DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. FCIC–13–0006]

RIN 0563–AC46

Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulation—Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies. The intended effect of this action is to incorporate legislative changes to the Federal Crop Insurance Act (Act) stemming from the Agricultural Act of 2014, clarify existing regulations, lessen the burden on submitters of crop insurance policies, provisions of policies, or rates of premium under section 508(h) of the Act, provide guidance on the submission and payment for concept proposals under section 522 of the Act, provide provisions for submission and approval of index-based weather plans of insurance as authorized by section 523(i) of the Act, and to incorporate changes that are consistent with those made in the Common Crop Insurance Policy Basic Provisions (Basic Provisions).

DATES: This rule is effective September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

This rule finalizes changes to the General Administrative Regulation—Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies (7 CFR part 400, subpart V), that were published by FCIC on February 25, 2015, as a notice of proposed rulemaking in the **Federal Register** at 80 FR 10008—10022. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register.**

A total of 80 comments were received from 10 commenters. The commenters were insurance providers, insurance organizations, grower organizations, crop insurance product developers, and a business council.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated they believe the 508(h) process serves agriculture well. The commenter believes Congress intended the 508(h) process to protect the best interest of most growers through inclusion in the farm bill. As the size of government shrinks, the ability to engage the private sector in creating functional insurance products will grow. In serving the American farmer, and to be consistent with the farm bill, RMA should seek a vibrant and functional regulation that will encourage development of insurance products. A clear regulation would be a step in the right direction.

Response: FCIC agrees with the commenter that the regulation should be written as clearly as possible. FCIC has made a number of changes in the final rule to clarify provisions in the regulation.

Comment: A commenter offered support for the proposed rule. The commenter stated they believe that under the current rules, smaller farmers and organizations are placed at a competitive disadvantage compared to large corporate farms due to the current procedures favoring these bigger businesses. The commenter stated they believe that under the current proposal, these procedures would be simplified to facilitate increased access to FCIC's services by smaller farmers, commodity groups, and others to make it easier for these producers to develop brand new programs. In that light, the commenter also favors the expansion of FCIC's current programs in western Washington to include many crops which are classed as specialty crops and currently not covered by FCIC. The commenter stated they value their agricultural industry in western Washington and the working relationship they have with many of the local farmers. Moreover, the commenter stated they are committed to supporting the small agricultural industry and continuing to work with farmers, especially at the individual and small producer level, in addressing collective interests. The commenter sees the proposed simplification of the procedures and expansion of crops covered as positive and vital steps in a direction that encourages the smaller agricultural businesses in their region.

Response: FCIC appreciates the commenter's support for the Federal crop insurance program.

Comment: A commenter offered a general concern with the 508(h) process, which is that any individual or organization can submit a proposal following the guidelines in these regulations even if they do not plan to write or retain any of the risk for the proposed program. While the submitter must have a commitment in writing from at least one approved insurance provider (AIP) to sell and support the policy or plan of insurance, this is often very informal and the supporting AIP will generally have little or no involvement in the development process of such product. These developers establish all of the terms, conditions, and rates for the proposed program, but often have no exposure to the actual results that may occur from the product that is developed. The AIPs who choose to participate in these approved 508(h) submissions retain the risk for such coverages and suffer the consequences of any flaws or deficiencies that may exist with them. The commenter proposed that the FCIC should allow the opportunity for AIPs who choose to participate in writing these approved 508(h) submissions to reduce their risk exposure for these programs beyond what is currently allowed during the initial years until a credible number of years of experience have been developed to determine the adequacy of the program from both an underwriting and rating standpoint.

Response: FCIC agrees that the current regulations do not contain enough involvement of the AIP in the development process or consideration of the impact of the submission on other AIPs and the delivery system. As a result, FCIC is adding provisions that require a more formal involvement by an AIP in the development process, requiring that an AIP be included as a submitter, and having that AIP and one other independent AIP provide an assessment of marketability, risks, and anticipated impacts on the delivery system. With respect to the risks, AIPs can independently assess the potential risk of a privately developed policy, and based on their own assessment, may choose whether or not to sell the product. AIPs have the option to reduce their risk exposure by assigning higher risk policies to the Assigned Risk Fund under the Standard Reinsurance Agreement (SRA), a fund that significantly limits risk exposure to the AIP and transfers that risk to FCIC.

