduction in compensation," such a definition is not required. The term "compensation" is defined in the interim rule and standards for reporting compensation on the Expense Exhibits currently exist. Further, as stated above, RMA has developed a formula that will be used to determine when there has been a reduction in compensation and changes in the operation.

Further, as stated above, approved insurance providers have an incentive to retain agents so they would not set commission rates at so low a rate that they risked agents going out of business or moving their books of business to other approved insurance providers. The free market forces will determine what will constitute a fair commission. Therefore, no change has been made in response to this comment.

*Comment:* Several interested parties commented that the premium discount should be shared at least 50/50 with the approved insurance provider. A commenter recommends a split of 75/25 with the insured provider contributing a majority to the premium discount. A commenter stated it would show that both the agent and approved insurance provider are willing to participate. A commenter stated that coupling this with approved insurance providers staying below A&O and keeping any reinsurance gain or loss out of the schedule will guarantee the program's integrity and longevity.

*Response:* As stated above, it would be impossible to set a specific standard for "portion" because of the wide variety of business operations of the approved insurance providers. It is the approved insurance provider that must evaluate its operation to determine where it can attain efficiencies and still comply with all the terms of the SRA and approved procedures. Further, as stated above, the approved insurance provider's incentive to retain agents should mitigate the possibility of approved insurance providers making such drastic cuts in agent commissions that agents can no longer afford to sell crop insurance or are forced to move their book of business to other approved insurance providers.

*Comment:* A few interested parties commented that "efficiency" is defined in the dictionary as acting or producing

effectively with a minimum of waste, expense, or unnecessary effort and exhibiting a high ratio of output to input. The commenter stated that in the business world, this means to produce more with a given amount of resources or produce the same with fewer resources. The commenter stated that cost cutting is not considered an efficiency. Cost cutting generally results in receiving less goods or services or both. The commenter stated that this does not meet the requirements of "more efficiently" in the Act.

*Response:* RMA disagrees with the commenter. Section 508(e)(3) of the Act specifically uses the term efficiency to compare the difference between the costs to deliver the Federal crop insurance program with the A&O subsidy. Therefore, cost cutting would meet this requirement. Further, the intent of section 508(e)(3) of the Act is to allow price competition. As stated above price competition occurs when there is the same level of service for a reduced price, or a higher level of service for the same price. Another commonly accepted definition of "efficiency" (Webster's Third New International Dictionary) is "capacity to produce desired results with a minimum expenditure of energy, time, money or materials." To ensure that this principle remains in the premium reduction plan, RMA mandates that there cannot be a reduction in service, which is defined as the requirements contained in the SRA and approved procedures.

*Comment:* An approved insurance provider commented that the definition of "efficiency" is discriminatory against approved insurance providers that are operating under the A&O because it states that the monetary savings must result from changes in the administrative and operating procedure and expenses of the approved insurance provider. The commenter stated that the original language did not require changes in procedures or expenses. The commenter stated that an approved insurance provider should be able to show it is operating under the A&O under its current procedures. The commenter stated the proposed language favors approved insurance providers that pay high commissions because they can demonstrate the changes and disfavor approved insurance providers who are keeping commission costs down. The commenter proposes that an approved insurance provider demonstrate not less than a year that they can operate below the A&O before they have a premium reduction plan in place. The commenter stated that the plan would

then be based on actual not projected efficiencies.

*Response:* RMA agrees that definition of efficiency in the proposed rule may have discriminated against approved insurance providers that currently deliver the crop insurance program for less than the A&O subsidy and has removed the requirement from the interim rule. Further, as stated above, RMA is requiring that premium discounts be based on actual cost savings.

*Comment:* An approved insurance provider commented that limiting the amount of the savings that is related to "a reduction in compensation" is contrary to FCIC's goal of ensuring easily verifiable efficiencies. Indeed, the proposed rule recognizes that savings based on state-by-state reductions to agent commissions "would be straightforward," and "easy to verify." Moreover, the proposed rule acknowledges that the expert reviewers confirmed the economic rationale underlying a system in which an approved insurance provider based its efficiencies on reduced commissions. The commenter questions why FCIC has decided to limit the amount of an approved insurance provider's "monetary savings can come from a reduction in compensation."

*Response:* RMA does not agree that limiting reductions in compensation reduces RMA's ability to verify other cost saving measures. As stated above, RMA is using the Expense Exhibits to the SRA, which contain costs that are verifiable. In addition, RMA has developed a formula that will allow it to allocate costs not attributable to agent compensation or loss adjustment expense to each state. This formula is straightforward, relatively simple to apply, and will be provided to approved insurance providers through approved procedures.

As stated above, it is up to the approved insurance provider to analyze its operation to determine where any cost savings can be achieved. Further, the use of the term "portion" provides approved insurance providers considerable latitude in making this analysis.

*Comment:* An approved insurance provider commented the definition of "efficiency" is inconsistent with the Act. The definition distinguishes between costs relating to compensation and costs relating to administrative and operating procedures. The Act does not define the term "administrative and operating." However, section 516(a)(2)(A) of the Act authorizes the appropriation of "such sums necessary to cover \* \* \* [t]he administrative and

operating expenses of the Corporation for the sales commissions of agents.” The administrative and operating costs for which FCIC subsidizes the approved insurance providers pursuant to section 516(a)(2)(A) and which approved insurance providers must reduce to qualify for the premium reduction plan pursuant to section 508(e)(3) contemplate only one type of expense—agent commissions. For FCIC to restrict the degree to which approved insurance providers reduce agent commissions in order to achieve program efficiency contravenes both the meaning and intent of the Act.

*Response:* To adopt the commenter’s interpretation would mean that RMA would only be able to reimburse approved insurance providers for the agent commission they pay and not the other expenses they incur, which means the entire amount paid as A&O subsidy must be paid by approved insurance providers to agents as commission. Such an interpretation would be contrary to section 508(k)(4) of the Act which states that the A&O subsidy is to “reimburse approved insurance providers and agents for the administrative and operating costs of the providers and agents.”

Further, this interpretation is incorrect because it refers to the “administrative and operating expenses of the Corporation for the sales commissions of agents.” FCIC does not incur any administrative and operating expense for the sales commissions of agents. Such expenses are incurred by the approved insurance providers who contract with and pay agent commissions. These commission payments would be considered as part of the approved insurance providers administrative and operating expenses and payment is authorized under sections 516(a)(2)(B) and 516(b)(1)(C) of the Act.

*Comment:* An interested party commented that the definitions of “compensation” and “profit sharing” are not well crafted and require extensive editing before the interim rule can be effectively analyzed.

*Response:* RMA agrees that the definitions in the proposed rule require clarification and has revised both definitions.

*Comment:* An approved insurance provider supported the definition of “profit sharing arrangements” as a whole, but point out specifically that “\* \* \* gain on the total book” is important because the alternative would allow an approved insurance provider to divide its book for purposes of creating incentives and disincentives for agents. Since the law requires equal

service to all farmers, the commenter views the division of books of business to create such incentives/disincentives and any resulting market segmentation as likely to result in approved insurance providers and/or their agents avoiding their legal obligation to serve all farmers on an equal basis.

*Response:* RMA agrees that profit sharing arrangements must be based on the total underwriting gain of the approved insurance provider’s book of business. To allow otherwise would not only allow approved insurance providers to divide its book of business for the purpose of creating incentives, as stated above, it would permit the approved insurance provider to pay profits even though it earned no profits for the reinsurance year. This could jeopardize the financial stability of the approved insurance providers in loss years.

*Comment:* An approved insurance provider commented that it supported the definition of “unfair discrimination” because it ensures that approved insurance providers and their agents serve all farmers.

*Response:* RMA agrees with the commenter and this definition is included in the interim rule.

*Comment:* An approved insurance provider suggested a clear definition for “producer.” The commenters recommend that “producer” be defined as a “crop insurance policy holder.”

*Response:* Producer cannot be defined as a “crop insurance policyholder” because many of the references refer to farmers who may not yet have applied for insurance and become policyholders. Further, producer is a common, well known term in the crop insurance program, used on the Act, regulations, the SRA, and approved procedures. Therefore, no change is made.

#### Section 400.714

*Comment:* An approved insurance provider comments that, with respect to § 400.714(a), the “15 day” window for submission of revised Plans of Operations is appropriate for this year only, since the finalization of the proposed rule will leave a very tight time frame.

*Response:* RMA agrees with the comment and has preserved this provision in the interim rule.

*Comment:* An approved insurance provider comments that, with respect to § 400.714(b), May 1 would be a more appropriate deadline for subsequent applications because an April 1 deadline for submissions comes too closely after the spring crops sales closing deadline, there is also an

approved waiting period in which the agent can complete record keeping, and RMA needs the opportunity to spread its work load evenly.

*Response:* RMA recognizes and appreciates the commenter’s concerns about the timing and workload burden required for preparing requests for the opportunity to pay premium discounts under the proposed rule. However, as stated above, those burdens have been significantly reduced in the interim rule. Under the interim rule there will be two deadlines for requests. The first will be when an approved insurance provider seeks eligibility to offer a premium reduction plan. This request will be very limited in the information required and will be due with submission of the Plan of Operations. Because of the limited nature of the information, approved insurance providers should have little difficulty providing this information at that time. Because RMA will also be reviewing the Plans of Operation during this time and RMA needs sufficient time to evaluate the requests before the beginning of the reinsurance year. The second request is for RMA approval to pay a discount, which is due not later than December 31 after the end of the reinsurance year.

*Comment:* An approved insurance provider comments that, with respect to § 400.714(c), it supports this provision because it is committed to a level playing field in which farmers have the opportunity to make insurance choices having full access to the information they need to make informed business decisions. In order to allow farmers this opportunity, the premium reduction plans must be submitted by all approved insurance providers and approved by the RMA in a timely and consistent fashion.

*Response:* RMA agrees that the proposed rule provides a framework for requesting the opportunity to offer a premium discount that provides equal opportunity to all existing approved insurance providers and retained the provisions in the interim rule. However, RMA determined that additional provisions were necessary to address the situation where approved insurance providers that enter the crop insurance program after the start of the reinsurance year. Therefore, RMA has added provisions to the interim rule to allow new approved insurance providers to include their requests for an opportunity to offer a premium discount with their application for a SRA.

*Comment:* An approved insurance provider comments that, with respect to § 400.714(d), it supports the provision since the law clearly requires that

approved insurance providers who make savings must pass them on to farmers, there would be no valid reason to withdraw the premium reduction plan once savings are proven since they must be passed on to the farmers. This provision benefits farmers, as well as the crop insurance program as a whole, because it provides strong protections to farmers.

*Response:* Since the interim rule revised the requirement that premium discounts be paid on actual savings determined at the end of the reinsurance year, there is no longer a requirement for a provision to allow approved insurance providers to withdraw their request. Premium discounts are no longer guaranteed and farmers are expressly informed that such discounts may not be approved to be paid. Therefore, approved insurance providers that are unable to, or elect not to, pay a premium discount can simply not request approval for the payment of a discount.

*Comment:* An approved insurance provider comments that, with respect to § 400.714(e), it is absolutely necessary that all trade secrets and confidential commercial or financial information in submissions remain completely confidential. However, the commenter notes that 5 U.S.C. 554(b)(4) protects "trade secrets" as well as commercial or financial information. Accordingly, the commenter suggest adding the following language to this subsection in order to track 5 U.S.C. 552(b)(4): "Any trade secrets and commercial or financial information submitted with a revised Plan of Operations will be protected \* \* \*."

*Response:* Since this provision only referred to the existing protections in law, there is no need to include such a provision here. Existing law regarding the protection from disclosure of such information will continue to apply.

#### Section 400.715

*Comment:* An approved insurance provider commented that in § 400.715(a) RMA is allowing as much as a 4 percent reduction in the net book premium. With the reduced A&O reimbursements found in the 2006 SRA, the commenter states a four percent reduction is too much. Most premium is produced from revenue coverage such as Crop Revenue Coverage or Revenue Assurance, and in a number of states, the 80 percent coverage and higher is selected, driving the average A&O near 20 percent. There is no way for an approved insurance provider to service such a complicated line of business at today's commodity prices in the 16 percent range. With threatened budget cuts to the crop

insurance program, the A&O may be reduced even more. Only an irresponsible approved insurance provider would make such a filing. This approved insurance provider would need to take shortcuts to make such a filing possible. RMA should consider capping the discount at 2 percent until it is sure that approved insurance providers can write at such a low expense ratio and still service the business properly.

*Response:* Since the interim rule requires that all premium discounts be based on the actual cost savings of the approved insurance providers, the commenters concerns that a 4 percent reduction A&O costs is unrealistic have already been addressed. An approved insurance provider can only pay the 4 percent maximum premium discount if it can prove that it had the requisite cost savings and it was in compliance with all requirements of the interim rule, the SRA, and applicable procedures, including the requirements regarding service, loss adjustment, quality control, etc. Compliance with these requirements will be monitored under the SRA and approval of the payment of a premium discount will not be provided until compliance has been determined. However, RMA will retain the cap to allow it to manage the premium reduction plan to ensure there are no market disruptions from approved insurance providers trying to cut costs too drastically. Therefore, no change has been made in response to this comment.

*Comment:* An approved insurance provider commented that philosophical and competitive impact concerns notwithstanding, from solely a cost accounting view, the cap on premium discounts should not be a concern if the cost savings from efficiencies are valid. However, the commenter suggests they may not be valid.

*Response:* Since premium discounts are based on the actual cost savings of the approved insurance provider, the maximum premium discount may not be needed. However, as stated above, to ensure that there are no market disruptions from approved insurance providers trying to cut costs too drastically, RMA is retaining the cap. It can be removed or adjusted at a later date if it proves not to be necessary.

*Comment:* A few interested parties agreed with the cap. A commenter stated that the limits to adjusting and other costs outlined in § 400.715(a), § 400.716(h) and § 400.719 are particularly crucial to the viability of the program as well as the solvency issues raised above. These limitations will ensure that reductions are based on

cost efficiencies achieved by the participating approved insurance provider. The commenter urges RMA to consider carefully the impact of increases in the future maximum limitations on the premium discount and what those changes will mean to other approved insurance providers, while maintaining competition in the marketplace. A commenter stated no caps would result in a bidding war and service to farmers would be drastically hindered.

*Response:* As stated above, the use of actual cost savings to determine premium discounts may eliminate the need for the cap in the future, but RMA is retaining it to manage expectations of the limits of this program and to ensure that there are no market disruptions. RMA will consider the effect on the market when it determines whether there is a need for such a cap and the appropriate amount in the future.

*Comment:* An approved insurance provider commented that § 400.715(a) allows premium discounts to vary from 1.0 to 4.0 percent between approved insurance providers. The commenters state that this is inherently discriminatory and farmers do not have equal access to the best reductions. It depends upon the approved insurance provider writing their insurance. Premiums charged the farmers for their crop insurance are the same regardless of the approved insurance provider that insures them so it only follows that the discounts should be identical between approved insurance providers.

*Response:* Section 508(e)(3) of the Act clearly gives the right to any approved insurance provider that can deliver crop insurance at a cost less than the A&O subsidy to pay a premium discount on the basis of such savings. There is no requirement that each approved insurance provider pay the same premium discount. Such a requirement would be contrary to the very price competition that section 508(e)(3) was intended to promote. Further, it would be impossible to impose such a burden on the approved insurance providers because their operations are so different. Only they can determine where it would be appropriate to cut costs while still complying with all requirements of the SRA and approved procedures.

Further, allowing these differences is not discriminatory because every farmer has the free market choice to be insured with the approved insurance provider that historically pays the highest premium discount. RMA agrees that its election to allow approved insurance providers to select the states in which it will participate in the premium reduction plan could result in farmers

not having access to premium discounts. However, as stated above, when weighed against the possibility that approved insurance providers will withdraw from such states, leaving these farmers without any insurance protection, the loss of the opportunity to receive a premium discount at such later date seemed the most appropriate option.

*Comment:* An approved insurance provider comments that, with respect to § 400.715(a), it supports the imposition of a cap. The commenter states it provides a benefit to farmers by acting as a stabilizer to the marketplace and making sure that approved insurance providers who seek approval of a premium reduction plan do so with due care and submit only accurate information. However, the commenters suggest the cap be raised to 5.0%. The commenter stated it will continue to benefit farmers while maintaining stability in the market if the RMA allows this additional amount of flexibility for approved insurance providers to identify and pass through cost savings to farmers, and for the RMA to approve them if they are adequately documented.

*Response:* As stated above, premium discounts are based on the actual cost savings achieved by the approved insurance provider. However, RMA has elected to retain the maximum 4.0 percent cap to manage program expectations and to avoid market disruptions that could occur if approved insurance providers attempt to cut costs too drastically. Until it has more information, RMA is reluctant to raise the cap but, in the future, RMA will re-evaluate the cap to determine whether it is necessary or what would be the appropriate amount. Therefore, no change is made in response to this comment.

