

Proposed Rules

Federal Register

Vol. 76, No. 4

Thursday, January 6, 2011

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563-AC28

General Administrative Regulations; Good-Performance Refunds

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations by adding a new subpart Y to provide a Good-Performance Refund (GPR) to producers who have demonstrated favorable crop insurance performance evidenced by a very limited number of claims experienced over a specified number of years participating Federal crop insurance programs. The GPR will recognize an individual producer's contributions to favorable program performance as authorized under section 508(d)(3) of the Federal Crop Insurance Act (Act). In addition, new or beginning producers demonstrating favorable crop insurance performance may also be recognized for initial participation in the program.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 21, 2011 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled "Good-Performance Refund Proposed Rule", by any of the following methods:

- *By Mail to:* Leiann Nelson, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0801, P.O. Box 419205, Kansas City, MO 64141-6205.

- *By Express Mail to:* Leiann Nelson, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801,

9240 Troost Avenue, Kansas City, MO 64131-3055.

- *E-Mail:* DirectorPDD@rma.usda.gov.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT:

Leiann Nelson, Senior Underwriter, Product Management, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7394.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Impact Analysis

A Regulatory Impact Analysis has been completed and is available to interested persons from the Kansas City address listed above. In summary, the analysis finds that the benefits of Good Performance Refunds will outweigh the expenses of the program. Good Performance Refunds will return a portion of producer paid premium back to producers who purchase crop insurance for their risk management needs, pursue loss prevention and loss reduction methods, and demonstrate good farming practices, providing, in effect, a premium discount to individual producers demonstrating a series of good years with very few losses in their insurance history.

The Good Performance Refund program will specifically encourage sound management practices as well as encouraging insured producers to continue participation in the crop insurance program. Benefits to insured's who qualify for the program based on their individual number of insured years and losses, will be cash refunds of premium based on their out-of-pocket premium amount. Cash refunds are estimated on average to be slightly over \$1,000 for the 2011 refund and will vary annually depending on the number of producers qualifying, and, once qualified, the individual insured's

number of years of insurance history and amount of insurance purchased. The return of some previously paid premium dollars may be used to offset anticipated increases in the costs of production inputs or higher crop insurance premiums due to higher crop prices and, in some cases, higher volatility of prices. With these higher anticipated costs, these benefits allow producers to continue purchasing higher levels of crop insurance.

The GPR program will, additionally, encourage insureds not to claim small or insignificant losses so they may qualify for a refund later. Small losses present administrative costs to insurance providers, the government, and taxpayers that can add up program-wide. Any reduction of these types of losses can result, long-term, in decreases in administrative costs of the program as well as possible decreases for future premium rates and corresponding subsidy amounts, thus benefiting insureds, insurance providers, the government and taxpayers.

GPR costs to the government are estimated at \$75 million annually.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), there are no paperwork implications involved with this rule.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. GPR payments for the Federal crop insurance program are calculated using the same method for all producers regardless of the size of their farming operation. The amount of work required of the insurance companies will not increase because the information must already be collected under the present regulations, policies and procedures approved by the FCIC and by the Risk Management Agency of the United States Department of Agriculture (RMA), and the GPR payments will be issued by RMA on behalf of FCIC. 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 requires 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 preempt State and local

laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

Background

Section 508(d)(3) of the Federal Crop Insurance Act (Act) authorizes the Federal Crop Insurance Corporation (FCIC) to provide a performance-based premium discount to a producer of an agricultural commodity who has good insurance or production experience relative to other producers of that agricultural commodity in the same area and as determined by the FCIC.

The proposed rule will implement a GPR program to producers meeting the qualifications for years of participation in the Federal crop insurance program combined with a limited number of losses, demonstrating favorable program performance. In addition, any new or beginning producers may be recognized for initial participation in the program who also demonstrated favorable program performance.

GPR payments will not exceed \$75 million unless FCIC makes an announcement of an alternative amount in a notice published in the Federal Register. Based on the net paid premium of qualifying producers and the total amount designated for GPR payments, a premium percentage will be determined to apply to all producers who meet the program qualification requirements.

Good cause is shown to provide a shortened comment period because the provisions of this rule are straightforward, so a shortened comment period still allows enough time for the public to provide meaningful comments.

While the premium to purchase buy-up levels of coverage in the Federal crop insurance program already receive substantial subsidies, these subsidies are not tied to an individual producer's performance. The good performance refund will provide a tool to encourage producers to mitigate small losses.

Producers will soon be making decisions regarding the upcoming crop year so knowing and understanding the benefits of this rule will allow producers to take more timely actions to

purchase the necessary buy-up levels of coverage required for qualification for a good performance refund, and to reduce or prevent small losses that could otherwise jeopardize their future qualifications for such refund. To the extent losses are mitigated or reduced in the Federal crop insurance program, premium rates also may be lower, in turn reducing program costs to producers, the government, and taxpayers.