Comment: A commenter stated that this regulation incorporates language to address the index-based weather plans of insurance, which were authorized by the Agricultural Act of 2014 (2014 Farm Bill). One of the requirements for these products is that they must first be approved by the applicable regulatory authority for the state in which the AIP intends to offer the product. The commenter stated their understanding is that there are currently no states that will approve these type of products as they are considered to be derivative products whereby the product may allow a loss payment to be made even though no physical damage to the crop has occurred. If no states will approve such products, this effectively makes the additional language addressing such index-based weather plans of insurance meaningless. The commenter recommended that the RMA consider not including any reference to index-based weather plans of insurance until such time that a state regulatory authority will approve a product of this nature. Otherwise, the portion of the regulation related to index-based weather products is not implementable.

Response: The proposed rule required that index-based weather plans of insurance must first be approved by the state in which they will be sold prior to FCIC approval. This provision is necessary because these products are not reinsured by FCIC, so the provisions regarding Federal preemption do not apply. Each state will be required to regulate the sale and service of these index-based weather plans of insurance. Regardless of whether any states have previously approved any index-based weather plans of insurance, FCIC is obligated to implement the process for submitting, reviewing, approving, and implementing these products in accordance with the Federal Crop Insurance Act because states may elect to approve such plans of insurance in the future. In such case, for any index-based weather plan of insurance that may be approved by a state, the process to submit, review, approve, and implement such plans of insurance will timely be in place.

§ 400.701—Definitions

Comment: A commenter stated that the definition of ''advanced payment'' as proposed, could be read to allow 50 percent of the development cost after the applicant has begun research and development activities. The commenter contends the intent of the definition is to allow an additional 25 percent advance payment after research and development activities are underway. The phrase ''after the applicant has begun research and development'' should be moved to the end of the definition to eliminate any possible confusion.

Response: FCIC agrees with the commenter and moved the phrase to prevent possible confusion. In addition, FCIC added the 25 percent advance payment requirements from the Federal Crop Insurance Act. These requirements are as follows: (1) The concept proposal will provide coverage for a region or crop that is underserved, including specialty crops; and (2) the submitter is making satisfactory progress towards developing a viable and marketable 508(h) submission. FCIC intended to include these requirements in the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs, but determined it more appropriate to include these in this regulation. However, the evidence necessary to show satisfactory progress, or to determine if the crop or region is underserved, may be included in the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs.

Comment: A commenter stated that the definition of the term ''complete'' is confusing or subjective. The commenter stated the definition of complete in § 400.701 attempts to redefine the word to include unrelated subjects. This can be very confusing, especially because the word complete is hardly a term of art. A better definition of complete would be found in any dictionary. The commenter suggested a 508(h) submission be considered either complete or not complete (although the commenter suggested materiality should be considered) if it contains the required elements in § 400.705. The term ''sufficient quality'' is included within the definition of complete, but is a performance standard. Performance standards are better placed within § 400.705. The inclusion of performance standards within a definition is suspect. Significant effort will be expended to develop concept proposals and 508(h) submissions. In fact, it is a very reasonable assumption that the submitting public will invest tens of thousands of hours (if not hundreds of thousands of hours) in efforts to improve the crop insurance system under this rule. FCIC can support the improvements certain to come out of the private sector by expending relatively small efforts to clearly codify its notion as to what is sufficient quality. The term ''meaningful'' is subjective and should also be removed from the definition. Meaningful should also be described within § 400.705. The commenter suggested the following revised definition of complete: ''a submission, concept proposal, or index-based weather plan of insurance that contains all required documentation shown at § 400.705.''