*Comment:* An approved insurance provider commented that in § 400.715(b), now redesignated § 400.715(h), RMA is proposing that the premium reduction plan be instituted for all premium written by the approved insurance provider regardless of crop or state of location. Some approved insurance providers only write in the Midwest where the underwriting gain has been good. In states where the results have been less favorable, sometimes the only reason to write there is for the A&O subsidy. The commenter stated that an approved insurance provider may consider withdrawing from such a state to keep rates competitive in profitable states. The commenter asked whether RMA is concerned that the few approved insurance providers writing in a number

of these unpopular states might withdraw to file a premium reduction plan to compete in the profitable Midwest.

*Response:* As stated above, RMA has reconsidered the requirement that approved insurance providers offer the premium discount in all states in which they write business for the very reasons mentioned by this commenter. RMA determined that the possibility of a farmer being left without insurance protection was far worse than that same farmer not having an opportunity to receive a premium discount in the future. As a result, the interim rule will allow approved insurance providers to select the states in which it will participate in the premium reduction plan.

*Comment:* Several approved insurance providers and agents commented that the premium reduction plan should only be done over all policies, plans and states. Otherwise, expense loading could be easily shifted to those policies which the premium reduction plan is not offered. A commenter stated that such shifting will likely occur due to the questionable ability for any approved insurance provider to operate within A&O reimbursement. A commenter stated that it is not fair to allow an approved insurance provider to offer the premium reduction plan and the traditional crop insurance in the same state. The commenter stated agents should not be able to "pick" who would be offered the premium reduction plan. A commenter stated that to suddenly allow a myriad of state-by-state choices could foster an unstable situation and that the "all states/all crops/all insurance policies and plans" requirement minimizes the risk of unfair competitive disadvantage among premium reduction plans.

*Response:* RMA agrees with the comment that, within a state, an approved insurance provider participating in the premium reduction plan must pay the approved premium discount to all policyholders, regardless of the crop insured, the coverage level or the plan of insurance. This requirement has been retained. However, as stated above, the real concern that approved insurance providers may withdraw from states necessitated allowing approved insurance providers the ability to select the states in which to participate in the premium reduction plan. As stated above, RMA has dealt with the expense loading issue through the use of Expense Exhibits to the SRA to determine efficiencies and the development of the formula that contains the allocation of costs and

allows RMA and approved insurance providers to determine the amount of premium discount. Further, there should not be an issue regarding unfair competitive advantage because the purpose of the premium reduction plan is to introduce price competition and now all approved insurance providers have the option to select the state in which to participate in the premium reduction plan so the playing field is level.

*Comment:* Several approved insurance providers commented that in § 400.715(b), now redesignated § 400.715(h), forcing an approved insurance provider to offer the premium reduction plan in all states in which it does business penalizes national carriers and, as explained in connection with § 400.175(c), ignores critical differences that exist among the various states, crops and policies. Only two approved insurance providers sell and service policies nationally and nothing precludes them from withdrawing from high-risk, low-reward states. The commenter stated that RMA's shortsighted decision to prohibit the premium reduction plan from varying by state only increases that likelihood.

*Response:* RMA agrees with the commenter and, as stated above, the interim rule now allows approved insurance providers to select the states in which it will participate in the premium reduction plan and to vary its requested discount by state within the maximum discount allowed. However, within a state, the interim rule still requires that the premium discount be the same for all crops, plans of insurance, and coverage levels.

*Comment:* An approved insurance provider commented that, with respect to § 400.715(b), now redesignated § 400.715(h), if the marketplace and competition compel the approved insurance provider to implement the premium reduction plan, the approved insurance provider will do so. To that end, if FCIC mandates that the approved insurance provider offer its plan in all states or in none, the approved insurance provider likely will reconsider its role as a national carrier. The commenter stated the approved insurance provider would sooner abandon marginal states than allow its quality business to be eroded by regional carriers who would profit from FCIC's inability to recognize or unwillingness to acknowledge the economic variables that exist between the states.

*Response:* As stated above, RMA agrees with the commenter and the interim rule now allows approved insurance providers to select the states

in which it will participate in the premium reduction plan. However, within a state, the interim rule still requires that the premium discount be the same for all crops, plans of insurance, and coverage levels.

*Comment:* Several approved insurance providers, agents, farmers and interested parties suggested that with respect to § 400.715(b), now redesignated § 400.715(h), approved insurance providers who offer the premium reduction plan make it available for all insurance plans and for all crops grown in all of the states they serve. If an approved insurance provider offers the discount in one area then they should make it available in all areas and not discriminate by crop, insurance plan, or state location.

*Response:* RMA agrees with the comment that a premium discount should not vary by crop, plan of insurance, or coverage level. However, RMA has assessed the possible impact of not allowing approved insurance providers to select the states in which it will participate in the premium reduction plan and has determined that the adverse effect of possible withdrawal of approved insurance providers significantly outweighs the effect on farmers if they do not have the opportunity to receive a premium discount in the future.

*Comment:* An approved insurance provider recommends that, with respect to § 400.715(b), now redesignated § 400.715(h), and § 400.715 (c), approved insurance providers have the option not to offer a premium discount on CAT policies as farmers do not pay a premium (only an administrative fee) for CAT policies. Further, the commenter would recommend the clause "or any other basis" be eliminated and replaced with "or any basis which could limit or restrict access to a premium reduction, in whole or in part, to some producers." As long as cost savings programs are fair and equally available to all farmers, they should be presented to and considered by the RMA.

*Response:* As stated above, RMA has added a provision that would make policies insured at the CAT level of coverage ineligible for the premium reduction plan.

However, RMA disagrees with the suggestion to replace the clause "or any other basis." This clause is intended to be all inclusive to prevent any means to exclude a policy from receiving a premium discount. RMA is concerned that making the recommended change could lead to farmers being denied access to the premium discount or receiving a different amount of premium

discount based on whether they are small, limited resource, women, or minority farmers or on their loss history, which is exactly what the interim tried to avoid. Therefore, no change is made in response to this comment.

*Comment:* An approved insurance provider commented that varying levels of agent compensation from state to state should not be allowed to justify a difference in premium discount from state to state, although the commenter acknowledges that market forces cause approved insurance providers typically to pay different rates of agent compensation around the country.

*Response:* The proposed rule did require that the approved insurance provider pay the same premium discount in each state. This would mean that approved insurance providers would need to cut the same amount of costs from each state in order to meet the requirement in section 508(e)(3) of the Act that efficiencies correspond to the premium discount. However, as the commenter correctly states, approved insurance providers already vary the amount of agent commissions by state. Further, the costs within each state may well be different and to require that the same cost savings could very well jeopardize the operations of the approved insurance provider in the state and its ability to comply with all the requirements of the SRA. For these and the other reasons stated above, RMA has elected to allow approved insurance providers to select the states in which it will participate in the premium reduction plan and the amount of premium discount to vary between states. However, within a state, the amount of premium discount must be the same.

*Comment:* Several agents commented that the concept of the premium reduction plan is good, but the rules that the RMA has proposed are too restrictive. The commenter states that § 400.715(b), which forces the approved insurance providers to offer the premium reduction plan in all geographies makes the premium reduction plan a very bad idea. The commenter stated that if approved insurance providers agree to all of the rules of the premium reduction plan as they stand today they are putting themselves at a huge financial risk. This in turn creates the potential for destabilizing the industry.

*Response:* RMA agrees with the commenters and, as stated above, the interim rule now allows approved insurance providers to select the states in which they will participate in the premium reduction plan. However, within a state, the interim rule still

requires that the premium discount be the same for all crops, plans of insurance, and coverage levels.

*Comment:* An interested party expressed concern that the premium reduction plan may, in fact, be a form of rebating, which is prohibited under most state laws. The commenter stated anti-rebating laws prohibit insurance agents and/or insurers from returning any portion of a commission as an inducement for an applicant to do business. The commenter stated that the language in § 400.715(b) and § 400.715(c) of the current proposed premium reduction plan, requiring that the rebate be distributed equally across "all states and for all crops, coverage levels, policies or plans of insurance, or on any other basis" does not provide or eliminate an inducement to do business for any particular applicant or group of applicants.

*Response:* As stated above, whether the previous premium reduction plan or the proposed or interim rule may allow a form of rebating that is prohibited under most state laws is not material. Under section 506(l) of the Act, any state law that is in conflict with the Act or any regulation promulgated by FCIC is preempted. As stated above, since section 508(e)(3) of the Act expressly allows premium discounts to be provided and is not expressly made subject to state law, the fact that such discounts may be an inducement to purchase insurance does not override this express authority. The provisions of the interim rule preempt state law.

*Comment:* Several approved insurance providers, farmers and agents suggested that with respect to § 400.715(b), redesignated as § 400.715(h), to simplify the programs accessibility and accountability the program should be offered to all states and crops that the approved insurance provider operates in. The commenter stated that due to recent accounting problems the program should remain the same throughout with the same reduction available to all states. This would also help in monitoring the program. A commenter also stated that all approved insurance providers operating under the premium reduction plan should do so within the A&O and reinsurance funds should not be filtered back into the program. A commenter stated that the intent of the program is to learn to operate below the A&O reimbursement by implementing creative and process altering systems or procedures that will make it easier for the farmer to participate. The ability of the approved insurance provider to document their plan in such a way that expense reductions can be easily



verified by RMA is essential to the integrity of the program. A commenter stated that this will also eliminate any concerns of discrimination that some have suggested would occur.

*Response:* RMA agrees with the commenters that offering a premium discount in all states and for all crops that an approved insurance provider services would simplify accounting and monitoring issues and ensure that all farmers would participate equally. This feature was included in the proposed rule. However, after considering the concerns raised by several commenters regarding the factors approved insurance providers must consider in deciding to enter or leave a state and how the requirement that approved insurance providers must provide the same premium discount in all states in which the approved insurance providers do business might affect this decision, as stated above, RMA determined that the adverse effects of not allowing an approved insurance provider to select the states in which it participates in the premium reduction plan or allowing the amount of premium discount to vary between states outweighed the potential benefit that a farmer may receive a premium discount in the future. Therefore, as stated above, the interim rule now allows for both selection of states and variability in premium discounts between states.

RMA also agrees with the comment that the integrity of the premium reduction plan depends on the ability of RMA to verify actual delivery expenses. As stated above, the interim rule strengthens this effort through the requirement that premium discounts be based on actual cost savings, the use of Expense Exhibits provided with the Plan of Operations, which can be verified through the statutory expense accounts and by requiring that the Expense Exhibits be audited and certified by an independent certified public accountant experienced in insurance accounting.

RMA agrees with the comment that the potential for discrimination will likely be reduced to the extent that an approved insurance provider can accurately report its expenses and RMA can verify the cost savings. Again, the interim rule includes provisions to ensure that these activities occur.

*Comment:* A few approved insurance providers commented that, with respect to § 400.715(c), there should not be any variability of discounts among states, crops, and insurance plans and policies. A commenter stated that variability requires complex accounting decisions. The commenter states that "all states/all crops/all insurance plans and policies

requirement" also makes it easier for customers, and eases the accounting and other necessary tracking of its business systems. The commenter states it allows RMA to verify savings, and allows farmers to make informed business decisions without having to evaluate different pricing structures offered by multiple providers based on numerous factors. In addition, state variability would require additional, more complicated bookkeeping not only for the RMA, but also for the approved insurance provider and agent. It would also disadvantage captive agent approved insurance providers, for whom such bookkeeping would be even more burdensome and complex.

*Response:* While RMA expressed most of these same reservations in the preamble to the proposed rule, as stated above, RMA had to rethink its position because of the very real possibility that national approved insurance providers may pull out of certain states, leaving those farmers without access to any crop insurance protection. To protect these farmers and the financial stability of the approved insurance providers and crop insurance program, RMA is allowing approved insurance providers to select states in which they will participate in the premium reduction plan and allow a variation in premium discounts between states based on the actual cost savings.

As stated above, this will allow approved insurance providers to better determine where savings can be achieved while still allowing them to remain in compliance with the SRA. It should not be confusing to farmers because the premium discount within the state will remain the same and cannot vary by crop, coverage level or plan of insurance within a state.

To address the cost accounting issues, as stated above, RMA has found ways to simplify such accounting and reduce the burden on approved insurance providers. One is through the adoption of the alternative proposal, which eliminates the burden to project cost savings up front and allows premium discounts to be based on actual cost savings. Another simplification is the use of existing Expense Exhibits. Further, RMA has developed a standard formula that can be applied to all approved insurance providers to allocate certain costs and determine the amount of premium discount that could be paid in each state.

*Comment:* An approved insurance provider commented that, with respect to § 400.715(c), currently premiums charged by state, crop or plan of insurance differ based upon actuarially determined differences (loss costs, loss

adjustment expense, etc.). The commenter states it does not follow that premium discounts should be identical as a percent reduction in premium. Farmers in states with the highest premiums, or plans of insurance with the highest premiums, would receive the largest discounts in terms of dollar savings. The commenter stated that business generating the largest losses would receive more discount. The commenter claimed that savings derived because of operating efficiencies should be affected based upon a dollar amount per policy or per crop insured. The fixed cost to process and service a policy is the same regardless of the amount of premium. The commenter states that only commissions vary by state so the discount should be the same unless the commissions are reduced by differing amounts between states.

*Response:* RMA agrees with the commenter that premiums charged by state, crop, plan of insurance, and coverage level vary considerably and that delivery cost structures for policies also differ considerably depending on these factors. RMA further agrees that for the policies that have the same amount of acreage, policies with higher losses pay higher premiums. However, the same is true for policies with higher coverage levels, different unit structures, additional options, revenue coverages, etc. Therefore, the higher premium is not necessarily a result of higher actual losses but because of a higher risk of loss or the potential for a higher indemnity if a loss is paid. Further, premiums do not take into consideration loss adjustment expense. Such expense is part of the A&O subsidy the approved insurance provider receives or the CAT loss adjustment expense, which as stated above, is no longer taken into consideration under the premium reduction plan.

While it is possible to structure the premium discount as a set amount based on the fixed costs of delivery and savings, this process would not be fair or equitable. It could result in small farmers paying little or no premium, or actually receiving money back, and large farmers receiving very small premium discounts that are insignificant in terms of their operation. RMA has determined that a percentage of premium was the most fair and equitable payment structure because it allowed proportionally the same savings for all farmers and did not favor one size operation over another.

The commenter also suggested that premium discounts be allowed to vary by state only if the agent commission varies by state. RMA does not believe

the rule should be so restrictive. Under the formula, all costs will be placed into one of three categories: Agent compensation, loss adjustment expense or overhead. Loss adjustment expense and agent compensation are reported on a state basis so that reductions in either could allow for state variability. Therefore, no change is made based on this comment.

*Comment:* Several approved insurance providers, loss adjusters, farmers and interested parties commented that the requirement in § 400.715(c) that the amount of the premium discount offered may not vary between states, crops, coverage levels, policies, or plans of insurance, or any other basis fails to recognize the significant differences between states, crops, coverage levels, policies, plans of insurance. A commenter stated that it does not appear feasible to mandate non-variable efficiencies in an environment full of variable costs. A commenter stated that RMA should not expect costs to be the same for corn versus a fruit or tree policy and policies in Iowa versus those in Florida. A commenter stated that this proposed regulation may have the unintended result of an approved insurance provider not doing business in states that are not profitable and therefore depriving or limiting the choices of farmers in those states relative to crop insurance. A commenter also stated that regional approved insurance providers, operating only in historically profitable states, would have an unfair advantage over national operations in determining efficiencies and discounts. A commenter stated that consideration should be given to allow for these cost variances and a differing reduction in premium based upon those factors.

*Response:* RMA agrees that the proposed rule, which required the same premium discount for all states, could result in some approved insurance providers deciding to withdraw from certain states. RMA also agrees that this provision could favor regional over national approved insurance providers. Consequently, the interim rule allows the premium discount to vary by state based on the actual cost savings and for approved insurance providers to select those states in which to participate in the premium reduction plan. However, the premium discount within a state will remain the same and may not vary by crop, coverage level or plan of insurance. While the costs may be different for the different crops, costs are not reported by crop, coverage level or plan of insurance. Therefore, complex accounting rules would have to be developed, which is the very thing

RMA has sought to avoid and commenters have stated would be detrimental to the program because of the undue burdens that would be imposed and the potential for misallocation of costs.

*Comment:* An agent commented on § 400.715(c) and expressed concern about the equity of the premium reduction plan in terms of applying the discount to various sizes of farm operations and also within various states where loss ratios can vary by incredible margins. As it stands now, farmers in SW Nebraska would receive the same discount as those in say Eastern Iowa. The commenter suggested that RMA check some loss ratios and justify that because it can't be justified.

*Response:* As stated above, now approved insurance providers will be able to select the states in which they participate in the premium reduction plan and can vary the amount of premium discount between states based on the actual cost savings. However, the variation in premium discount between states is based on the actual cost savings achieved in each state, not the loss ratio of the state. Section 508(e)(3) of the Act only allows premium discounts to be based on the cost savings of the approved insurance provider and while loss ratios may play a factor in the approved insurance provider's election to participate in a state or the amount of cost savings that can be achieved, it cannot be used to determine the amount of the premium discount.