A longer comment period, such as a 60 day period, would delay the implementation of this rule and the payment of any refunds hereunder, until well after the normal spring planting season for most 2011 crops. By delaying these refunds, producers will not be able to use them to help finance their 2011 spring operations. In addition, in the coming weeks, producers will be making decisions regarding the upcoming crop year so knowing and understanding the benefits of this rule will allow producers to take more timely actions to purchase the necessary buy-up levels of coverage required for qualification for a good performance refund, and to reduce or prevent small losses that could otherwise jeopardize their future qualifications for such refund. To the extent losses are mitigated or reduced in the crop insurance program, premium rates also may be lower, in turn reducing program costs to producers, the government, and taxpayers.

The agency believes that requirements governing the payment of a good performance refund are straightforward. There are a limited number of ways that such refunds can be provided within the context of the Federal crop insurance program. Therefore, a lengthy delay of implementation of the program is unnecessary and contrary to providing the benefits to producers receiving these refunds in time for them to be used to help finance their spring 2011 operations. For the reasons stated above, good cause is shown to limit the comment period to 15 days for this rule as a lengthy comment period is not practicable and would be contrary to the public interest.

The GPR is applicable to the 2011 and succeeding calendar years as long as funds are available for GPR payments.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to add a new

subpart Y to 7 CFR part 400 to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart Y—Good-Performance Refunds

Sec.

- 400.800 Basis and applicability.
- 400.801 Definitions.
- 400.802 Eligibility requirements.
- 400.803 New or beginning producers.
- 400.804 Payments.
- 400.805 GPR announcements.

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

Subpart Y—Good-Performance Refunds

§ 400.800 Basis and applicability.

(a) The regulations contained in this subpart describe the eligibility requirements, rules, and criteria for receiving a Good-Performance Refund (GPR).

(b) GPR payments will be made annually generally during the first quarter of the calendar year, provided funds are available.

§ 400.801 Definitions.

Base period. A period of crop insurance program performance used to determine an individual producer's net paid premium including the base year and nine years prior to the base year. For example: If the base year is 2009, the base period includes years 2000 through 2009.

Base year. The last crop year that has been completed and all claims would normally have been paid. The base year is used to establish the base period. For example: A payment for the 2011 calendar year will be based on information containing the producer's crop insurance experience with a base year of 2009 because claims for the 2010 crop year would not all have been finalized. For a 2012 calendar year payment the base year would be 2010.

Buy-up coverage level. A level of coverage greater than catastrophic risk protection. This level of insurance may also be referred to as "additional coverage."

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

Net paid premium. For the base period, total premium for all crops and units insured by the producer less the total premium subsidy and any indemnities received. Indemnities will include all payments for all claims except those designated as replant payments.

New or beginning producers. A producer who has not participated in

any farming or ranching operation, either as a primary entity or as a person having a SBI in the operation, for any crop year prior to the two crop years immediately preceding the base year. Example: New or beginning producers for a GPR payment authorized for the 2011 crop year could have been involved as a primary operator or a SBI in any farm or ranch in 2007, 2008, and 2009 but could not have been a primary operator or have a SBI in any farm or ranch for any crop year prior to 2007.

Percentage of net paid premium. A percentage determined by FCIC and used to calculate the GPR, based on the total funds determined by FCIC to be available for the GPR program and the total net paid premium of all qualified producers. The percent of net paid premium will not exceed 15 percent. (The percentage of net paid premium is adjusted to account for the minimum and maximum allowable payments and new or beginning producer payments.)

Positive net paid premium. When the net paid premium is greater than one.

Substantial beneficial interest (SBI). Has the same meaning as contained in section 1 of the Basic Provisions and any applicable procedures.

§ 400.802 Eligibility requirements.

To be eligible for a GPR payment, a producer must:

(a) Have been a participant in any Federal crop insurance program at the buy-up coverage level for at least one insurance policy that earned premium for the base year.

(b) Not be determined to be ineligible in accordance with the Basic Provisions or subpart U of this part, for the crop year subsequent to the base year. For example, if the 2009 crop year is the base year, the insured must not be determined to be ineligible for the 2010 crop year.

(c) Have used the same social security number or employer identification number to identify the primary insured entity throughout the base period.

(d) Meet the following good-performance requirements of:

(1) In the case of a producer with seven to ten years of program participation during the base period:

(i) Not more than 1 year with a reported loss, and

(ii) Have a positive net paid premium for the program participation period; or

(2) In the case of a program with four to six years of program participation during the base period of having no years with a reported loss.

§ 400.803 New or beginning producers.

(a) New or beginning producers will be eligible for a GPR payment for any

given year when GPR payments are made, unless FCIC publishes an announcement, as specified in § 400.805, stating otherwise.

(b) New or beginning producers must meet the requirements of §§ 400.802(a), (b), and (c).

(c) New or beginning producers will be required to sign a certification statement that they meet the requirements to be designated as a new or beginning producer in order to be eligible for a GPR payment.

(d) New or beginning producers must demonstrate favorable program performance by participating in the Federal crop insurance program for the most recent one to three years of the base period, and have a positive net paid premium for that period of participation.

§ 400.804 Payments.