Response: FCIC disagrees with the commenter that the definition of ''complete'' is subjective. The definition relies on submitters meeting the requirements in § 400.705 and the submission must be of ''sufficient quality'' as defined in § 400.701. Sufficient quality is not a performance standard so much as it is a determination of whether there is adequate information to consider the submission comprehensive enough and complete to allow for a meaningful external reviewer to provide their assessment of the product submitted. The main purpose of a determination of completeness is to determine whether to send the submission for external expert review. Therefore, in addition to providing the required information, it is also necessary that the information provided is of sufficient quality in order for external expert reviewers to conduct a meaningful review and be able to determine if the 508(h) submission meets the standards for approval by the Board. There is a cost for external reviews so sufficient quality of a 508(h) submission is an important consideration for quality external expert reviews that provide the Board with meaningful feedback and analysis, and make prudent use of public funds. The definition in the dictionary would be insufficient to evaluate the information necessary to determine completeness. No change has been made.

Comment: A commenter stated that the definition of ''complexity'' should be eliminated from the final rule. A developer's notion of complexity has little to do with any of the factors considered in the proposed rule. Underwriting complexity arises from the identification and treatment of risk. Tying complexity to the format of existing crop insurance policy materials is naïve. Actuarial complexity resides with the types, quantity and quality of available price and yield data. Crops with significant recorded histories are significantly easier to work with than crops with sparse or scattered data. The proposed methodology has little to do with a complexity determination. In addition, the complexity determination seems to be a discriminatory tool placed against grower organizations needing crop insurance programs. The complexity determination can and will

discourage developers from treating specialty crop insurable risks. Whereas the generally accepted notion of a professional risk manager is to reduce risk, the complexity determination is certain to increase risk for developers precisely where an insurance treatment of risk is often needed. The commenter concludes that the discriminatory complexity determination should be eliminated from the final rule so that all grower groups have equal access to the benefits of crop insurance.

Response: FCIC disagrees with the commenter that the definition of ''complexity'' should be removed. First, the Board is required to consider complexity when assessing the reimbursement of costs under section 522(b)(6) of the Act. Therefore, a standard for determining complexity is required. Second, this provision is neither intended nor expected to discourage development of products for specialty crops. However, the use of the term ''processes'' is unclear and the term has been removed in the final rule and replaced with the phrase ''all other steps required.'' FCIC recognizes the complexity of a product should be reflected in the level of effort it takes to complete a particular submission requirement. The purpose of these provisions is to protect taxpayer dollars by reimbursing developers appropriate amounts to reflect the level of effort and work performed. This allows distinctions to be made between submissions that may simply add a new coverage to an existing policy without changing the policy terms, underwriting, or premium rating and submissions that create whole new plans of insurance that measure risk differently than the yield or revenue based policies available under the Common Crop Insurance Policy (7 CFR part 457) and the Area Risk Protection Policy (7 CFR part 407). Completely new plans of insurance may require new underwriting and loss adjustment handbooks or premium rating methodology and that will be reflected in the research and development for the submission. Presently, regardless of the type of submission, most requests are generally near the same dollar amount, even though the level of work required may not be the same. This gives the Board the discretion to reduce payments to submissions where the costs seem excessive for the amount of work needed. FCIC is revising the provisions in § 400.712(e) by removing the percentage reductions for complexity and scope and giving the Board discretion to make adjustments as required by the Federal Crop Insurance Act based on type of submission and amount of work required and the size of the area proposed to be covered.

Comment: A commenter stated that the definition of ''concept proposal'' stretches into evaluative criteria. The definition introduces a new concept, ''enough information.'' This section of the proposed rule should be limited to the section title, ''Definitions.'' A more accurate definition would be: ''A written proposal for the funding of research and development of a crop insurance plan that will comply with the provisions of this rule and authorized by section 522 of the Act.'' Whether the concept proposal is complete or of sufficient quality are evaluative criteria best managed in their proper location (§ 400.705) and not within the definitions section.