*Comment:* An approved insurance provider commented that with respect to § 400.715(c) FCIC is incorrect that the Act requires uniformity with respect to the amount of the reduction and prohibits distinctions based on states, crops, coverage levels, policies, plans of insurance. The commenter states that although the language may support FCIC's contention that the premium discount must correspond to the efficiency underlying that discount, nothing in section 508(e)(3) of the Act precludes an approved insurance provider from establishing different premium discounts on a state-by-state or plan-by-plan basis.

*Response:* Section 508(e)(3) of the Act states that premium discounts are subject to the limits and procedures established by FCIC. The requirement in the proposed rule that the same premium discount be offered across all states, crops, coverage levels, policies, and plans of insurance was such a limitation based on the concerns of RMA that to allow variability would require complex cost accounting rules that may not be suitable for all the approved insurance providers' business

operations, would be burdensome to administer by both RMA and the approved insurance provider, and could adversely affect program integrity because of the potential for misallocation of costs.

As stated above, RMA has reconsidered its position to require the same premium discount be provided in all states in which the approved insurance provider does business and the interim rule allows the approved insurance provider to select the states in which to participate in the premium reduction plan and allows variation in the amount of premium discount between states based on the actual cost savings. This is because, as stated above, RMA found ways to eliminate most of the concerns regarding the burdens and other risks of such an approach. However, RMA is retaining the limitation of varying the premium discount by crop, coverage level or plan of insurance because, as stated above, costs are not currently reported in this manner and all the concerns raised by RMA would still exist. Cost accounting rules would be complex and allow for the potential of misallocation of costs and there would be significant burdens on RMA and the approved insurance provider to administer the program.

*Comment:* An approved insurance provider commented that with respect to § 400.715(c) the most persuasive evidence supporting the argument that approved insurance providers should be permitted to vary premium discounts by state and by plan of insurance is the A&O subsidy provided by FCIC. The A&O subsidy paid by FCIC varies by plan of insurance and by coverage level. For example, in 2005, the A&O subsidy for the revenue plans ranges from 21.0 percent (75 percent coverage level or less) to 19.6 percent (85 percent coverage level). By contrast, the A&O subsidy associated with the APH plan of insurance varies between 24.4 percent (75 percent coverage level or less) to 22.8 percent (85 percent coverage level). The approved insurance provider asked if FCIC recognizes the differences in plans of insurance and coverage levels for purposes the A&O subsidy, why FCIC disregards those same differences for purposes of the premium reduction plan.

*Response:* RMA agrees that the A&O subsidy varies by plan of insurance and by coverage level. However, section 508(e)(3) of the Act states that premium discounts must be based on the savings achieved by the approved insurance provider, not the manner in which the A&O subsidy is paid. While variation by coverage level or plan of insurance may be permitted under the Act, premium

discounts are subject to the limits established by RMA and RMA must be able to verify that premium discounts correspond to cost efficiencies. As stated above, costs are not reported by the approved insurance provider by coverage level or plan of insurance. Therefore, there is no way to ensure that the cost savings corresponded to the premium discount on a coverage level or plan of insurance bases without complex accounting rules. As stated by other commenters, RMA must avoid the need for complex accounting rule. While RMA has avoided the need for such rules with respect to state selection and variability of the premium discount between states, there is no easy way to further break down these costs within a state by coverage level or plan of insurance.

*Comment:* An approved insurance provider contends that, with respect to § 400.715(c), FCIC has a statutory obligation to permit approved insurance providers to vary the premium discount by product and coverage level. More specifically, section 508(e)(3) of the Act provides that an approved insurance provider may offer a premium discount “[i]f an approved insurance provider determines that the provider may provide insurance more efficiently than the expense reimbursement amount established by the Corporation.” The term “expense reimbursement amount” refers to the A&O subsidy, and, as shown above, the A&O subsidy varies by insurance plan and coverage level. Thus, to provide insurance more efficiently than the 21.0 percent expense reimbursement amount established by FCIC for revenue plans may necessitate different cost reductions than are necessary to provide insurance more efficiently than the 24.4 percent expense reimbursement amount established by FCIC for the APH plan. In short, to comply with section 508(e)(3)’s requirement that the efficiency be judged in relation to the expense reimbursement amount, FCIC must allow approved insurance providers to tailor the premium discount to plan of insurance and coverage level. The commenter states that FCIC was so concerned with satisfying the condition established in the second clause of the first sentence in section 508(e)(3) that it neglected to implement the first clause.

*Response:* The flaw to the commenter’s logic is that even though the A&O subsidy is tied to the coverage level or plan of insurance, the expenses are not necessarily on the same basis. Since costs are not reported by coverage level or plan of insurance, complex accounting rules would need to be developed that would impose a

significant burden on approved insurance providers. Further, because there is no way to verify such costs, the possibility of misallocation is significant.

While RMA agrees that section 508(e)(3) of the Act does not preclude premium discounts based on coverage levels or plans of insurance, that section does give RMA the authority to impose such rules and limitations as are necessary to protect the integrity of the program. Not allowing variability of premium discounts by coverage level or plan of insurance is such a limitation. Therefore, no change has been made in response to this comment.

*Comment:* The approved insurance provider commented that, with respect to § 400.715(c), the proposed rule oversimplifies the manner in which an approved insurance provider might reduce costs. To wit, the proposed rule includes, as an example, this statement: “if the approved insurance provider can reduce costs by 2.5 percent, such reduction must be provided to all policyholders in all states.” The commenter states that this example assumes, incorrectly, that all approved insurance providers gauge their respective costs on a program-wide basis. In fact, the commenter states it calculates its costs on a state-by-state and product-by-product basis. Accordingly, the approved insurance provider’s ability to decrease costs by 2.5 percent on corn in Iowa does not correlate to a 2.5 percent reduction in the costs associated with nursery in Florida.

*Response:* The proposed rule contained the requirement that all premium discounts be the same because of RMA’s concern stated above regarding the projections of costs, the burdens on approved insurance providers to administer the program, and the potential for misallocation of costs. RMA considered all the comments on this issue, including the comments regarding the variability of costs between states, and determined that it could address these concerns and still allow variability of premium discounts by state, which it did.

However, even though the commenter claims it calculates costs on a state-by-state and plan of insurance basis, RMA has no way of knowing whether all costs are calculated in this manner. For example, RMA knows that agent compensation and loss adjustment expenses are calculated and accounted for on a state-by-state basis but it does not know whether such overhead costs, other employee or contractor compensation, etc., is also calculated and accounted for on a state-by-state or

insurance plan basis. RMA also does not know whether all approved insurance providers may calculate or accounted for costs in this manner.

Further, even if approved insurance providers did calculate costs in this manner, agent compensation and loss adjustment expenses may be reported to RMA on a state-by-state basis, it is not reported on a plan of insurance basis. Further, all other costs are reported on a book of business basis. Therefore, even if approved insurance providers calculate such costs on a state-by-state basis, RMA has no way to verify whether such costs were correctly allocated. This means that complex accounting rules would be required and the burden on the approved insurance providers and RMA would significantly increase. This is precisely the situation that RMA has sought to avoid in the interim rule.

*Comment:* An approved insurance provider commented that, with respect to § 400.715(c), the proposed rule’s prohibition against variances in premium reduction plan submissions is at odds with the experts that reviewed the proposed rule prior to its publication. The commenter asked that if the expert reviewers recognize that the difference between states, crops, policies, and plans of insurance, why does FCIC not and on what basis did FCIC reject these suggestions.

*Response:* The expert reviewers recognized that costs varied between states, policies and plans of insurance. RMA acknowledges that this is correct. However, the expert reviewers did not examine the complex cost accounting rules that would be required to verify and approve savings on this basis or assess the burden on approved insurance providers or RMA to administer the program in this manner. RMA has done this assessment and determined that it could structure a rule that would permit variability among states because certain costs are already allocated and reported by state and the others could be allocated by state through a formula designed by RMA.

However, as stated above, because costs are not reported on a crop or plan of insurance basis, RMA has no way to verify that such costs are correctly allocated. Further complex accounting and allocation rules would be required and the burdens on RMA and the approved insurance providers would increase significantly. This is precisely the situation that RMA has sought to avoid in the interim rule.

#### Section 400.716

*Comment:* An interested party commented that regulators are always

concerned about the possibility of financial stress placed on approved insurance providers who feel they have to reduce essential operating costs in order to compete in the marketplace. Such competitive pressures can reduce competition in the marketplace as approved insurance providers are no longer able to write business profitably, or in the worse case scenario, causes insolvency, which is a burden to the regulatory authority, state guaranty funds, the RMA and not least, the consumer. Transparency of the efficiency and constraints on what types of expenses can be included in the premium reduction plan are essential to the integrity of such a program and the financial well being of the participating approved insurance providers. The commenter states the language in § 400.716 sufficiently documents the approved insurance provider's premium reduction plan such that the extent and nature of the efficiencies are known and understood by regulators.

*Response:* RMA shares the concern of the commenter that the provisions of the interim rule need to protect against the possibility that increased price competition under the premium reduction plan would lead to unnecessary insolvencies. RMA has reduced the financial stress on approved insurance providers to cut costs in essential operations in several ways. One is to only require premium discounts to be based on actual costs savings and no promise that any discount will be made unless savings are achieved. This will reduce the stress on approved insurance provider to fund promised premium discounts. Another way is the allowance of approved insurance providers to select the states in which they will participate in the premium reduction plan and vary the amount of premium discount between states. This will allow approved insurance providers to select those aspects of its operation where it can safely cut costs without jeopardizing their ability to comply with all requirements of the SRA. RMA has also retained the premium discount maximum of four percent.

RMA also agrees with the commenter that transparency and consistency in the application of expense reporting is essential in a sound premium reduction plan and, as stated above, the use of existing Expense Exhibits that are verifiable and certified and the use of a standard formula applicable to all approved insurance providers to determine the amount of premium discounts for each state creates a transparent and consistent process.

*Comment:* An interested party commented that the initial application process should include an analysis of the impact on how the premium discount would affect minority farmers.

*Response:* As stated above, the initial application process has been revised significantly and now approved insurance providers will only be requesting the opportunity to be able to offer a premium discount in the event it can deliver the Federal crop insurance program for less than the A&O subsidy. However, RMA has taken several measures to ensure that small, limited resource, women and minority farmers are not adversely impacted by the premium reduction plan. RMA has retained the requirement that approved insurance providers submit marketing plans that demonstrate how they will market the premium reduction plan to small, limited resource, women and minority farmers. RMA has also added provisions that such marketing plan must be addition to any solicitation done by the agent and that if RMA discovers that the marketing plan is not effectively reaching such farmers, RMA can require remedial measures or impose sanctions. RMA has also clarified that all farmers must receive at least the level of service required by the SRA and approved procedures and added consumer complaint provisions that allow farmers to complain directly to RMA.

*Comment:* An approved insurance provider commented that § 400.716 addresses the contents of a revised Plan of Operations. The commenter stated that the reporting requirements detailed in this rule will substantially add operating expense to the approved insurance provider and works counter to the intent of generating operating efficiencies to pass along to farmers in the form of a premium discount. The commenter states that subsections (h) and (i) are particularly onerous and that the alternative proposal offered by RMA for consideration would be less costly to administer and would assure that the efficiencies derived are actual rather than projected.

*Response:* As stated above, the initial application process has been revised significantly and now approved insurance providers will only be requesting the opportunity to be able to offer a premium discount in the event they can deliver the Federal crop insurance program for less than the A&O subsidy. Further, as stated above, RMA has adopted the alternative proposal, which will significantly reduce the burdens on the approved insurance provider. In addition, the requirements in subsections (h) and (i)

have been removed from the interim rule and the process considerably streamlined.

*Comment:* An approved insurance provider asked, with respect to § 400.716(e), redesignated § 400.716(c), if RMA will be advising approved insurance providers of specific standards or criteria that must be met for marketing to small farmers, limited resources farmers, women and minorities. The commenter asked if RMA will test such standards or criteria to determine if the marketing plan is acceptable to prevent discrimination. The commenter also asked if the approved insurance provider does not meet the RMA standards, will the approved insurance provider be assessed penalties.

*Response:* RMA has revised redesignated § 400.716(c) to clarify that the marketing plan must identify the media used, that such media must be designed to reach small, limited resource, women and minorities farmers, and that such advertising must be in addition to any solicitation done by the agent. However, RMA cannot set specific standards because it would be impossible for RMA to know in advance of a request being received what would be the most appropriate form of media in a particular market. The approved insurance providers, because they have local personnel such as agents or loss adjusters, would be in the best position to know how to reach these farmers. Further, RMA recognizes that each approved insurance provider will face different circumstances, depending on its geographical presence and other factors. RMA will provide feedback during the review process if the marketing plan is deemed inadequate in providing a level of outreach that is commensurate with the size and geographical presence of the approved insurance provider.

Regarding whether RMA will test to determine whether the marketing plan is acceptable to prevent discrimination, the purpose of the marketing plan is to ensure that all farmers are aware of how to have access to a premium discount in a state in which it is offered. RMA will monitor indicators of possible discrimination and the success of the marketing plan under the SRA, based on the number of consumer complaints, and a comparison of the composition of the approved insurance providers' books of business in the area. An ineffective marketing plan could result in the imposition of remedial measures or sanctions.

*Comment:* An interested party commented that, with respect to § 400.716(e), redesignated § 400.716(c),

a marketing plan must be a minimal requirement of the program. Most farmers participating in the crop insurance program obtain crop coverage as well as marketing and other farm related educational advice from their trusted agents. The commenters stated that minority farmers should have access to this same level of added information. The commenter also stated that this requirement helps the agency to implement section 10708 of the 2002 Farm Bill, which states that approved insurance providers should actively seek the assistance of community based organizations in such data collection and analysis.

*Response:* RMA agrees that an adequate marketing plan should be included as a condition for participation in the premium reduction plan and the interim rule reflects this requirement. RMA has also referenced community based organizations to identify them as a valuable resource to reach small, limited resource, women and minority farmers. Further, the interim rule will provide a process for farmers to complain about their treatment directly to RMA.

*Comment:* An approved insurance provider comments that, with respect to § 400.716(h), to ensure that efficiencies are evaluated accurately, any efficiencies related to agent compensation be evaluated on the basis of information that must be reported to the IRS and counted on 1099 tax forms. The commenter also notes there is a conflict here in terms of reporting—annual basis vs. crop year basis—for bonuses which could be paid to agents after the crop season is over and after providers have accurately determined the amount of realized profits, if any.

*Response:* As stated above, subsection (h) has been removed from the rule. However, with respect to the demonstration of actual cost savings, the current Expense Exhibits provided with the Plan of Operations requires that an approved insurance provider submit information on both a calendar and reinsurance year basis. RMA also provides instructions as to how costs should be allocated between these formats. Therefore, since these existing Expense Exhibits will be used for determining cost efficiencies and the amount of premium discounts, no conflict exists. Further, the adoption of the alternative proposal in the interim rule eliminates concerns regarding costs incurred after the crop year. The cost accounting occurs after the end of the reinsurance year when a majority of all expenses, including bonuses, have been paid, and the approved insurance provider is required to report an

estimate of any costs that have not yet been paid. RMA will be able to determine whether costs have improperly been shifted by comparing the costs reported on the various statutory accounting statements and Expense Exhibits. If there is improper reporting, RMA may impose sanctions on the approved insurance provider.

*Comment:* An interested party commented that RMA states that the workload on RMA and approved insurance providers to identify cost allocations and determine whether the projected cost savings from efficiencies are reasonable and correspond to the premium discount in the state would be enormous. The commenter states that this conflicts with RMA's statement that "in accordance with §§ 400.716(h) and 400.719(a)(6) of the proposed rule, RMA would track the expense performance of the approved insurance provider at the state level to ensure that costs are reduced in each state by an amount that is at least equal to the premium reduction." The commenter states that §§ 400.716(h) or 400.719(a)(6) do not say anything about a state level accounting requirement yet it is clear that RMA intends to enforce an "enormous" expense on the industry.

*Response:* As stated above, § 400.716(h) has been removed. Further, by adopting the alternative proposal in the interim rule, RMA has removed the burdensome requirement for the approved insurance provider to forecast and justify proposed efficiencies for the reinsurance year and for RMA to verify the reasonableness of such forecasts and then to go through the same process at the end of the reinsurance year. Under the interim rule, cost efficiencies are to be determined based on information currently reported in the Expense Exhibits provided with the Plan of Operations and verified after they have been realized. This will significantly reduce the workload on RMA and the approved insurance providers.

Further, although RMA now allows variations in premium discounts between states, it has developed a standard formula that can be applied to all approved insurance providers and will allow the allocation of certain costs by state. This will reduce the burden on approved insurance providers to maintain and report certain costs by state that are currently reported on a book of business basis. This formula will be provided to the approved insurance providers through procedures.

*Comment:* An approved insurance provider commented that in § 400.716(i) a financial reserve of 25 percent of the projected savings as a contingency fund

seems excessive, except for years such as from 2004 to 2005 in which the commodity prices are significantly dropping. The commenter asked if the 25 percent reserve was determined from judgment only or were there calculations used to determine this percentage.

*Response:* The adoption of the alternative proposal in the interim rule eliminates the need for § 400.716(i) and it has been removed from the interim rule.