(a) Aggregated premium and indemnity for all crops insured in all counties under a qualifying producer's social security number or employer identification number will be used to calculate the GPR.

(b) Except as provided herein, in the case of a new or beginning producer, the net paid premium percentage will be reduced by 50 percent of the percentage paid to producers who are not new or beginning. For example: If the percent of net paid premium is 8 percent for producers who are not new or beginning producers, then new and beginning producers will receive a GPR of 4 percent of net paid premium, unless an adjustment is needed due to a larger number of certifying new or beginning producers than is anticipated.

(c) GPR payments under this section will not exceed \$75 million. If amounts to be paid exceed \$75 million due to a larger than anticipated number of producers that certify they are new or beginning, then FCIC will adjust the percentage refund for new or beginning producers, contained in paragraph (b) of this section, downward.

(d) Subject to paragraph (e) of this section, GPR payments will be calculated as follows:

(1) For producers, other than new or beginning producers, multiply the percent of net paid premium by the individual producer's net paid premium; and

(2) For new and beginning producers, multiply the percent of net paid premium by .50, unless adjusted in accordance with paragraph (c) of this section, and then multiply the result by the individual producer's net paid premium.

(e) A GPR payment will:

(1) Not be made unless it is at least \$25; and

(2) Be capped at \$25,000 for calculated GPR payments larger than \$25,000, regardless of the calculated payment.

(f) All GPR payments will be considered final with no adjustments, modifications, additions or deletions, except as specified in paragraphs (g) and (h) of this section, and will be based on data contained in the RMA crop insurance database as of the end of the first full week in January of the year the GPR payment is authorized, unless FCIC publishes an announcement in accordance with § 400.805 providing a different date. For example: For GPR payments made for the 2011 calendar year, the data used would be as of the end of the first full week in January 2011.

(g) Any qualifying producer involved in arbitration, litigation, or mediation will not receive a payment until the legal proceedings have been resolved.

(h) If a producer receives a GPR payment under this subpart and is determined to be ineligible for the crop year subsequent to the base year or is at any time determined to not meet the requirements of § 400.803, the GPR payment must be repaid to FCIC in accordance with section 24 of the Basic Provisions and any applicable procedures.

§ 400.805 GPR announcements.

FCIC will post information on the RMA Web site, at <http://www.rma.usda.gov> or a successor Web site, to provide the public with information regarding the GPR for a calendar year.

Signed in Washington, DC, on January 3, 2011.

William J. Murphy,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011-14 Filed 1-4-11; 11:15 am]

BILLING CODE 3410-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 90-NM-267-AD]

RIN 2120-AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model G-1159 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) to supersede an existing AD, applicable to certain Gulfstream Aerospace Corporation Model G-1159 airplanes. The existing AD requires an inspection to detect cracks or corrosion in the wing structure in the area of Fuselage Station (FS) 452 inboard clothespin attachment fitting, and repair if necessary. The proposed AD would have required repetitive inspections to detect corrosion or cracks in the forward and aft wing attach fittings at FS 345 and 452, respectively, and adjacent wing beam and wing plank areas, and repair if necessary; and the application of corrosion protection treatment. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that indicate the aircraft maintenance manual has been revised to include additional inspections that address the unsafe condition detailed in the NPRM and that the full fleet is in compliance with the inspection and applicable repair required by the existing AD. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Carey O'Kelley, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474-5543; fax (404) 474-5606.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to Gulfstream Aerospace Corporation Model G-1159 airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on January 2, 1991 (56 FR 33). The proposed rule would have superseded an existing airworthiness directive (AD 90-13-02, Amendment 39-6660 (55 FR 29008, July 17, 1990)), applicable to certain Gulfstream Aerospace Corporation Model G-1159 airplanes. The existing AD currently requires an inspection to detect cracks or corrosion in the wing structure in the area of Fuselage Station (FS) 452 inboard clothespin attachment fitting, and repair if necessary. The NPRM proposed to require additional repetitive inspections to detect corrosion or cracks in the forward and aft wing attach fittings at FS 345 and 452, respectively, and adjacent wing beam and wing plank areas, and repair if necessary; and the application of corrosion protection treatment. The NPRM resulted from a review of the inspection reports

submitted in response to the existing AD. The proposed actions were intended to prevent significantly reduced structural integrity of the wing/fuselage attachment joint, and the inability to carry flight or ground loads.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, Gulfstream has revised Chapter 5, inspection program (continued airworthiness), of the aircraft maintenance manual (AMM) to include additional inspections that address the unsafe condition detailed in the NPRM. We have also received data that shows full fleet compliance with the inspection and applicable repair required by AD 90-13-02.

FAA's Conclusions

Upon further consideration, the FAA has determined that the actions required by AD 90-13-02 adequately addressed the identified unsafe condition. Therefore, it is not necessary to mandate the repetitive inspections specified in the Gulfstream AMM. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 90-NM-267-AD, published in the **Federal Register** on January 2, 1991 (56 FR 33), is withdrawn.

Issued in Renton, Washington, on December 27, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-54 Filed 1-5-11; 8:45 am]

BILLING CODE 4910-13-P