Response: FCIC agrees with the commenter that the proposed use of the phrase ''enough information'' in the definition of ''concept proposal'' is vague and subjective. A better approach would be to reference where the required information is contained. FCIC has revised the definition by removing the phrase ''enough information'' and replacing it with a reference to this regulation and the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs, which can be found on the RMA Web site at *www.rma.usda.gov.*

Comment: A few commenters stated that the definition of ''delivery system'' should be modified. One commenter stated that the phrase ''but is not limited to'' is not a necessary component of the definition and recommended that the phrase be removed from the definition of ''delivery system.'' Several commenters stated that this definition would undermine the private-public partnership that has been the cornerstone of Federal Crop Insurance for 35 years. One of the commenters suggested this definition be stricken from the proposed rule. The commenter stated that when the United States Congress and American agriculture have placed so much responsibility and confidence in Federal Crop Insurance and just recently emphasized and renewed their trust in the context of the 2014 Farm Bill, this provision of the rule, which could very well be used to undermine the entire system, is both perplexing and especially ill-timed.

Response: Congress expressly requires the Board to consider the potential impact on the delivery system. Therefore, a definition of ''delivery system'' is necessary. Consistent with section 508(a)(4)(C) of the Act, the delivery system includes the AIPs. However, there are numerous other entities that are necessary to sell and service policies to producers. Therefore, FCIC agrees with the commenter that the second sentence containing the phrase ''includes but is not limited to'' is not necessary. Therefore, the definition has been retained in the final rule, but the second sentence has been removed.

Comment: A commenter stated that portions of the definition of ''maintenance,'' regarding the addition of a new commodity and concept proposals that are similar to a previously approved 508(h) submission, should be removed. The commenter stated that it seems new insured crops and new concept proposals should be eligible for advance payments and a full four reinsurance years of maintenance expenses in accordance with the Act. The portion of the definition that considers expanding a 508(h) program maintenance, restricts the ability of farmers to receive the benefits of crop insurance. The result is discriminatory because it prevents developers from expanding a program into a new area if the program is successful. For example, developers manage their risk by limiting the scope of the program. USDA rules, rather than encouraging the expansion of crop insurance, in fact cause developers to cautiously approach the development problem. For a developer, risk management may involve limiting the scope of the program to avoid the potential financial losses from having the current arbitrary standards, and the increasingly arbitrary standards shown in this proposed rule, reducing their operating capital. This is particularly a problem given the Board's resistance to expanding approved 508(h) products into other territories due to an over-cautious approach on the part of the Board and a failure to understand the substantive risk the 508(h) process presents to developers. Unfortunately, with this regulation, including this definition of maintenance, the FCIC continues to pressure developers, with the result being fewer growers served by the insurance program.

Response: FCIC disagrees with the commenter that the language in the definition of ''maintenance'' regarding the addition of a new commodity and concept proposals should be removed. FCIC disagrees this language is discriminatory and arbitrary. The language does not prevent the expansion or reimbursement for expanding approved products, but rather it prevents the inappropriate use of limited funds for activities that require little additional effort, work, or

development on the part of the submitter to add additional commodities similar in nature and scope. To the extent that added costs are incurred during an expansion, the submitter is able to request reimbursement of such costs in the maintenance reimbursement. No change made in the final rule.

Comment: A commenter stated the definition of ''marketing plan'' is unnecessary and only serves to confuse reviewers and submitters. A marketing plan is a submission requirement listed in § 400.705. The definition of a marketing plan is redundant and should be struck from the final rule. All requirements for a marketing plan, including a standard for sufficient quality, should be shown in the regulatory language requiring the marketing plan.

Response: FCIC agrees the definition of ''marketing plan'' is somewhat repetitive because much of the information is contained in § 400.705(e) and does not really capture the information that is required to assess the potential marketability of a submission. Since the enactment of the 2014 Farm Bill, marketability is a standard used by the Board in determining whether to approve a submission. Previously, marketability was only considered in the reimbursement of research and development costs. Therefore, FCIC has changed the term to ''marketability assessment'' to more accurately reflect the information necessary. FCIC has also removed the definition and moved the substantive provisions to § 400.705(e).