*Comment:* An approved insurance provider commented that, with respect to § 400.716(i), it supports this provision, but suggests that it be clarified to recognize that additional "income" may come from contracts or third party agreements executed by the approved insurance provider that are designed to provide a reserve for such a contingency.

*Response:* The adoption of the alternative proposal in the interim rule eliminates the need for § 400.716(i) and it has been removed from the interim rule.

*Comment:* An approved insurance provider commented that § 400.716(i) would not account for a major misrepresentation in the premium reduction plan. The commenter stated that if such a plan is necessary, the approved insurance provider should be responsible for the entire amount of the savings and be willing to provide access to those additional funds.

*Response:* The adoption of the alternative proposal in the interim rule eliminates the need for § 400.716(i) and it has been removed from the interim rule.

*Comment:* An agent commented that with respect to § 400.716(l), if agents have state approval for marketing the product, then this plan will never happen in Kansas. The commenter stated that its agency proposed a plan to allow agents to offer \$20 gift cards to anyone wishing to stop by an agent's office for an auto insurance quote. The commenter stated that this proposal never made it out of committee because the concept was rejected on the basis of violating existing rebating statutes. The commenter claims this example also has implications for § 400.719(a)(10), which says that the premium reduction plan must not violate applicable state laws concerning solicitation and sale of insurance. The commenter states that if it cannot get approval to offer a \$20 gift card how can anyone be expected to be able to get approval to offer a premium discount for hundreds of dollars.

*Response:* Section 400.716(l) required approved insurance providers to submit to the states its marketing strategy

submitted under proposed § 400.716(d). However, with the adoption of the alternative proposal, RMA determined that such marketing strategy was no longer required because premium discounts would be based on actual cost savings and approved insurance providers should not be locked in regarding how those savings are achieved as long as all provisions of the SRA and approved procedures are complied with. Therefore, proposed § 400.716(l) has been removed from the interim rule. RMA will work with state insurance regulators, which have the responsibility to monitor marketing conduct with respect to any advertising and promotion of the premium reduction plan and ensuring that all agents are properly licensed by the state.

*Comment:* An agent commented that the requirement that approved insurance providers provide their premium reduction plan to the state to determine whether the licensing and conduct of the agents complies with state law ignores the fundamental principle of state law that all agents must be licensed if they sell, negotiate or solicit any type of insurance.

*Response:* As stated above, proposed § 400.716(l) has been removed from the interim rule. RMA agrees that the states will still monitor market conduct with respect to any advertising and promotion of the premium reduction plan and continue to ensure that all agents are properly licensed by the state.

*Comment:* An interested party commented the language in § 400.716(l) requiring the approved insurance provider to provide a copy of its marketing strategy to the State Insurance Department for review in all states in which the approved insurance provider does business is crucial for state regulators to perform their market conduct regulatory functions.

*Response:* Since a review of the marketing strategy by the State is no longer required, proposed § 400.716(l) is rendered moot. However, the interim rule makes it very clear that approved insurance providers and agents must comply with all requirements of the SRA and approved procedure and RMA agrees that the RMA and the states already share responsibility to monitor market conduct with respect to advertising and promotion and ensure that all agents are properly licensed by the state.

*Comment:* A few approved insurance providers asked if one state does not approve the marketing plan, whether the plan can be offered in the other states as an exception to the premium reduction plan rule that requires all policies be allowed the discount. A

commenter stated that requiring an approved insurance provider to provide the state approved insurance provider a copy of its marketing strategy would not only be confusing, but burdensome to the state government. Furthermore, the commenter stated that if the state insurance department elected to review the plan, their timing could be long after the initiation of the plan. The commenter asked what happens to the policies that have already been sold. A commenter stated it supported the idea that if one state rejects the marketing plan, the approved insurance provider cannot offer the premium reduction plan.

*Response:* As stated above, proposed § 400.716(l) has been removed from the interim rule. RMA agrees that the states will continue to monitor market conduct with respect to advertising and promotion of the premium reduction plan and ensure that all agents are properly licensed by the state. This responsibility is no different than their existing responsibility.

*Comment:* A few approved insurance providers and interested parties commented that an issue that must be addressed is potential conflicts between federal and state law and among the states. If adopted, § 400.716(l) would require approval of various State Departments of Insurance with respect to marketing issues, including the licensing of agents and the conduct of agents in the solicitation and sale of insurance. The commenter states that this approach is understandable, especially given the potential for premium reduction plan abuse and the risk of illegal rebating. On the other hand, the federal crop insurance program is national in scope and, in accordance with 7 U.S.C. 1506(l) and 7 CFR 400.352, virtually all state regulation is preempted. Commenters stated that there are substantial risks that individual states would view the premium reduction plan offerings by multi-state approved insurance providers differently. Because state-by-state review explicitly is required in the proposed rule, RMA is inviting this level of regulatory conflict and resulting confusion. If this approach is to be utilized, RMA should not publish a final rule until it has established a mechanism for resolving all such potential conflicts among state regulators. The commenter also states that there is a distinct risk that market conduct issues will be viewed differently between RMA and a particular state. While the Supremacy Clause of the Constitution generally should favor RMA's position, the commenter states that the text of 7 CFR

400.352 is not sufficiently clear to support this proposition. Also, the commenter suggests that the text of § 400.716(l) of the proposed rule could be viewed as a voluntary surrender by RMA of its supremacy powers. At a minimum, the proposed premium reduction plan rule introduces a very complex set of considerations involving the interplay of federal and state regulation of approved insurance providers, and RMA should think this through very carefully and strengthen the proposed rule before promulgation as a final rule. Such strengthening must address both the breadth of federal preemption and the details of resolving potential federal-state conflicts.

*Response:* As stated above, proposed § 400.716(l) has been removed from the interim rule. Further, nothing in the interim rule changes the relationship between state and Federal law with respect to the premium reduction plan. Federal preemptive authority under the Federal Crop Insurance Act is limited, not general. As a result under the interim rule, states will still have the same responsibility to monitor market conduct with respect to any advertising and promotion of the premium reduction plan and ensure that all agents are properly licensed by the state. RMA looks forward to working with state insurance regulators to address any advertising or market conduct concerns that arise in the implementation of this regulation.

#### Section 400.717

*Comment:* An interested party commented that newly formed approved insurance providers would be required to amortize start-up costs up to three years in the premium reduction plan. The commenter is concerned that including start-up costs in the premium reduction plan will create a disadvantage to start-ups as they compete with larger established approved insurance providers who are able to pass along efficiencies under the plan. This provision could deter approved insurance providers from entering the market and thereby reducing competition.

*Response:* RMA shares the concern of the commenter that the interim rule should not contain unnecessary barriers to a new approved insurance provider participating in the premium reduction plan. However, the intent of the interim rule is to provide neither established nor new approved insurance providers with a competitive advantage, and to exclude start-up costs could provide a competitive advantage to new approved insurance providers, especially when established approved insurance

providers are still incurring the same type costs because of updating systems or equipment, etc. The interim rule must recognize that there may be some costs incurred regardless of whether the approved insurance provider is new or established but that generally the costs to create a system are generally larger than those for updating or modifying a system. Therefore, three year amortization represents a reasonable compromise in that such start-up costs must be reported on the Expense Exhibits but that all the costs will not count against one reinsurance year.

*Comment:* An approved insurance provider objects to the provision that grants new approved insurance providers the right to amortize so-called "one time start-up costs." The costs briefly described in the parenthetical are costs that all approved insurance providers incurred when they entered the crop insurance program. The commenter asked why FCIC affords these new approved insurance providers benefits not provided the existing approved insurance provider and how FCIC rationalizes providing new approved insurance providers with an economic advantage. In proposing the premium reduction plan regulations, FCIC claims to be "striving to develop procedures that provide a level playing field." Allowing new approved insurance providers the ability to amortize start-up costs, a benefit not afforded existing approved insurance providers, is inconsistent with this purported goal.

*Response:* RMA agrees that some of the costs included as start-up are incurred by all approved insurance providers when they start up. However, the premium reduction plan identifies whether an approved insurance provider would be able to deliver the Federal crop insurance program in the current reinsurance year. If the start-up costs were not incurred in the current reinsurance year, they would have no bearing on whether the approved insurance provider has such an efficiency for such year. Therefore, new approved insurance providers are not being provided a competitive advantage. In fact, if RMA did not allow the amortization of such costs, new approved insurance providers would be at a competitive disadvantage because they would be incurring costs that established approved insurance providers would not. This means the new approved insurance providers' A&O costs would be higher, decreasing the likelihood they could achieve an efficiency. The three year amortization is a reasonable compromise that RMA anticipates will neutralize these factors

in favoring neither existing nor new approved insurance providers in determining whether approved insurance providers can pay premium discounts.

*Comment:* An approved insurance provider concurs with RMA clarification limiting new entrants to those that have not participated in the program previously or are not affiliated with a managing general agent, another approved insurance provider or other such entity that already has the infrastructure necessary to deliver crop insurance. Requiring new entrants to include startup costs over a three-year period shows a commitment to new entrants without unfairly discriminating against approved insurance providers involved in the program since its inception.

*Response:* RMA agrees that allowing amortizing of start-up costs would allow new approved insurance providers to enter the program and compete with existing approved insurance providers without a competitive advantage or disadvantage.

*Comment:* An approved insurance provider commented that, with respect to § 400.717, approved insurance providers would amortize over one year to develop a higher "efficiency" in year two. The commenter stated that RMA's "level playing field" objective would suggest they permit new entrants to exclude those costs.

*Response:* The purpose of the amortizing is not to create efficiencies. The purpose is to put new and existing approved insurance providers on relatively the same footing with respect to reporting the A&O costs for the crop year. Further, the interim rule requires that if the approved insurance provider is going to amortize start-up costs, they must be amortized equally over the three years. However, any new approved insurance provider could elect not to amortize the start-up costs and report them all in the first year. For every year thereafter, the approved insurance provider would be treated as every other approved insurance provider and would have the same opportunity to achieve savings.

RMA considered allowing new approved insurance providers to exclude start-up costs but it realized that existing approved insurance providers still incur similar costs, such as updating or modifying systems. Therefore, it would be inequitable to exclude all such costs. However, since such costs are generally higher with start-up than maintenance, amortization provides a more equitable solution.

*Comment:* An approved insurance provider commented that the proposed

rule strikes the right balance between allowing new entrants into the crop insurance marketplace, but with adequate controls to ensure that farmers are protected.

*Response:* RMA agrees with the comment.

#### *Section 400.718*

*Comment:* An agent does not believe September 1, 2005 is a realistic date. The commenter states the date should be pushed back considerably because the timeline would not support this as a realistic date. The commenter hopes that after receiving comments to the proposed rule it will conduct another round of review and comments. The commenter suggested Congress may want to hold hearings.

*Response:* As stated above, adoption of the alternative proposal has permitted RMA to significantly reduce the reporting requirement and burden on approved insurance providers. Many of the requirements in the proposed rule regarding the cost accounting, state review, etc., have been removed and essentially all approved insurance providers must do is select the states in which they will participate in the premium reduction plan and develop and submit their marketing plans.

However, because RMA was unsure of the date the interim rule would be published, it revised the provision to require RMA to respond not later than 30 days after the date the approved insurance provider submits its request for eligibility to offer a premium discount under the premium reduction plan.

With respect to the solicitation of additional comments, RMA recognizes that additional comments may be desirable to determine whether the premium reduction plan is operating properly and, therefore, has elected to implement the rule as an interim rule. This would allow RMA to solicit additional comments.

However, there is no legal basis for RMA to not implement the premium reduction plan for the 2006 reinsurance year. As stated above, section 508(e)(3) of the Act obligates RMA to consider all requests by approved insurance providers. The interim rule simply provides the framework under which to consider such requests. Further, as stated above, RMA has responded to the comments by creating a more simple, streamlined, less burdensome, more verifiable rule that should benefit all participants.

#### *Section 400.719*

*Comment:* Several agents and interested parties asked that any and all applications for the premium reduction

plan be considered by the full FCIC Board. RMA would still be able to evaluate the applications. The commenter also asked that a guideline be added that fully reviews the impact to approved insurance providers and agents.

*Response:* The FCIC Board has the authority to review requests to participate in the premium reduction plan and approve the payment of premium discounts. However, as with many of the day-to-day operations, it has chosen to delegate that authority to the Manager of FCIC, *i.e.*, the Administrator of RMA. The Board has not rescinded this delegation because the changes to the interim rule have mitigated many of the concerns of the Board, as expressed in the preamble, and that RMA has the personnel and knowledge to best administer the program. However, the Board has asked the FCIC Manager to review with the Board the agency's analysis of the premium reduction plan requests before the Manager determines the approved insurance provider is eligible to participate or approves the payment of any premium discount under the existing delegation.

With respect to adding a requirement for an impact review, it is RMA's position that an approved insurance provider would likely already consider the full impact of the premium reduction plan on it, its competition, and its agents before requesting to participate in the premium reduction plan. Further, many of the changes to the interim rule were in response to comments expressing concerns regarding these impacts. In addition, through publication of the rule as an interim rule, RMA has left open the possibility that it will solicit additional comments regarding the impacts of the rule.

*Comment:* An approved insurance provider commented the discount must be offered "in all states where the approved insurance provider does business." The commenter asks why the provision indicates that the reduction "correspond to the location where the premium reduction is offered." The commenter asserts that this statement in the standards for approval appears inconsistent with the intent discussed in the proposed rule.

*Response:* The requirement that any premium discount correspond to the cost efficiency comes directly from 508(e)(3) of the Act. The legislative history of this section confirms that the "corresponding" principle was added intentionally and, therefore, must be given meaning.

However, as stated above, RMA agrees that requiring the same premium discount in all states in which the approved insurance provider does business could create a strain on the business operations of the approved insurance providers by requiring them to achieve the same cost savings in each state. As stated above, RMA has eliminated this requirement and now allows approved insurance providers to elect the states in which it will participate in the premium reduction plan and allows variation of premium discount among states. As stated above, this is to allow approved insurance providers to better evaluate their operations to determine the best means to achieve savings while still complying with all requirements of the SRA and approved procedures.

*Comment:* An approved insurance provider commented that proposed § 400.719(a)(7)(ii) requires that "The efficiency must not be derived from any marketing or underwriting practices that are unfairly discriminatory." The commenter states that in order for premium reduction plans to not be unfairly discriminatory, all approved insurance providers must be able to offer the plans. Otherwise, all farmers do not have equal access to premium discounts. Furthermore, unless all approved insurance providers are approved to offer premium discount plans the situation will exist that an agent representing more than one approved insurance provider may have one approved insurance provider approved and others not approved for premium discount plans. Agents will be able to write some farmers with discounts and others without. There will be no guarantee that all farmers have been offered the discount plan.

*Response:* As stated above, unfair discrimination occurs when farmers are denied access to the crop insurance program or the premium reduction plan. Since such conduct is regulated under the SRA, it was not necessary to reiterate the requirement here, especially since approved insurance providers no longer report the actions they propose to take to achieve the cost efficiency when requesting eligibility for the opportunity to offer a premium discount. Therefore, § 400.719(a)(7)(ii) has been removed. In addition, equal access to the premium reduction plan is accomplished through other means, such as the marketing plan.

With respect to the concern that unfair discrimination occurs if not all approved insurance providers participate in the premium reduction plan or agents write for more than one approved insurance provider, which

may not participate, as stated above, there is a difference between being treated differently than other farmers where the premium reduction plan is available and residing in a state where no approved insurance provider may be participating in the premium reduction plan. The former would be prohibited and, as stated above, provisions have been added to ensure that all farmers in a state are paid the same percentage of premium discount, have awareness and access to the premium reduction plan, do not suffer from reduction in service, etc. In addition, as stated above, agents that write for more than one approved insurance provider must notify their customers of all the approved insurance providers they write for that are participating in the premium reduction plan in the state so farmers can make informed decisions.

*Comment:* An approved insurance provider comments that, with respect to proposed § 400.719(a)(9), now redesignated § 400.718(c)(2), it very much supports the need to actively market to small, limited resource, women and minority farmers, as defined above. However, the commenter states it is concerned that as the size of acreage declines, so do the savings. The commenter respectfully suggests that the standard should focus only on whether the plan is reasonable in its approach and not on the marketing "effectiveness" of the plan's reach. In cases where it appears that the plan's reach is not working effectively, the RMA will work with the approved insurance provider to strengthen the plan.

*Response:* RMA agrees that when the marketing plan is submitted, it will be difficult to determine whether it effectively reaches small, limited resource, women, and minority farmers. Therefore, RMA has revised the provision to require that the marketing plan be designed to effectively reach such farmers. However, size of the farming operation and declining savings are not considerations when determining whether a marketing plan is designed to reach small, limited resource, women, and minority farmers. The interim rule requires the approved insurance provider to use the appropriate media to reach such farmers. Further, RMA has added provisions that state that RMA will monitor the marketing plan and if RMA determines the marketing plan is not effective, it can require remedial measures or impose sanctions, as appropriate.

*Comment:* A few approved insurance providers stated RMA is requiring that the approved insurance provider not



reduce its service to the insureds. The commenter asked how RMA will audit to determine that service is remaining constant to their farmers and whether RMA has standards of service developed. A commenter asked how FCIC measures "service."

*Response:* As stated above, service is required to be provided in accordance with the SRA and approved procedures. Any violation with one of these requirements would be considered a reduction in service. Therefore, there are clear standards that are applicable to all approved insurance providers and agents. RMA will monitor service as it currently does through the SRA and RMA has added provisions to the interim rule to allow consumer complaints to be made directly to RMA.

*Comment:* An approved insurance provider and interested party commented that, with respect to proposed § 400.719(a)(11), now redesignated § 400.718(c)(4), the one approved premium reduction plan provides commissions for agents substantially below what are offered to agents from other approved insurance providers. The commenter states that agents have reported that they cannot afford to provide the same level of service to farmers. Fewer visits to the farms and less assistance is offered to the farmers to complete the complex paperwork and advise the farmers concerning which plan is best suited to them. The commenter stated that the premium reduction plan and the entire Federal crop insurance program is a very complex line of insurance and it requires well trained agents to assist the farmers in making the appropriate decisions and following all the rules and procedures. Less service is harmful to the interests of farmers and potentially undermines the integrity of the crop insurance program.

*Response:* As stated above, the interim rule outlines the standards for service that must be maintained for an approved insurance provider to participate in the premium reduction plan, which are identical to those needed to operate under the SRA. Therefore, at a minimum, all farmers will receive at least the level of service that would permit them to understand the available plans of insurance, program requirements, etc. This should ensure that program integrity is maintained.

As stated above, RMA recognizes that some agents may wish to offer special educational and other services above these standards to differentiate themselves from other agents in a competitive marketplace. This is part of cost competition; can the same service

be provided at a better price or can superior service be provided for the same price. It is up to the marketplace to determine the value of these additional services and whether the farmer wants to bear the cost. As some commenters have stated, some farmers will value the superior service over the possibility of a premium discount, which maintains the possibility of competition on both price and service, which can only benefit the farmer.

*Comment:* An approved insurance provider commented that, with respect to proposed § 400.719(a)(12), now redesignated § 400.718(c)(3), RMA has not been able to enforce this provision in the past two years. Agents and adjusters have reported from the field that the one approved insurance provider approved for the premium reduction plan is not providing the required training for agents and adjusters. This was required by Manual 14 and also is required by the 2005 SRA, addendum IV. The commenter states that this is harmful to the interests of farmers and potentially undermines the integrity of the crop insurance program. Furthermore, if these training requirements were adhered to it would add to the operating expenses of the one approved insurance provider and make it difficult for it to operate within the A&O expense reimbursement from RMA. The principal reason asserted by RMA in its declining the applications for the premium reduction plan of the other approved insurance providers was that they currently were not operating within the A&O expense reimbursement. The proposed premium reduction plan will not cure this deficiency.

*Response:* RMA disagrees that it has not enforced the provision of the proposed rule regarding the required training of agents and loss adjusters for the premium reduction plan, which is the same requirement as that contained in the SRA. As stated above, all approved insurance providers are required to provide information regarding the training provided to its loss adjusters and agents. In its monitoring of the approved insurance provider currently authorized to offer the premium reduction plan, RMA has received, reviewed and confirmed training activity logs, training curricula, and other documentation showing that the approved insurance provider is in compliance with SRA training requirements.

In addition, the approved insurance provider has demonstrated that it can operate at less than the A&O subsidy and still comply with all requirements of the SRA and approved procedures.

Because all approved insurance providers are being held to the same standards, the integrity of the insurance program is maintained. If the commenter has evidence of any particular instance where the approved insurance provider was not in compliance with the training or any other requirement of the SRA, it should provide such evidence to RMA.

*Comment:* An approved insurance provider commented that, with respect to proposed § 400.719(a)(13), now redesignated § 400.718(c)(3) and (5), this cannot be achieved unless all approved insurance providers are approved to offer the premium reduction plan and agent commissions are not reduced to a level which removes the incentive for offering premium discount plans to the farmers.

*Response:* Section 400.719(a)(13), now redesignated § 400.718(c)(3) and (5), requires that participation in a premium reduction plan not result in a reduction in the total delivery system's ability to service all farmers. RMA agrees that the provision as drafted would appear to judge each individual approved insurance provider by the ability of all other approved insurance providers to deliver the Federal crop insurance program and this is not the intent. The reference to total delivery system was intended to refer to the whole delivery system of the approved insurance provider, such as managing general agents, agents, loss adjusters, any service providers, etc. Redesignated § 400.718(c)(3) and (5) are much clearer that the requirement applies to the performance of the approved insurance provider, not competitors.

*Comment:* An approved insurance provider asked what is meant by "a reduction in the total delivery system's ability to serve all producers . . ." in proposed § 400.719(a)(13), now redesignated § 400.718(c)(3) and (5). The commenter asked how FCIC determines whether there has been "a reduction in the total delivery system's ability to serve all producers" and how FCIC determines whether that reduction resulted from the premium reduction plan or from other causes. The commenter asked if an approved insurance provider's ability to implement the premium reduction plan is contingent upon the overall crop insurance program. The commenter asked if the approved insurance provider would otherwise qualify for the premium reduction plan, does FCIC have the ability to reject the approved insurance provider's plan based on the service provided to "all producers." If so, it seems FCIC is penalizing the approved insurance provider for the

inadequacies of its competitors. Moreover, nothing in section 508(e)(3) suggests that the ability of an individual approved insurance provider to achieve program efficiencies is trumped by program-wide inefficiencies.

*Response:* As stated above, the language in proposed § 400.719(a)(13) was misleading. However, as explained above, it was never the intent of RMA to approve or disapprove an approved insurance provider from participating in the premium reduction plan or paying a premium discount based on the performance of its competitors. The only exception to that statement is that the composition of the approved insurance providers' books of business may be compared to determine whether the marketing plan is effective. Redesignated § 400.718(c)(3) and (5) have been clarified that RMA will be looking at the performance of the approved insurance provider and the various components of its delivery system.

*Comment:* An interested party commented recommended that any marketing plan that does not invest resources in the development of minority and other limited resource farmers be denied. The commenter stated that any marketing plan must pay particular attention to, and invest substantive resources in, closing this gap in eligibility for crop insurance. Similarly, the marketing plan must include comprehensive training of agents in specific methods needed to serve minority farmers, including partnerships with community based organizations serving minority farmers.

*Response:* RMA agrees that the marketing plan must be specifically designed to reach small, limited resource, women and minority farmers and must identify and use the appropriate media to reach these farmers, including the use of community based organizations. Further, as stated above, provisions have been added regarding the monitoring of these marketing plans and actions that may be taken if they are not effective.

However, RMA is unsure of what the commenter was referring to regarding comprehensive training of agents in specific methods needed to serve minority farmers. The SRA requires that approved insurance providers serve all farmers and the interim rule reiterates that the approved insurance provider must have the ability to effectively market to, and is operationally and financially capable and ready to serve, all farmers in the state. This would include small, limited resource, women and minority farmers.

#### Section 400.720

*Comment:* An approved insurance provider comments that, with respect to proposed § 400.720(a), now redesignated § 400.719(a), for good business planning purposes as well as maximizing stability in the crop insurance marketplace, approvals should continue beyond one year. As long as the rules are met, approved insurance providers should not have to reapply for annual approval of the premium reduction plan.

*Response:* RMA disagrees that eligibility should extend beyond one year. The SRA states that it is not effective for the reinsurance year until the annually filed Plan of Operations is approved by RMA. Therefore, it would be inappropriate to allow eligibility for a period longer than the effective period for the SRA. This could result in approved insurance providers being eligible to offer a premium discount even though they have not been approved for an SRA. In addition, since approval of the premium discount is based on the actual cost savings achieved for the reinsurance year, approval to pay a premium discount must be given each year. However, as stated above, the burden on the approved insurance provider to request eligibility to participate in the premium reduction plan has been significantly reduced. Therefore, no change has been made as a result of this comment.

*Comment:* An approved insurance provider comments that proposed § 400.720, now redesignated § 400.719, addresses the terms and conditions for the approved premium reduction plan. The commenter stated that the reporting requirements detailed in this rule will also significantly add to the operating expense to the approved insurance provider and defeats the intent of the premium reduction plan to reduce operating expenses. The cost alone of CPA certification as required in subsection (f), now redesignated § 400.720(a)(1), will be substantial.

*Response:* RMA recognizes that an approved insurance provider that chooses to participate in the premium reduction plan under the interim rule will incur certain costs when requesting approval to pay a premium discount. However, the incurrence of such costs will not occur until after the end of the reinsurance year and the approved insurance provider intends to request approval to pay a premium discount. This means that in crop years where there has been insufficient savings achieved, the approved insurance provider does not have to request

approval to pay a premium discount and will not have to incur such costs.

Further, as stated above, RMA has sought to minimize such costs by eliminating the projected cost accounting up front, using the Expense Exhibits already provided with the Plan of Operations, and eliminating many of the other reporting requirements.

*Comment:* An approved insurance provider states that § 400.720(e), now redesignated § 400.715(h), changes the premium reduction plan from an offer that must be made to farmers with the right to reject the premium discount to a mandatory premium discount for all farmers. The wording throughout the proposed rule clearly makes the premium discount an offer to farmers which they may opt to decline. The commenter states that if the proposed wording of subsection (e) remains and the premium discounts are mandatory for all insureds of the approved insurance provider, then it follows that all approved insurance providers must be approved for the plan to avoid rate discrimination between the insureds based upon the approved insurance provider providing the insurance.

*Response:* RMA disagrees that all approved insurance providers must be determined eligible to participate in the premium reduction plan to avoid rate discrimination. First, as long as all farmers have access to the premium reduction plan, there is no discrimination unless an approved insurance provider refuses to insure an otherwise eligible farmer. To ensure universal access, approved insurance providers eligible to offer a premium reduction plan must execute a marketing plan that is designed to reach all farmers in the state, in addition to any promotional activity of its agents. In addition, all agents that represent at least one approved insurance provider that offers a premium reduction plan in the state must inform their customers of the names of all approved insurance providers that they represent that are also eligible to participate in the premium reduction plan in the state. Therefore, farmers can make an informed choice of approved insurance providers.

Second, the proposed rule makes it clear that all farmers that insure with the approved insurance provider authorized to provide a premium discount will receive the discount. This requirement remains in the interim rule. The approved insurance provider approved by RMA to pay a premium discount in a state must pay the premium discount to all its insureds in the state. Obviously it is the farmer's choice with respect to whether to accept

the premium discount and some may elect not to if it would adversely affect the payment under other farm programs. However, to allow approved insurance providers to select who receives a premium discount could lead to unfair discrimination.

In addition, the whole purpose of the premium reduction plan is to introduce price competition. Therefore, it is assumed that there will be differences between those approved insurance providers that participate in the premium reduction plan and those that do not and even among approved insurance providers that participate.

*Comment:* An approved insurance provider comments that, with respect to § 400.720(e), now redesignated § 400.715(h), it supports this provision because approved insurance providers who offer the premium reduction plan must be required to serve all farmers/all crops in the states in which they are licensed. This prevents “cherry-picking” and thus furthers Congressional intent. However, the commenter strongly feels that this sentence should include the word, “applicable” following the words “receive the” in the preceding sentence. As previously noted, for CAT policies, no premium discount would be applicable as the farmer pays no premium.

*Response:* RMA agrees with the comment regarding the requirement that premium discounts will automatically be provided to all of an approved insurance provider’s insured in a state where it has been approved to pay a premium discount. RMA also agrees that there should be language stating that CAT policies or ineligible farmers will not receive the premium discount and has revised redesignated § 400.715(h) accordingly.

*Comment:* A few approved insurance providers and interested parties commented that proposed § 400.720(f), now redesignated § 400.720(a)(1), which requires certification by a CPA, should be signed by the person authorized to sign the SRA to emphasize the importance of the document.

*Response:* As stated above, under the alternative proposal adopted in the interim rule, only actual costs will be provided to determine whether there has been an efficiency and the amount of any premium discount and such costs will be based on the Expense Exhibits provided with the Plan of Operations, which is already signed by the person authorized to sign the SRA. Therefore, it is not necessary to have such person sign the audit and certification of these Expense Exhibits. Therefore, no change

has been made as a result of this comment.

*Comment:* An interested party commented that proposed § 400.720(g), now redesignated § 400.719(d), would require that approved providers periodically report to the RMA on the average number of acres insured both before and after the premium reduction plan, the number of small, limited resource and minority farmers insured, and the number of agents selling and servicing policies by state. Such reporting would not identify efforts by approved providers to consolidate business among agents with only large, low risk customers. The commenter states that under the proposed rules, approved providers could effectively use agent business as a litmus test for choosing the states in which they do business and the agents who sell and service their policies.

*Response:* RMA agrees that the required report would not identify efforts by approved insurance providers to consolidate agents or select agents with only large, low risk customers, nor is the report intended to accomplish this. Neither the current SRA nor the proposed or interim rule precluded this conduct. To ensure that small, limited resource, women and minority farmers have access to the premium discount plan, approved insurance providers are required to target market through the appropriate media designed to reach these farmers and agents are required to inform all customers of the names of all approved insurance providers they write for that are eligible for the opportunity to offer a premium discount. This report, which has been substantially modified to remove the information collections that could be obtained through the summary of business or other RMA databases, is intended as a tool to assess the effectiveness of the marketing plan.

Further, as stated above, because of the real possibility that approved insurance providers would withdraw from states if they were required to participate in the premium reduction plan in all states in which they do business, RMA has elected to allow approved insurance providers to select the states in which they will participate in the premium reduction plan. This is because the risks associated with the possibility of no insurance coverage outweigh the risks associated with the possibility of not receiving a premium discount in the future.

Further, the selection criteria of the states is solely in the discretion of the approved insurance provider because only the approved insurance provider is in the position to determine where

savings can be achieved without risking non-compliance with the requirements of the SRA or approved procedures.

*Comment:* An interested party commented that the approved insurance providers should be required to report the proposed impact of the premium reduction plan on the various types of products offered, by race, gender and ethnicity. In lieu of comprehensive data on race, gender and ethnicity, the approved insurance providers should further be required to report by scale and value of operation the number of farmers of various sizes enrolled in basic CAT coverage and other levels of more comprehensive coverage, and where reduced premiums were allocated.

*Response:* As stated above, much of the information collected in proposed § 400.720(g), now redesignated § 400.719(d), has been removed because such information is already collected under Appendix III to the SRA and maintained in RMA databases. It is only that information that is not currently collected, such as the number of small, women, and minority farmers making application and the resolution of any complaints that RMA will require approved insurance providers to report. The remaining information listed by the commenter is retained in RMA databases so there is no need for an additional information collection.

*Comment:* An approved insurance provider commented that the requirements in § 400.720(g), now redesignated § 400.719(d), requiring approved insurance providers to report the average number of acres insured under all policies by State before and after implementation of the premium reduction plan could create inaccuracies where a farmer has policies in different counties. The commenter stated that, at a minimum, the requirement should be restated to include “the average number of acres on a crop, county, and entity basis insured under all policies by State before and after implementation of the premium reduction plan,” and should also require premium growth by crop in each state. In addition, these semi-annual reports should be made available to the public.

*Response:* As stated above, this information collection has been removed from the interim rule because such information is already collected under Appendix III to the SRA. Therefore, there should not be a problem with inaccurate reporting. In addition, much of this information is available to the public in the aggregate in the summary of business published on RMA’s website. However, to the extent that the semi-annual reports

required by the interim rule contain confidential business information, such information is protected from release to the public.

*Comment:* An approved insurance provider comments that, with respect to proposed § 400.720(g)(3), now redesignated § 400.719(d), it is very important that premium discounts are offered to all farmers. The required reporting, however, should not be of the numbers of small, limited resource, women and minority farmers that have made applications. In some regions of the country, it is likely there will be very few, if any, small/limited resource/women/minority farmers. It is also likely for newer crop approved insurance providers that their sales to such groups may not be statistically valid as they enter new states. Thus, the commenter recommends that each approved insurance provider offering the premium reduction plan only be required to report, and judged on, their outreach efforts as a whole in all states in which they are licensed.

*Response:* RMA agrees that the number of small, limited resource, women, and minority farmers is likely to vary dramatically according to geographical regions. Further, RMA recognizes that such figures when expressed as percentage of the total business in the state may present skewed figures, especially for new approved insurance providers. However, this information is still useful. Under the marketing plan, approved insurance providers are required to target these farmers. If RMA does not collect the information regarding their participation, RMA will have no way to judge whether the marketing plans are successful. Further, as stated above, any comparison between approved insurance providers would be based on the composition of their books of business, not just gross numbers.

RMA does not agree that approved insurance providers should only be judged on the outreach effort as a whole in all states. The whole purpose of the marketing plan is to increase participation of a traditionally underserved segment of farmers in each state where these farmers are located. However, because approved insurance providers can now select the states in which they participate in the premium reduction plan, the reporting must only be done for those states the approved insurance provider selects. Without such information, RMA would not be able to judge whether additional remedial measures are required by the approved insurance providers to reach these farmers. Therefore, no change has been made in response to this comment.