Comment: Several commenters were concerned the definition of the term ''sufficient quality'' could be interpreted as subjective, confusing, and contains performance standards. The commenters stated that the definition should be transparent, concrete and reasonable. The commenters proposed FCIC revisit the terminology and publish in the final rule definitions that provide clear and measurable standards that can be met by a submitter. One commenter suggested the definition of ''sufficient quality'' should be stricken from the final rule and an actual standard placed with the requirement in § 400.705. A commenter stated the requirement that ''The material book must be presented in Microsoft Office format . . .'' is a submission requirement that belongs in § 400.703—Timing and Format. A commenter stated the phrase ''must contain adequate information for determination to be made whether RMA has the resources to implement, administer and deliver'' is a performance standard that should be contained in § 400.705—Contents for New and Changed Submissions. The commenter stated it seems unlikely that any submitter should be placed in the position of attempting to determine whether FCIC can implement any particular product. Although it seems logical that confusing regulations should be interpreted against the author, when a regulation is confusing, it is likely to be held against the submitter. Under this proposed rule, even if a submitter complies with a reasonable interpretation of the submission requirement and its evaluative standard, the 508(h) submission could be judged as being of insufficient quality. To complicate a regulation with confusing, arbitrary and subjective language is a disservice to the farmers and ranchers whose financial well-being provides purpose for the crop insurance program. The expectation of the FCIC should be described using objective standards so submitters' efforts can match the standard. The lack of a clear definition for sufficient quality allows for arbitrary and possibly even discriminatory decisions. Because there is no clear standard and many of the decisions of the Board are made ''at the sole discretion of the Board or RMA,'' the proposed rule invites disparate treatment of submitters. The final rule should be drafted with clear standards to create a level playing field for all submitters. Because there are only about 12 places where sufficient quality needs to be defined, the commenter strongly encouraged FCIC to expend effort to place its concept of sufficient quality into § 400.705.

Response: FCIC agrees the performance standards included in the proposed definition of ''sufficient quality'' should be located in § 400.705 so that the submitter is aware of the standards by which the product will be measured. FCIC disagrees that the definition of ''sufficient quality'' should be removed because it is confusing or subjective. The definition of ''sufficient quality'' is necessarily subjective because each submission is different, and an objective one-size-fits-all definition would do a disservice to unique submissions that may differ substantially from others. Further, the purpose of the term ''sufficient quality'' is to ensure that there is sufficient data and analysis to support the provisions in the concept or submission, and that the submission is clear, so the Board, RMA, and external expert reviewers can evaluate the submission to determine whether it meets the qualifications for approval. Therefore, the Board, RMA, and external expert reviewers must be able to understand what the submitter has done and why and draw conclusions based on the data, analysis and information provided by the submitter. The definition has been simplified to reflect this, and FCIC removed the reference to, and definition of ''disinterested third party'' because it is really the external expert reviewers, RMA and the Board who have to evaluate concept proposals and submissions. FCIC has also revised the definition of ''sufficient quality'' to clarify the determination is made by RMA and the Board. FCIC agrees the requirement in the definition of ''sufficient quality'' for the material to be presented in Microsoft Office format can be removed because this requirement is contained in § 400.705. FCIC has also added a reference to the Plain Writing Act of 2010 in order to clarify the ''clearly written'' requirement.

Comment: A few commenters stated that the definition of ''viable and marketable'' should be clearer and contain the qualities and standards to be applied. One commenter states the definition of viable and marketable provides for a determination by the Board. The commenter suggested that the determination of viable and marketable should be clear enough so a submitter is able to arrive at the same conclusion as the Board or external expert reviewers regarding the marketability of the proposed product. The lack of a standard is certain to provide divergent views between submitters, the Board, RMA, and the external expert reviewers. Given the number of entities involved in this process and the difficulties and costs involved in producing a 508(h) submission, FCIC should include a clear definition of viable and marketable in the final rule. A commenter stated that the proposed definition of viable and marketable addresses neither viable nor marketable and should be removed in the final rule.