*Comment:* An approved insurance provider comments that, with respect to § 400.720(h), it supports this provision on the basis that an “overstated” premium discount is unfair to farmers. Any approved insurance provider applying for approval to offer the premium reduction plan should be required to accurately document their savings, allowing for the “financial reserve plan” as a back-up. Overall, the commenter states it sees this as protection to farmers, since approved insurance providers might be tempted to use the premium reduction plan as a loss-leader to enter new markets if the savings are not substantiated and if they are not penalized for failing to achieve the savings they represented to the RMA would be made.

*Response:* As stated above, since RMA has adopted the alternative proposal in the interim rule, and premium discounts are based on actual cost savings, not projected, this provision is no longer required and has been removed from the interim rule.

*Comment:* An approved insurance provider commented that 400.720(h) says there is no penalty for not achieving the projected savings needed to cover the premium discount. The approved insurance provider is limited to no more than the “actual cost savings” in the future year with no consequence for the year of misrepresentation to the farmers. The commenter states that this creates an unfair competitive advantage to a provider willing to take its chances on RMA not discovering their error with no financial impact at all to the approved insurance provider. There needs to be a provision added to portray the severity of this type of misrepresentation, *i.e.* reject any and all future premium discounts, charge the amount of the premium discount as a policy surcharge in the following year, require that amount as an additional expense in each of the next two reinsurance years, etc.

*Response:* As stated above, since RMA has adopted the alternative proposal in the interim rule, and premium discounts are based on actual cost savings, not projected, this provision is no longer required and has been removed from the interim rule. With respect to the sanctions for misrepresentation, as stated above, additional sanctions have been added that allow RMA to tailor the sanction to the offense and they include the ability to disqualify an agent or approved insurance provider from participating in the premium reduction plan.

*Comment:* An approved insurance provider comments that, with respect to

§ 400.720(i), now redesignated § 400.719(e), Congress and RMA has been very clear that no “cherry-picking” is allowed in the delivery of the crop insurance program. Exceptions for the premium reduction plan should not be made. The commenter specifically supports this provision on the basis that a premium reduction plan is and should be good for all farmers.

*Response:* RMA agrees with the comment. While RMA cannot prevent agents from competing for large attractive accounts, RMA can take action when insurance is denied to any eligible farmer, especially small, limited resource, women and minority farmers.

*Comment:* An approved insurance provider comments that, with respect to § 400.720(j), now redesignated § 400.719(f), FCIC and RMA should not have any liability for damages arising from these matters, but is concerned that this provision attempts to re-allocate liability for damages among private parties, which should be left to state law. For example, in the implementation of an approved premium reduction plan, an agent could make errors or misrepresentations for which the agent bears some or all of the liability to third parties injured thereby under applicable state law. Moreover, this provision could be interpreted to create a new, federal cause of action for these matters, which the commenter does not believe is or should be the RMA's intent. The commenter stated that state law should govern both the existence of a cause of action for these matters, as well as the allocation of liability among private third parties. Accordingly, the commenter proposes the provision be changed to read “In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.”

*Response:* RMA agrees and has revised the provision accordingly.

*Comment:* An approved insurance provider commented that § 400.720(k) seems to suggest this program will only be “periodically reviewed” by RMA. It is imperative to the integrity of this program that a formal and regular review of an approved audit procedure be in place with necessary staff to analyze the results annually. This element of control and accountability is essential to the fairness to all farmers and to all approved providers.

*Response:* RMA agrees that monitoring is important. Under the interim rule, monitoring will occur under the SRA and under the premium reduction plan. However, since

adoption of the alternative proposal, many of the monitoring activities stated in proposed § 400.720(k) have been rendered moot and removed from the interim rule.

*Comment:* An approved insurance provider comments that, with respect to § 400.720(m) and (n), now redesignated §§ 400.719(j) and 400.721(a), RMA should be able to withdraw approval or require modification of the premium reduction plan if any of the criteria in (m) exists. However, the commenter states that before it withdraws approval, RMA should give the approved insurance provider a thirty day cure period. The approved insurance provider may not have been aware of the problem, and this gives it a reasonable period within which to fix it. Additionally, the commenter requests that an approved insurance provider whose premium reduction plan has been withdrawn or required to be modified should have the right to request reconsideration, as § 400.719(c)(2) of the proposed rule would allow if a revised Plan of Operations is disapproved.

*Response:* Section 400.719(j) provides RMA with additional options so that sanctions can be tailored to the offense. One of the options is to require remedial measures to eliminate the problem. In addition, RMA has added a reconsideration process if any of the sanctions are applied, including denial of the payment of a premium discount or withdrawal of eligibility for the opportunity to offer a premium discount. RMA has also added an appeals process to the Board of Contract Appeals to avoid confusion regarding the proper forum to handle appeals. The Board of Contract Appeals was determined to be the proper forum because the premium reduction plan has been incorporated by reference into the SRA, monitoring will occur under the SRA, sanctions may be imposed under the SRA, and the documents reviewed are provided under the SRA.

*Comment:* An approved insurance provider proposes that, with respect to § 400.720 RMA add a new subsection (o) stating as follows:

“(o)(1) Before withdrawing or modifying its approval of a premium reduction plan, RMA will notify the provider in writing of the contemplated withdrawal or modification of approval and the reason therefore, and allow the provider at least thirty days to cure. If the provider does not cure within such period to the RMA’s reasonable satisfaction, the withdrawal or modification shall be effective after the expiration of such thirty day period and as of the date specified in the notice.

(2) If approval of a premium reduction plan is withdrawn or modified, the approved insurance provider may request, in writing,

reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days after the effective date of such withdrawal or modification and such request must provide a detailed statement of the basis for the reconsideration.”

*Response:* As stated above, RMA has added provisions that allow RMA to require remedial measures instead of withdrawal of eligibility for the opportunity to offer a premium discount. Such remedial measure could include a cure period. In addition, reconsideration and appeals provisions have also been added.

*Comment:* An interested party recommended that a process should be established to monitor compliance, planned outcomes and results of marketing plans.

*Response:* RMA agrees that it have a process in place that monitors approved insurance provider performance with respect to the marketing plans. The semi-annual reports will be used. In addition, RMA can compare the compositions of the books of business of the approved insurance providers to determine whether there are any anomalies that suggest the marketing plan is not effective. RMA has also created a mechanism whereby farmers can file complaints directly to RMA for investigation and resolution.

Following are a summary of the current procedures and the adopted changes in the interim rule.

1. Fundamental Principles. Under the existing procedures, approved insurance providers could name the states and crops for which the premium reduction plan would be applicable. As stated more fully above, after careful consideration of all the comments, RMA has elected to retain the provisions regarding the selection of states. In the interim rule, approved insurance providers will be able to select those states in which it wants the opportunity to offer a premium discount. RMA retained this provision because of the concerns raised by commenters that approved insurance providers would pull out of unprofitable states, leaving those farmers without access to crop insurance. RMA balanced the interests of farmers potentially receiving a premium discount with the possibility that farmers could be left with no coverage and determined that it was more important to ensure that farmers have access to crop insurance than that they potentially receive a premium discount.

However, to avoid any unfair discrimination all farmers within that state must be treated the same. Therefore, RMA has removed the

provisions allowing approved insurance providers to select specific crops. Allowing such a practice could lead to unfair discrimination against farmers of certain crops.

Under the existing procedures, the same premium discount was provided in all states. The interim rule changes this requirement to allow approved insurance providers to vary the discount by state because the A&O costs of approved insurance providers can vary significantly by state. It is safer for the crop insurance program for approved insurance providers to cut costs in those states where it would not affect their ability to deliver the crop insurance program than to require approved insurance providers make the same cuts in all states.

However, as stated more fully above, the premium reduction plan has been redesigned so that RMA approves the amount of premium discount that can be paid in any state. Further, it allows for true competition because the market will determine the appropriate amount of premium discounts. In addition, RMA is now requiring that not all efficiencies can come from reductions in agents’ compensation.

In the interim rule, RMA still had to address the concerns expressed by commenters that the premium reduction plan would require complex cost accounting rules and there would be cost allocation issues. There was also the concern that RMA would not have the adequate skilled staff to be able to oversee and administer each of the potentially different premium reduction plans that could be submitted by the approved insurance providers.

As discussed more fully above, adoption of the alternative proposal mitigates or eliminates most of these problems. Under the alternative proposal, premium discounts are based on actual cost savings attained for the reinsurance year. Further, RMA has broken the A&O costs into three categories and has determined simple cost allocation rules where necessary. Approved insurance providers will be provided with procedures that set forth a formula that will be used to determine efficiencies and the amount of premium discount that can be paid in a state. These procedures will be published on RMA’s website at [www.rma.usda.gov](http://www.rma.usda.gov) not later than 5 days after the publication of the interim rule in the **Federal Register**.

With respect to when payments can be made, under the existing procedures, premium discounts are based on projected cost savings and the approved insurance provider may advertise and guarantee those savings to the farmer

before they are realized. This means that farmers see an immediate reduction in the amount they owe on their premium bill for the crop year.

Under the interim rule, premium discounts will be based on the actual costs realized in a reinsurance year so payment of a premium discount cannot be made until after all such costs are accounted for, reported to RMA, and RMA approves the amount of premium discount that can be paid in any state. This means the farmer may not see the benefit of a premium discount until well after the end of the crop year and there is no guarantee that any premium discount will be paid for the year. While this may preclude farmers from receiving the immediate benefits, it allows the premium reduction plan to operate in a manner that reduces the possibility that an approved insurance provider may not be able to attain its projected savings, that such cost saving measures may affect the financial stability of the approved insurance provider and the delivery system, and reduces the burden on approved insurance providers and RMA to administer the premium reduction plan.

2. Revisions of Definitions. Most of the definitions from the current procedures have been included in this interim rule, although some have been modified to conform to the SRA. The definitions of "administrative and operating (A&O) costs" and "administrative and operating (A&O) subsidy" have been revised to eliminate the costs and loss adjustment expense subsidies related to the sale and service of catastrophic risk protection (CAT) policies. This change was made because no premium is owed under a CAT policy. Therefore, the premium discount would not be applicable. For the ease of cost accounting, and because there is little variation in the sale or service of CAT policies because options are so limited, these definitions create an assumption that the loss adjustment expense subsidy paid by RMA is equal to the amount of costs associated with the sale and service of CAT policies.

RMA has also revised the definition of "compensation" to clarify that compensation includes any benefits, including those from third parties, that are guaranteed, even though the amount may differ year to year, regardless of the existence of an underwriting gain for the approved insurance provider, and to clarify when profit sharing arrangements will not be included as compensation. The definition of "efficiency" is revised to clarify that cost savings must be attributable to operational efficiencies or a reduction in

expenses but such savings cannot solely result from reductions in compensation.

A definition of "approved procedures" is added for clarification. Definitions of "eligible crop insurance contract" and "eligible producer" have been added consistent with such definitions in the Standard Reinsurance Agreement. A definition of "profit sharing" is added to clarify the difference between guaranteed benefits, which are considered compensation, and contingent benefits based on underwriting gains. A definition of "reduction in service" is added to clarify that approved insurance providers are only required to meet the requirements for service contained in the SRA, procedures, and other directives of RMA. Therefore, a reduction in service occurs when there has been a failure to comply with one of the requirements. RMA acknowledges that there may be agents who have been providing many more services than those required but RMA cannot require that such service be maintained. It can only enforce the requirements it has set out.

A definition of "underwriting gain" is added to clarify that such gains include the net gain payment made to the approved insurance provider on its whole book of business under the SRA, less any costs it pays from such gains, including any costs related to the delivery of the program in excess of the amount of administrative and operating subsidy received from RMA. The definition of "unfair discrimination" has been modified to clarify that approved providers cannot exclude farmers based on the loss history or the size of the policy.

3. Timing of the Submission of Revised Plans of Operations. The current procedures require revised Plans of Operations be filed not later than 150 days prior to the first sales closing date where the premium discount will be applicable. In the interim rule, for the 2006 reinsurance year, revised Plans of Operations must be received by RMA not later than 15 days after publication of the interim rule to allow RMA time to consider such revised Plans of Operations before the fall sales closing dates. For subsequent reinsurance years, all revised Plans of Operations must be received by RMA with the Plan of Operations for the reinsurance year. RMA has elected to have a single submission window each reinsurance year to ensure that all approved insurance providers are playing on a level field, as requested by the commenters. However, RMA has added provisions that would allow new approved insurance providers to request

an opportunity to offer a premium discount in their request for approval of an SRA.

Under the existing procedures, approved insurance providers were required to implement the premium reduction plan once it was approved by RMA. This provision has been removed. Approved insurance providers have the ability to determine whether it can effectively implement cost cutting measures necessary to achieve the requisite efficiency. The interim rule now reflects that if the approved insurance providers requests approval to pay a premium discount, it must pay the premium discount if it is approved by RMA. Since approved insurance providers have the option of requesting approval to pay a premium discount, the existing procedures allowing the approved insurance provider 15 days to withdraw its premium reduction plan were also not included in the interim rule.

4. Confidentiality Requirements. The existing procedures contained confidentiality requirements. However, since such procedures do nothing more than restate the law, RMA has elected to remove them from the interim rule. This will allow flexibility should such laws be revised.

5. Contents of Revised Plans of Operations. The current procedures require five copies and both a hard copy and electronic version of the revised Plan of Operations and other documentation. The interim rule has been revised to remove this requirement because there is no longer a need to submit a revised Plan of Operations. The current Expense Exhibits submitted with the Plan of Operations will be used, along with any estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits. The current procedures require the approved insurance provider to provide the name of the person responsible for the administration of the premium reduction plan, the reinsurance year the plan will be in effect; a statement of the amount of the premium discount to be offered to farmers, how it is calculated, and reported to RMA; a list of any and all terms and conditions that affect its availability; and the projected total dollar amount of the premium discount to be provided to the farmers. Except for providing the name of the person who will be responsible for the premium reduction plan, all these other requirements have been removed from the interim rule. Such requirements are no longer necessary because premium discounts are now based on actual costs, not projected costs. Further, the availability or amount of the premium

discount is no longer known or guaranteed. The interim rule does require that approved insurance providers provide a report of the actual premium discount payments made for the previous year but such report must be provided not later than 15 days after the payment of the premium discounts.

The existing procedures also require the approved insurance provider to list the proposed crops and states where the efficiency is being gained and the estimated number of farmers. As stated above, the requirement to list the states has been retained but the requirement to list the crop has been removed from the interim rule because this provision was rendered moot by the requirement that premium discounts be paid for all crops in those states listed by the approved insurance provider.

The existing procedures also require that approved insurance providers state how they intend to deliver the premium reduction plan and to identify the cost saving measures that will be used to attain the projected efficiency. These requirements were removed from the interim rule because RMA no longer has to determine up front whether it is realistic for approved insurance providers to meet their projected efficiencies.

The requirements in the existing procedures stating how projected efficiencies are calculated, requiring detailed accounting statements, and the other accounting matters have been removed from the interim rule. Now that the premium discount will be based on actual cost savings instead of projected cost savings, such information is no longer required to be provided up front. Cost accounting information necessary for the approval of the premium discount that can be offered in a state is already contained in the existing Expense Exhibits to the SRA. Further, RMA will provide a formula for calculating the premium discount to be used in the approval process through procedures.

The requirement that counsel from the approved insurance provider certify that the manner in which the premium reduction plan will be delivered is in accordance with state law has been removed from the interim rule. It is the responsibility of the approved insurance provider to ensure that it delivers the crop insurance program in compliance with the requirements of the SRA. Failure to comply with any requirements can subject the approved insurance provider to sanctions under the SRA. Therefore, this requirement was no longer necessary.

The existing procedures also required that approved insurance providers

provide an analysis of whether the premium reduction plan is unfairly discriminatory or could be perceived as such. This provision has been removed from the interim rule and instead, approved insurance providers are required to provide marketing plan for all farmers, including small, minority, women and limited resource farmers to address concerns that such farmers will not receive access to premium discounts.

RMA has added provisions that limit the marketing that can be done regarding premium discounts because they are no longer guaranteed up front. After the approved insurance providers have been determined to be eligible for the opportunity to offer a premium discount, approved insurance providers and their contractors and employees will only be able to advertise that they have been determined to be eligible and state the premium discounts that have been paid in previous reinsurance years. Disclaimers must also be prominently displayed that state that past premium discounts do not guarantee that a future discount will be paid or its amount. RMA is also enlisting the states to assist it in monitoring the marketing conduct of the approved insurance providers and their contractors and employees because states currently monitor such activities so they already have the infrastructure in place.

RMA has also added a requirement to the interim rule that approved insurance providers must provide a certification that their cost saving measures will not result in a reduction in service as defined in the interim rule. This is to reinforce the importance of this requirement.

6. New approved insurance providers. The existing procedures allow certain costs associated with new approved insurance providers and with respect to expansions by existing approved insurance providers be included in the A&O costs for the purposes of determining the efficiency. RMA has elected to remove the provisions regarding existing approved insurance providers because it is impractical to track those costs associated with normal expansion and those attributable to the premium reduction plan. Further, the Act does not make any distinction between the types of costs against which to measure the efficiencies. However, it is only the new entrants into the crop insurance business that have the exceptional costs associated with such entrance. Existing approved insurance providers may incur some additional costs but not nearly to the extent that new entrants would. Further, some of these costs associated with expansion

may be captured if the approved insurance provider can establish a higher expected premium volume for the year. RMA has clarified that new entrants are limited to those that have not participated in the program previously or are not affiliated with a managing general agent, another approved insurance provider, or other such entity that already has the infrastructure necessary to deliver crop insurance. The existing procedures have also been revised to no longer allow the new entrant to exclude the startup costs from its expenses reported under the premium reduction plan. In the interim rule, such startup costs must be included as expenses but the approved insurance provider will be permitted to spread such costs equally for up to three reinsurance years.

7. RMA Review Process. The current procedures require RMA to evaluate the completeness of a revised Plan of Operations and notify the approved insurance provider within 30 days. This provision has been removed because of the administrative burden it places on RMA to review the revised Plan of Operations twice and provide two separate responses. In the interim rule, for the 2006 reinsurance year, RMA will notify the approved insurance provider not later than 30 days after the approved insurance provider requests the eligibility to offer a premium discount, whether it is eligible for the opportunity to offer a premium discount under the premium reduction plan. For all subsequent reinsurance years, current procedures require RMA to provide a response to the approved insurance provider regarding its eligibility for an opportunity to offer a premium discount not later than 30 days prior to the first sales closing date. This provision has been revised to require that the request be made with the Plan of Operations. Since approved insurance providers will no longer be able to market premium discounts like they did under the existing procedures, the additional lead time is not as critical.

RMA has also added provisions setting forth the criteria under which RMA will determine an approved insurance provider eligible for the opportunity to participate in the premium reduction plan. A new criteria is that the marketing plan be designed to reach small farmers, limited resource farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, women and minority farmers. Disclaimers have also been added to the interim rule to inform participants in the crop insurance program that RMA determination of eligibility does not

guarantee that it will approve a premium discount.

8. Standards for Approval. The current procedures require that the premium reduction plan not result in the reduction of service to farmers or be harmful to the interest of farmers, not place a financial or operational hardship on the approved insurance provider or undermine the integrity of the crop insurance program. Further, such procedures require the approved insurance provider have the financial and operational capacity and expertise to deliver the crop insurance program after implementation of the premium reduction plan, there be adequate internal controls to monitor its compliance with the provisions of the interim rule, and the premium reduction plan meet all other requirements of the Act and the SRA. These requirements have been retained in this interim rule but moved to the previous section because, in the interim rule, RMA has separated the process for determining eligibility for an opportunity to offer a premium discount under the premium reduction plan from the approval of the amount of premium discount.

To be approved for a premium discount, the approved insurance provider must provide an audit of its Expense Exhibits to the SRA and an estimate of additional A&O costs for the reinsurance year not included in such Exhibits, certified by an independent public accountant with experience in insurance accounting, a detailed description of the profit sharing arrangements, the amount and percentage of premium discount in each state determined by the approved insurance provider, and the amount of premium discount the approved insurance provider intends to pay. RMA has also added provisions requiring that the cost of such audit be included in the A&O costs. The criteria for approval of the amount of premium discount includes: (1) The Expense Exhibits to the SRA must show the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year; (2) a determination of whether the approved insurance provider had an efficiency and the amount of premium discount that can be paid in any state; (3) whether the amount of premium discount determined by the approved insurance provider exceeds the amount determined by RMA; and (4) whether the approved insurance provider has complied with all requirements of the rule.

9. Disapproval. RMA has revised the existing procedures and combined them

with the review and approval process as stated above.

10. Requirements After Approval of a Premium Reduction Plan. The current procedures specify that all procedural issues, problems, etc. will be addressed by the approved insurance provider; premium discounts must be implemented in accordance with the premium reduction plan; the approved insurance provider is liable for all mistakes, errors, etc. The current procedures also required the approved insurance provider to assist RMA in any reviews conducted to determine whether the efficiency is generated and there is compliance with the premium reduction plan and to make any changes required by RMA. These provisions have been basically retained in the interim rule, although modified slightly to reflect that premium discounts are based on actual cost savings and they now apply after RMA has determined the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan.

RMA has revised the procedures regarding reporting to ensure the information provided is adequate to review and assess the impact on program participants, including small farmers, limited resource farmers, women and minority farmers and on the crop insurance program. RMA will also utilize other information it obtains to monitor compliance with the rule. RMA has also revised the procedures to clarify that farmers will automatically receive the premium discount in those states listed by the approved insurance provider where it is approved to pay premium discounts. RMA has also added provisions making it clear that eligibility for the opportunity to offer a premium discount under the premium reduction plan is only for one reinsurance year and approved insurance providers must reapply for subsequent years.

Additionally, RMA has added provisions requiring agents to notify all existing policyholders or potential policyholders of all the approved insurance providers the agent represents that are eligible for the opportunity to offer a premium discount. As stated above, this is to help ensure that all farmers in states where premium discounts may be available to have access to such discounts. Further, RMA added provisions specifying that it will closely monitor the approved insurance provider's efforts to market the premium reduction plan to small farmers, limited resource farmers, women and minority farmers to ensure that no unfair discrimination takes place and that if it

is discovered, RMA may take such action as authorized in the rule.

The existing procedure requiring the approved insurance provider to offer a premium reduction plan has been removed and new provisions added giving the approved insurance provider the option of whether to request approval to pay a premium discount in any reinsurance year. However, once approved, the premium discount must be paid in accordance with the rule. The existing procedures regarding the withdrawal of approval have been retained but additional remedies, such as denial of all or part of a premium discount and remedial actions have been added.

11. New Provisions. Unlike the procedures, RMA has added provisions that expressly state the limitations and prohibitions on the premium reduction plan program in order to simplify and clarify the program. Such limitations include a cap on the maximum amount of premium discount RMA may authorize for at least the first two reinsurance years a premium discount is paid, and thereafter unless modified or eliminated by RMA, to allow RMA to evaluate the effect such plan may have on the crop insurance program and ensure that approved insurance providers are not leaving themselves financially vulnerable by cutting their costs too much. This means the cap could be in effect for at least 4 reinsurance years depending on when the premium discount is paid.

RMA has also created a new section that contains provisions regarding the reconsideration of actions taken by RMA and requires appeal of the decision in such reconsideration be made to the Board of Contract Appeals.

A new section has also been added regarding consumer complaints. These provisions provide a mechanism for reporting violations of the interim rule.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. A case for good cause is needed to make a rule effective less than 30 days after publication. Good cause exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this interim rule, it would be contrary to the public interest to delay implementation of the procedures under which approved insurance providers may request to participate in the premium reduction plan under section 508(e)(3) of the Act and seek approval to pay premium discounts if they have attained the requisite efficiency. The public interest is served by this interim rule



because: (1) It will greatly reduce the complexity and the burden on approved insurance providers and RMA to administer the premium reduction plan; (2) it will replace administrative procedures that have been determined by FCIC's Board of Directors to be inadequate because they fail to take into consideration the different business operations of the approved insurance providers; (3) to be given its full effect, the provisions of the interim rule must be implemented as soon as possible because the 2006 reinsurance year began on July 1, 2005; (4) time is needed for approved insurance providers to submit requests to participate in the premium reduction plan, RMA to determine their eligibility to participate, and for agents to be trained ahead of key fall sales closing dates; and (5) approved insurance providers, farmers, and the public will not be disadvantaged by the immediate implementation of the rule.

If RMA is required to delay the implementation of this rule 30 days after the date it is published, there will be inconsistency in the administration of the premium reduction plan for the 2006 reinsurance year because fall planted crops may have to be administered under the existing procedures while spring planted crops would be administered under the interim rule. This will cause confusion in the marketplace and the potential for certain farmers to miss the opportunity to receive a premium discount.

For the reasons stated above, good cause exists to implement this interim rule less than 30 days after the date of publication in the **Federal Register**.

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

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

**Interim Rule**

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400 subpart V, applicable for the 2006 and succeeding reinsurance years, as follows:

**PART 400—GENERAL ADMINISTRATIVE REGULATIONS**

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

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

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

- 2. Revise the heading for subpart V to read as set forth above.
- 3. Amend § 400.700 by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

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

\* \* \* \* \*

(b) The purpose of the premium reduction plan is to foster competition in the crop insurance program, thereby providing producers with an opportunity to receive a premium discount, as authorized in section 508(e)(3) of the Act. RMA has sought to accomplish this purpose, while still maintaining the financial stability of the delivery system and the integrity of the crop insurance program, by implementing a premium reduction plan where approved insurance providers participate in the premium reduction plan by requesting the opportunity to offer a premium discount and later requesting approval from RMA to pay a premium discount if the insurance provider has achieved an efficiency based on the actual savings it has attained through the reinsurance year.

(1) Since the payment of any premium discount is determined based on actual reported cost information for the reinsurance year, and must be approved by RMA, the disclosure to policyholders of the amount of the premium discount and the payment of the premium discount will not occur until after the close of any given reinsurance year.

(2) This premium reduction plan substantially limits the burden on approved insurance providers and RMA and provides for flexibility for approved insurance providers to choose the States in which they will offer premium discounts and vary the amount of premium discount between States.

(3) Under the premium reduction plan, the payment and amount of premium discounts cannot be guaranteed, or identified as to amount or certainty of payment, in advance of the sale of an eligible crop insurance contract. However, producers will have the potential to receive monetary assistance in defraying the costs of their future premium.

**§ 400.701 [Amended]**

■ 4. Amend § 400.701 by revising the definition of “Administrative and

operating (A&O) subsidy” and by adding the definitions of “Administrative and operating (A&O) costs,” “Agent,” “Approved procedures,” “Compensation,” “Efficiency,” “Eligible crop insurance contract,” “Eligible producer,” “Managing General Agent (MGA),” “Plan of Operations,” “Premium discount,” “Profit sharing arrangement,” “Reduction in service,” “Standard Reinsurance Agreement (SRA),” “Third Party Administrator (TPA),” “Underwriting gain,” and “Unfair discrimination” in alphabetical order to read as follows:

**§ 400.701 Definitions.**

\* \* \* \* \*

*Administrative and Operating (A&O) costs.* The costs of the approved insurance provider, and any MGA and TPA, which are directly related to the delivery, loss adjustment and administration of the Federal crop insurance program. Costs associated with the sale or service of catastrophic risk protection (CAT) eligible crop insurance contracts in an amount equal to the loss adjustment expense subsidy for CAT eligible crop insurance contracts, ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer, and payments for the purchase of reinsurance and related credits are not considered as A&O costs.

*Administrative and Operating (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 approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for CAT eligible crop insurance contracts, and any ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer are not considered as A&O subsidy.

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

\* \* \* \* \*

*Approved procedures.* The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board. For purposes of §§ 400.714 through 400.722 only,

approved procedures include all provisions of the SRA.

\* \* \* \* \*

**Compensation.** The total amount of any guaranteed salary or payment, commission, or anything that has a quantifiable value or benefit that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider or its contractor either directly or indirectly through a third party. Payments conditioned upon something other than the underwriting gains of the approved insurance provider are considered as compensation, such as bonuses or other conditional payments or commission based upon whether an agent timely turns in applications, production reports or acreage reports, etc. A profit sharing arrangement will be considered compensation unless and only to the extent that:

(1) Such profit sharing arrangement contains a provision that would require a pro rata reduction in the amount or percentage of profit contained in such arrangement if the total amount of underwriting gain paid by FCIC for the applicable reinsurance year is not sufficient to cover the amount or percentage of profit;

(2) At least one of the required triggers for the payment under the profit sharing arrangement is that the approved insurance provider receives from FCIC an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

\* \* \* \* \*

**Efficiency.** Monetary savings realized when the approved insurance provider's A&O costs are less than the amount of the A&O subsidy paid by FCIC. If the approved insurance provider is reducing agent compensation as a means to achieve an efficiency, not all of the efficiency can come from such reduction in agent compensation. Efficiency does not include any actual or projected underwriting gain earned from the SRA, private reinsurance revenues or expenses, or any investment returns on the approved insurance provider's reserves.

**Eligible crop insurance contract.** An insurance contract for an agricultural commodity authorized by the Act and approved by FCIC, with terms and

conditions in effect as of the applicable contract change date, which is sold and serviced consistent with the Act, FCIC regulations, and approved procedures having a sales closing date within the reinsurance year, and with an eligible producer.

**Eligible producer.** A person who has an insurable interest in an agricultural commodity, who has not been determined ineligible to participate in the Federal crop insurance program, and who possesses a United States issued social security number (SSN), employer identification number (EIN), or such other identification as required by RMA.

\* \* \* \* \*

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

\* \* \* \* \*

**Plan of Operations.** The documents and information the approved insurance provider must submit in accordance with section IV.F.2. and Appendix II of the SRA and applicable approved procedures.

**Premium discount.** A payment made by the approved insurance provider to the policyholder to help defray the cost of premium, in an amount equal to the dollar amount or corresponding percentage of net book premium approved by RMA, as authorized by section 508(e)(3) of the Act.

**Profit sharing arrangement.** An arrangement to make a payment to an employee, agent, loss adjuster or other contractor conditioned upon whether the approved insurance provider receives an underwriting gain on the crop insurance business. Payments made to commercial reinsurers or ceding commissions paid to the approved insurance provider for the reinsurance year for the crop insurance book of business are not considered as profit sharing arrangements for the purposes of determining A&O costs or A&O subsidy.

**Reduction in service.** When the approved insurance provider, agent and loss adjuster, or any other contractor or employee of the approved insurance provider that assists in or provides any service for a Federally reinsured eligible crop insurance contract, sells, services or administers such eligible crop insurance contracts at a level of service less than that required under all

applicable regulations and approved procedures. A violation of a provision in an approved procedure will be considered to be a reduction in service.

\* \* \* \* \*

**Standard Reinsurance Agreement (SRA).** The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. All references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement, unless otherwise stated in such reinsurance agreement.

**Third Party Administrator (TPA).** A person or organization that processes claims or performs other administrative services and holds licenses, as applicable, in States in which services are provided with respect to the Federal crop insurance business in accordance with a service contract or an affiliate or any other type of relationship.

\* \* \* \* \*

**Underwriting gain.** For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, including but not limited to payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, service, loss adjustment and administration of the Federal crop insurance program.

**Unfair discrimination.** An approved insurance provider's implementation of the premium reduction plan will be considered unfairly discriminatory to a producer if the availability of eligible crop insurance contracts sold under the premium reduction plan, or the percentage of net book premium upon which the premium discount is paid, is based on the loss history of the producer, the amount of premium earned under the eligible crop insurance contract, the producer's size of the operation or number of acres to be insured, or precludes in any manner producers from participating in the premium reduction plan in a State where an approved insurance provider is eligible for the opportunity to offer a premium reduction plan.

\* \* \* \* \*

■ 5. Add a new § 400.714 to read as follows:

**§ 400.714 Requests for the opportunity to offer a premium discount.**

(a) To participate in the premium reduction plan, approved insurance providers must make a request to RMA for the opportunity to offer a premium discount for the reinsurance year in accordance with § 400.716.

(b) If RMA determines that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan for the reinsurance year, the approved insurance provider will only be allowed to pay a premium discount if:

(1) The approved insurance provider has submitted the required information applicable for that reinsurance year in accordance with § 400.720;

(2) The approved insurance provider has demonstrated to RMA that it has operated sufficiently below its A & O subsidy to support the payment of such discount; and

(3) RMA has approved the dollar amount, and the corresponding percentage of net book premium, for the premium discount.

(c) For the 2006 reinsurance year:

(1) For an approved insurance provider with an approved SRA for the 2005 reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than August 4, 2005; and

(2) For an approved insurance provider that did not have an approved SRA for the 2005 reinsurance year and did not request such agreement until after the deadline contained in paragraph (c)(1) of this section, requests for the opportunity to offer a premium discount must be provided with the application for approval of a SRA.

(d) For all subsequent reinsurance years:

(1) For an approved insurance provider with an approved SRA for the previous reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than April 1 before the reinsurance year, or the date RMA otherwise determines the Plan of Operations is due; and

(2) For an approved insurance provider that did not have an approved SRA for the previous reinsurance year and did not request such agreement until after the deadline contained in paragraph (d)(1) of this section, requests for the opportunity to offer a premium discount under the premium reduction plan must be provided with the application for approval of a SRA.

(e) Any request for the opportunity to offer a premium discount under the premium reduction plan that is not

submitted by the applicable deadlines contained in paragraphs (c) and (d) will not be considered until the next reinsurance year.

(f) The request for the opportunity to offer a premium discount under the premium reduction plan must be sent to the Director, Reinsurance Services Division (or designee).

■ 6. Add a new § 400.715.

**§ 400.715 Limitations and prohibitions.**

(a) For the first two reinsurance years that RMA approves the payment of a premium discount, the approved insurance provider may not pay a premium discount under the premium reduction plan to a producer greater than 4.0 percent of the net book premium for the eligible crop insurance contract. For subsequent reinsurance years, the 4.0 percent of the net book premium for the eligible crop insurance contract will remain the maximum amount of premium discount authorized to be approved by RMA unless otherwise stated by RMA.