Response: Consideration of whether a submission is ''viable and marketable'' is required by the Act. The requirements of the Act cannot be waived by this regulation. However, to be clearer, separate definitions are provided for ''viable'' and ''marketable'' to reflect the different concepts embodied in each. With respect to marketability, the Board is specifically tasked with making the determination of whether or not a sufficient number of producers will purchase the product to justify the resources and expenses required to offer the product for sale and maintain the product for subsequent years. There is no specific number of producers or dollar amount that could be included in

the definition that would be appropriate for all scenarios. Therefore, it is necessary to give discretion to the Board to make this determination. With respect to viability, the Board needs to make a judgment regarding whether a policy or plan of insurance can be developed into an insurance product meeting actuarial and underwriting standards, and that the new product can be implemented into the market by the delivery system. However, because submissions and markets vary, FCIC is reluctant to create set standards or goals that may not be appropriate in all situations. In addition, no matter what standards are created, external expert reviewers, RMA and the Board may still differ because they may be emphasizing one aspect over the other. For example, actuaries may believe the rates are not viable because they do not reflect the risk but underwriters may believe the policy is viable because it can be developed into a product that can provide meaningful coverage to producers. It is the Board's responsibility to consider all comments and use its best judgment. Costs of development and implementation can be a consideration of the potential to develop the concept proposal or submission into a policy or plan of insurance that can be offered for sale to producers. The Board has received numerous submissions and concept proposals where the original cost estimates are substantially less than the amount of research and development reimbursement actually requested. In some cases, actual costs were more than double the original estimates. Excessive costs may be an indication that a concept or submission may not be viable or marketable.

Given the inaccuracy of the estimates received by the Board, FCIC is revising the provisions to require that submitters provide more accurate estimates of costs, and since this is a consideration of viability, reimbursement may be limited to the estimated amount unless the submitter can justify the additional costs.

§ 400.703—Timing and Format

Comment: A commenter stated that the proposed rule in § 400.703(b)(1) requires 508(h) submissions, concept proposals or index-based weather plans of insurance to be provided in electronic format. The electronic format is required to be in a single document. The commenter stated they appreciate the desire for single documents, but FCIC must recognize that some of the requirements it places on submitters and materials that may be submitted to FCIC with a concept paper, 508(h) submission etc., may include PDF files, Excel files, databases and other forms of documentation that do not fit neatly into a requirement for a single document. The commenter states that as written, the requirement for electronic format in § 400.703 will be difficult to impossible to meet. For example, further within this regulation the agency asks for letters demonstrating support. Those letters are likely to be in PDF format and they will not fit neatly inside a Microsoft word document. Additionally, the commenter asked, how a submitter would place an Excel workbook inside a word document if a submitter wishes to include an Excel workbook. While the commenter stated they appreciate the concern FCIC may have with multiple documents, the proposed solution falls short of solving the problem for all parties involved in the submission process. A different solution, such as a zip file with a control document, seems more appropriate.

Response: FCIC agrees with the commenter that the required information may not conveniently fit into a single document. The purpose of this proposed provision is to assure information is in the correct order and easily locatable by the reviewers. Because PDF files can be converted to Microsoft Word files and Excel files can be embedded in a Microsoft word document, FCIC believes it is possible to provide the required information in a single document. However, FCIC agrees it may not always be practical to embed such files in a single document. For example, an Excel file may have more columns than what will easily fit within the margins of a Word document. Therefore, FCIC has revised the provision by removing the requirement that all required information must be included in a single document. FCIC has replaced this requirement with a requirement to provide a document that contains a detailed index that, in sequential order, references the location of the required information that may either be contained within the document or in a separate file. The detailed index must clearly identify each required section and include the page number if the information is contained in the document or file name if the information is contained in a separate file.

Comment: A commenter stated that the requirement to provide two hard copies in § 400.703(b)(2) directly conflicts with the FCIC stated intention of easing the burden on submitters. This requirement increases the burden on submitters to no benefit for the FCIC. Electronic communication should be preferred and the requirement for hard copies should be eliminated from the final rule. By requiring two hard copies from the submitters, submitters must now keep a store of the appropriate materials necessary to submit the hard copies that are required only by FCIC, allow time for the production of hard copies that provide minor benefit to the FCIC, proceed to the post office or mail store to put the hard copies in the mail, incur the risk of not having the hard copies exactly match the electronic copy, etc. Because FCIC very clearly stated in the preamble to the rule that its intention was to ease the burden on submitters, FCIC should recognize requirement for hard copies increases the burden on submitters and the requirement for hard copies should be eliminated from the final rule. The background material for the regulation indicates that the rule was drafted in part to lessen the burden on submitters by reducing the number of printed copies required. However, what the drafters of the regulation have done increases the effort of submitters. The requirement for materials to be submitted in a three ring binder in subsection (a) with page numbers in section dividers is not at all helpful and does not lessen the burden. The requirement substantially increases the paperwork difficulty for submitters and in so doing contradicts the stated objective of reducing the burden on submitters. This will increase the burden for submitters at no foreseeable benefit for the RMA. A single copy of the electronic document is insufficient for review purposes, therefore the FCIC will need additional copies of the 508(h) submission, presumably from the electronic version, for reviewers. So the gain to FCIC appears to be nil, while the burden on submitters increases. FCIC should drop the requirement for a hard copy altogether and accept electronic copies only because FCIC has already proposed a system whereby it agrees to make copies for its review process.

Response: FCIC proposed to reduce the number of hard copies required to be submitted from six down to two. Therefore, FCIC disagrees with the commenter that the proposal to provide two hard copies increases the burden on submitters. However, FCIC recognizes that removing the requirement for a hard copy to be submitted would further reduce the burden. Therefore, FCIC has revised the final rule to eliminate the requirement for the submitter to provide hard copies. Submitters will be required to submit an electronic copy either by email or on a removable storage device (including CD or USB drive) by mail,

but not both. FCIC has also provided a single email address and a single postal address to avoid duplicative work by submitters and to prevent confusion for FCIC.

Comment: A commenter referenced § 400.703(g), which states that the Board, or RMA if authorized by the Board, shall determine when sales can begin for a 508(h) submission approved by the Board. The commenter recommends that either RMA be given more authority by the Board or that RMA is always authorized by the Board to make determinations when sales can begin for an approved 508(h) submission. A recent example of the problems created by not taking all of the above into consideration is the Livestock Risk Protection (LRP) program for lambs. The insurance year for LRP Lamb starts on July 1 and ends on June 30 of the following year. The LRP program rules require that agents be trained for three hours annually before they are authorized to write a livestock policy. The AIPs generally plan their livestock training for late May and June in order to have their agents properly trained by the time the insurance period begins on July 1. The LRP lamb program was previously developed and written for several years, but was suspended due to some problems with the program. The developers made significant revisions to the program and RMA recently announced that sales would resume on May 4, 2015. The AIPs already scheduled livestock training sessions for their agents for late May and June in preparation for the beginning of the livestock insurance period, which begins on July 1. The commenter notes that submitters have to hold additional training sessions for those agents who wish to write LRP lambs to assure they are aware of all the revisions made to this program. This could have easily been included with the normal training cycle if program sales would have resumed on July 1 instead of May 4. This is a perfect example of problems that occur with releasing a program and not considering the time cycle of the program along with the administrative issues the release causes to the AIPs who will be administering this program. The ideal release date for the revised LRP lamb program would be July 1, which coincides with the start of the insurance period and allows the AIPs to properly train their agents about the LRP lamb revisions made during the normal scheduled time frame for livestock training sessions. In summary, the commenter stated the Board needs to provide RMA with more authority to make the determinations when sales should begin for an approved 508(h) submission. RMA should take into consideration the time cycle of the approved product and the administrative functions AIPs must complete when making the decision of when sales will begin for the approved 508(h) submission. AIPs who choose to participate in these approved 508(h) submissions are the ones responsible for all administrative tasks involved with writing new programs from agent training, computer programming, form development etc. The decision to determine when sales begin should include the administrative tasks completed by the AIPs and the time cycle of the approved 508(h) submission.