(b) All premium discounts must be based on an actual accounting of efficiencies achieved by the approved insurance provider for the reinsurance year and may not be distributed to policyholders until the payment and the amount of such discounts have been approved by RMA in writing in accordance with § 400.720.

(c) The approved insurance provider may not impose any term or condition upon the distribution or amount of any premium discount (such as conditioning the premium discount based upon the renewal of the eligible crop insurance contract with the approved insurance provider or not having a loss for the crop year), except those included in §§ 400.714 through 400.722.

(d) Premium discounts under the premium reduction plan are not available for:

(1) Eligible crop insurance contracts at CAT level of coverage; and

(2) Ineligible producers.

(e) No approved insurance provider or its representatives, agents, employees or contractors may advertise or otherwise communicate to any producer the availability, potential availability, or existence of:

(1) The opportunity to offer a premium discount under the premium reduction plan until the approved insurance provider receives written notice from RMA that it is eligible for the opportunity to offer a premium discount;

(2) A specific amount of premium discount prior to such amount being approved in writing by RMA in accordance with § 400.720; and

(3) Past or projected ability of the approved insurance provider to operate at less than the approved insurance provider's A&O subsidy.

(f) After RMA has determined that the approved insurance provider is eligible for the opportunity to offer a premium discount in a State, the approved insurance provider and its representatives, agents, employees or contractors may advertise and communicate to producers that there is an opportunity for the approved insurance provider to offer a premium discount in that State and:

(1) If they advertise or otherwise communicate that there is an opportunity to offer a premium discount in that State, such advertisements or other communications:

(i) Can only state the dollar amounts or corresponding percentage of net book premium of premium discount actually paid to producers in the State for each reinsurance year for which the approved insurance provider paid a premium discount; and

(ii) Must contain a prominently displayed disclaimer that:

(A) States "The past payments of premium discounts are not a guarantee that future payments will be made or an indication of the amount of future premium discounts"; or

(B) States a similar statement that must be approved in writing by RMA; and

(2) RMA may impose a sanction authorized in § 400.719(j) if:

(i) RMA determines that the approved insurance provider or its representative, agent, employee or contractor is not in compliance with the provisions of this section; or

(ii) Any State regulatory authority determines that an approved insurance provider or its representatives, agents, employees or contractors has violated any State law regarding the advertising, marketing or solicitation of customers with respect to a premium discount under the premium reduction plan.

(g) The approved insurance provider shall not distribute any premium discount payment:

(1) Until the dollar amount, and corresponding percentage of net book premium, for the premium discount have been approved by RMA in writing (For example, RMA may approve a dollar amount of premium discount in a State of \$500,000, which corresponds to a percentage of premium discount of 3% of the net book premium for the State); and

(2) In an amount that is greater than the dollar amount, and corresponding percentage of net book premium, for the premium discount approved by RMA.

(h) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount in a State:

(1) All producers insured by the approved insurance provider in that State for the corresponding reinsurance year will automatically receive that percentage of net book premium of premium discount (For example, if an approved insurance provider is approved to pay a percentage of premium discount of 3% of the net book premium for efficiencies attained during the 2006 reinsurance year in a State, all producers insured with that approved insurance provider during the 2006 reinsurance year in that State will receive a premium discount that is 3% of the net book premium for their eligible crop insurance contract); and

(2) That same RMA approved premium discount percentage of net book premium must be paid for all crops, coverage levels except the CAT coverage level, and plans of insurance written by the approved insurance provider in that State.

(i) The approved insurance provider must be in compliance with all requirements of the approved procedures to be able to pay a premium discount.

■ 7. Add a new § 400.716.

**§ 400.716 Contents of the request for the opportunity to offer a premium discount.**

Each request for the opportunity to offer a premium discount under the premium reduction plan must include all of the following:

(a) The name of the approved insurance provider; the person who may be contacted for further information regarding the request for an opportunity to offer a premium discount under the premium reduction plan; and the person who will be responsible for the administration of the premium reduction plan.

(b) A list of the States where the approved insurance provider wants the opportunity to offer a premium discount under the premium reduction plan.

(c) A detailed marketing plan that describes how the approved insurance provider will promote the premium reduction plan to all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers. With respect to the marketing plan, it must:

(1) Identify and utilize the appropriate media with the capacity to reach all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority

producers, in the State in which the premium reduction plan will be offered, such as advertising through farm journals, farm radio, community based organizations, etc.;

(2) Be in addition to any solicitation or advertising done by agents of the approved insurance provider; and

(3) Contain a certification by the person responsible for signing the SRA that any cost saving measures will not result in a reduction in service to any producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers in the State in which the premium reduction plan will be offered.

(d) A report of the total dollar amount of premium discount and the corresponding premium discount percentage by State paid for the previous reinsurance year (Such report must be provided to RMA not later than 15 days after making the premium discount payments); and

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

■ 8. Add a new § 400.717.

**§ 400.717 New approved insurance providers.**

There may be instances where a new approved insurance provider is entering the crop insurance program for the first time and such approved insurance provider is not affiliated with an MGA, a TPA, another approved insurance provider, or any other entity that possesses the infrastructure necessary to deliver the crop insurance program, that is currently or has previously participated in the crop insurance program.

(a) In such instances, the one time start-up costs that are associated with entering the crop insurance business (e.g., creation of a claims system, interface with RMA's data acceptance system, initial marketing costs, set up charges) must be included in the Expense Exhibits required by the SRA, or the applicable regulations or approved procedures, but the costs may be amortized in equal annual amounts for a period of up to three years for the purpose of determining the efficiency on the documents described in § 400.720, in a manner determined by RMA.

(b) If the approved insurance provider is affiliated with a MGA, a TPA, another approved insurance provider that previously participated in the crop insurance program but such MGA, TPA, or other approved insurance provider can demonstrate that it no longer has the infrastructure to operate the program, the FCIC Board of Directors, in

its sole discretion, can authorize the amortization of start-up costs in accordance with paragraph (a) of this section.

■ 9. Add a new § 400.718.

**§ 400.718 RMA Review**

If an insurance provider requests eligibility for the opportunity to offer a premium discount under the premium reduction plan:

(a) For the 2006 reinsurance year, RMA will notify the approved insurance provider not later than 30 days after the date the approved insurance provider submits its request for eligibility for the opportunity to offer a premium discount under a premium reduction plan, whether it is eligible.

(b) For all subsequent reinsurance years, RMA will notify the approved insurance provider at the same time it approves the Plan of Operations whether it is eligible.

(c) An approved insurance provider may be determined to be eligible for the opportunity to offer a premium discount under the premium reduction plan if, in the sole determination of RMA, all of the following criteria are met:

(1) All information required in § 400.716 is included in the request for the opportunity to offer a premium discount under the premium reduction plan;

(2) The marketing plan is designed to be effective at reaching all producers in the State, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers;

(3) The implementation of any activities to enable the approved insurance provider to pay a premium discount does not impede the approved insurance provider's ability to comply with all requirements of the approved procedures, law, and regulation;

(4) There must be a reasonable assurance that producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, insured by the approved insurance provider will not experience a reduction in service;

(5) The insurance provider can demonstrate that it is operationally and financially capable and ready to serve, all producers in that State; and

(6) The approved insurance provider's resources, procedures, and internal controls are adequate to provide a premium discount under the premium reduction plan, make approved premium discount payments in a timely manner, prevent unfair discrimination,

and comply with all applicable laws, regulations and approved procedures.

(d) If the approved insurance provider is determined by RMA to be eligible for the opportunity to provide a premium discount under the premium reduction plan, the approved insurance provider will be notified in writing by the Director, Reinsurance Services Division, or a designee or successor.

(e) Notification that an approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan is not a guarantee that a premium discount payment will be approved by RMA for the reinsurance year. Approval of a premium discount cannot be provided by RMA until the actual A&O costs and A&O subsidy are reported for the reinsurance year and RMA determines that all the requirements of §§ 400.714 through 400.722 have been met.

■ 10. Add a new § 400.719.

**§ 400.719 Terms and conditions for the Premium Reduction Plan.**

The following terms and conditions apply to all approved insurance providers that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan:

(a) RMA's determination that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan will only be effective for one reinsurance year. Approved insurance providers must reapply each reinsurance year in accordance with §§ 400.714 through 400.716.

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

(c) The agents employed or under contract with an approved insurance provider that RMA has determined is eligible for the opportunity to offer a premium discount under the premium reduction plan must disclose to all producers, insured with the agent or inquiring about insuring with the agent, in writing the names of all approved insurance providers that the agent represents that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan.

(d) The approved insurance provider must provide to the Director, Reinsurance Services Division semi-annual reports, or more frequent reports as determined by RMA, that, along with other information obtained by RMA, permit RMA to accurately evaluate the

effectiveness of the approved insurance provider's implementation of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain for each State listed by the approved insurance provider under § 400.716(b):

(1) The number of small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers making application; and

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

(e) RMA will monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers.

(1) RMA may compare the composition of the approved insurance provider's book of business in a State with the composition of the books of business of other approved insurance providers in that State to assist in determining whether the marketing plan has been effective or there is credible evidence of unfair discrimination by the approved insurance provider or its agents.

(2) If at any time RMA determines that the marketing activities of the approved insurance provider are not effective in reaching small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or there is credible evidence of unfair discrimination by the approved insurance provider or its agents in any State listed by the approved insurance provider under § 400.716(b), RMA will take the appropriate action authorized in paragraph (j) of this section (Remedial measures may include additional targeted advertising by the approved insurance provider or other appropriate measures to ensure the insurance provider is adequately serving small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or that such unfair discrimination has been discontinued and corrective action taken).

(f) In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(g) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount for a State in accordance with § 400.720, it will be applicable to the reinsurance year in which the efficiencies were attained and the approved insurance provider must pay that dollar amount, and corresponding percentage of net book premium, for the premium discount to its policyholders in that State for that reinsurance year. If the approved insurance provider fails to pay this amount, the approved insurance provider:

(1) Will not be eligible for the opportunity to offer a premium discount for the reinsurance year immediately following RMA's approval of the payment of a premium discount; and

(2) Must disclose in all its promotional and advertising material that it was approved to pay a premium discount by RMA but elected not to pay such discount, unless approval to pay the premium discount was withdrawn by RMA, for the next two reinsurance years subsequent to the failure to pay the premium discount.

(h) For policyholders that were insured with the approved insurance provider in the reinsurance year from which the approved premium discount is applicable but are not currently insured with the approved insurance provider, any premium discount payments must be sent to the last known address of the policyholder.

(i) The approved insurance provider and its representatives, agents, employees and contractors must fully cooperate with RMA and any State or Federal government agencies in any review of the operations or activities of the approved insurance provider and its representatives, agents, employees and contractors, with respect to the premium reduction plan.

(j) At its sole discretion and upon written notice, RMA may withdraw a determination of eligibility for the opportunity to offer a premium discount under the premium reduction plan or approval of all or a part of a premium discount payment, preclude eligibility for the opportunity to offer a premium discount, or otherwise participate, under the premium reduction plan for a period determined by RMA commensurate with offense, take such other actions as authorized under the SRA, or require appropriate remedial measures as determined by RMA, if RMA determines that:

(1) Any approved insurance provider or its representative, agent, employee or contractor has failed to comply with any term or condition contained in 7 CFR 400.714 through 400.721; or

(2) The payment of a premium discount could adversely affect the financial or operational stability of the approved insurance provider, its MGA or TPA as required by applicable regulations or approved procedures.

(k) The insurance provider may be held solely responsible for the actions of its representatives, agents, employees or contractors with respect to any violation of any term or condition contained in §§ 400.714 through 400.721 or action under paragraph (j) of this section may be taken individually against the insurance provider or its representatives, agents, employees or contractors.

■ 11. Add a new § 400.720.

**§ 400.720 Standards for approval of a premium discount.**

For approval of a premium discount:

(a) If the approved insurance provider intends to offer a premium discount in a State listed by the approved insurance provider under § 400.716(b) based on efficiencies attained during the reinsurance year, the approved insurance provider must, not later than December 31 after the annual settlement for the reinsurance year, submit to RMA:

(1) An audit, in a format approved by RMA, of the Expense Exhibits provided with the Plan of Operations, and the estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits, certified by an independent certified public accountant with experience in insurance accounting, who must certify to the accuracy and completeness of the costs stated therein and the Expense Exhibits' conformance with the requirements of the SRA (The costs associated with such audit and certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's A&O costs for the purposes of determining an efficiency);

(2) A detailed description of all profit sharing arrangements that the approved insurance provider claims are not to be included as compensation (RMA reserves the right to request copies of such profit sharing contracts or other agreements); and

(3) The dollar amount, and corresponding percentage of net book premium, for the premium discount that the approved insurance provider will pay in the State.

(b) RMA will use the Expense Exhibits required to be submitted as part of the Plan of Operations to determine:

(1) Whether the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year for the entire book of business; and

(2) The actual dollar amount of efficiency attained by the approved insurance provider for the reinsurance year for each State where the approved insurance provider was eligible for the opportunity to offer a premium discount under the premium reduction plan. The dollar amount of efficiency and the dollar amount, and corresponding percentage of net book premium, for the premium discount must be prepared and submitted in accordance with approved procedures.

(i) For the 2006 reinsurance year, such approved procedures will be issued within 5 days after July 20, 2005; and

(ii) For all subsequent reinsurance years, such procedures will remain in effect unless revised and if such approved procedures will be revised, these approved procedures will be issued not later than January 1 before the start of the reinsurance year.

(c) For each State listed by the approved insurance provider under § 400.716(b) for which the insurance provider requests approval to pay a premium discount, RMA will compare the dollar amount, and corresponding percentage of net book premium, for the premium discount determined in accordance with applicable approved procedures with the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider.

(d) RMA may approve the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider if and to the extent that:

(1) The dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider does not exceed the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section; and

(2) If all other requirements of §§ 400.714 through 400.722 have been met.

(e) If the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider exceeds the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section, the approved insurance provider will be limited to paying the dollar amount, and corresponding percentage of net book

premium, for the premium discount determined by RMA.

■ 12. Add a new § 400.721

**§ 400.721 Determinations and reconsiderations.**

(a) If RMA takes any action authorized in § 400.719(j), the Director, Reinsurance Services Division, or a designee or successor will notify the approved insurance provider or its representatives, agents, employees or contractors against whom such action is taken, as applicable, in writing:

(1) Of the action taken;

(2) The date such action is effective; and

(3) The basis for such action.

(b) If eligibility for the opportunity to offer a premium discount, or to participate, under the premium reduction plan is withdrawn, the approved insurance provider or agent, as applicable, must notify its policyholders it is no longer eligible to offer a premium discount, cease any advertising or other communication regarding a premium discount effective for the next sales closing date, and no premium discount may be distributed to any producer of the insurance provider or agent, as applicable, for the reinsurance year.

(c) If notice is provided under paragraph (a) of this section to an approved insurance provider or its representatives, agents, employees or contractors:

(1) The approved insurance provider or its representatives, agents, employees or contractors, as applicable, may request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days of the date stated on the notice provided in paragraph (a) of this section;

(2) Such request must provide a detailed narrative of the basis for reconsideration; and

(3) The Deputy Administrator of Insurance Services, or a designee or successor will issue its reconsideration decision not later than 45 days after receipt of the request for reconsideration.

(d) Reconsideration decisions issued in accordance with paragraph (c) of this section are considered as final administrative determinations rendered under § 400.169(a) and if the approved insurance provider or its representatives, agents, employees or contractors who received such reconsideration decision disagrees with this final administrative determination, it may appeal in accordance with § 400.169(d).

(e) If eligibility to offer a premium discount plan has been withdrawn by RMA under § 400.719(j), the approved insurance provider may request eligibility for the opportunity to offer a premium discount for the next applicable reinsurance year if the condition which was the basis for such withdrawal has been remedied.

■ 13. Add a new § 400.722.

**§ 400.722 Consumer complaints.**

Consumer complaints regarding an approved insurance provider's violation of the requirements of §§ 400.714 through 400.721 should be sent in confidence to RMA, attention: The

Director of the Reinsurance Services Division, or a designee or successor.

(a) Consumer complaints must include:

(1) A specific citation of the requirement in §§ 400.714 through 400.721 that has allegedly been violated;

(2) A detailed listing of the actions alleged to have taken place that violate the requirement;

(3) Specific identification of persons involved in the violation, and

(4) The date, place and circumstances under which such violation allegedly occurred.

(b) Any complaint that does not meet the requirements in paragraph (a) of this section may be returned to the sender

for further details before RMA can pursue investigation of the complaint.

(c) RMA may seek additional information to assist in investigating the complaint.

(d) If RMA's investigation determines there has been a violation of a requirement in §§ 400.714 through 400.721, it may take the appropriate action authorized under § 400.719(j).

Signed in Washington, DC, on July 13, 2005.

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

*Manager, Federal Crop Insurance Corporation.*

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