Response: While the comment is relevant to the referenced provision, FCIC does not believe changing the provision to give RMA more authority to determine when a 508(h) submission can be implemented will solve the issues identified by the commenter. The problem is that RMA and the Board may not be aware of the types of issues raised by the commenter and submitters are asking for implementation as quickly as possible. In response to this and other comments, FCIC has revised the rule to require applicants to include a marketability assessment from an AIP supporting the submission and that the AIP be more involved in the submission process. FCIC is also revising the rule to require that at least one other AIP be consulted and provide analysis of potential implementation issues. If a marketability assessment by another AIP is not provided as part of the submission, the applicant must provide information regarding the names of the persons and AIPs contacted and the basis for their refusal to provide the marketability assessment. If the applicant cannot obtain a marketability assessment by another AIP, the Board will presume that the submission is unmarketable and it will be a very heavy burden on the submitter to overcome the presumption. By requiring involvement of at least two AIPs, RMA and the Board can be made aware of implementation and other issues before the issues become problems and take appropriate actions.

§ 400.704—Covered by This Subpart

Comment: A commenter offered support of the provision in § 400.704 that allows an applicant to submit a concept proposal to the Board prior to developing a full 508(h) submission. The commenter believes this will expedite and streamline the process by enabling the applicant to develop a better initial product with feedback from the Board.

Response: FCIC appreciates the comment and the support for concept proposals.

§ 400.705—Contents for New and Changed 508(h) Submissions, Concept Proposals, and Index-Based Weather Plans of Insurance

Comment: A commenter stated that new requirements in § 400.705(a) disallowing appended items or requiring a single software to be used may also result in important information being excluded.

Response: FCIC agrees the requirement for information to be included in single document and disallowing appended items could result in important information being excluded. Therefore, FCIC has removed the provision in § 400.705(a) restricting items from being appended to the end of the document. FCIC has also removed the requirement in § 400.703(b) that requires information to be included in a single document and replaced it with a requirement to provide a document that contains a detailed index that, in sequential order, references the location of the required information that may either be contained within the document or in a separate file.

Comment: A commenter stated they believe the revisions made in § 400.705 are problematic due to the fact that the ability of a concept proposal or complete 508(h) submission to move forward will be reliant on standards that are not easily measured. It will be very difficult for a submitter to know whether a proposal meets RMA and the Board's sole view that the concept proposal or 508(h) submission is both ''complete'' and of ''sufficient quality.'' The determination leaves a submitter with no opportunity for appeal of the decision if rejected. The commenter recommends FCIC incorporate language that provides submitters clear and measurable standards and a fair appeal process when the Board deems a 508(h) submission fails to meet those standards. The commenter continues to offer that § 400.705 is the heart of the 508(h) submission itself. RMA has been accepting 508(h) submissions for over 10 years. With over a decade of experience, RMA should have a clear notion of sufficient quality for the finite number of requirements contained in this paragraph. The commenter stated they believe this paragraph requires approximately 12 standards for clear communication with submitters. In particular, clear and transparent standards should be provided for § 400.705(d), the policy provisions,

§ 400.705(e), the marketing plan, § 400.705(g), the prices and rates of premium. The three paragraphs require the creation of standards that describe a successful set of Crop Provisions, approximately six standards for the marketing plan and standards for the prices and rates of premium that include standards for acceptable data (although this can be a little dangerous).

Response: FCIC believes the requirements contained in § 400.705 are clear and transparent, but simply providing an item on a list does not mean that the submission is complete. Unfortunately, over the years the Board has experienced a number of submissions that contained all the required items in § 400.705 but the contents were of such poor quality that it cost the Board, RMA and ultimately taxpayer's unnecessary funds to review the submission numerous times before the submission morphed into a level of quality that could be sent to expert review or be considered for approval. For this reason, and the reasons stated above, RMA is revising the definition of ''sufficient quality'' to make it clear that the submission must contain the data, analysis, and conclusions to support the information provided in the submission. In many instances where the Board concluded the submission or concept proposal was not complete was because it lacked the data or analysis needed for external expert reviewers, RMA and the Board to determine that the information provided was reasonable and would meet the standards necessary for approval. For example, some submissions identified a proxy crop without providing any agronomic or risk information to show that the proxy crop would correlate with the crop to be insured. In some cases, adjustments are made to rates without explaining why such adjustments are necessary and the basis for the amount of the adjustment. In other cases, assumptions are made without stating the basis for the assumptions. In those cases, external expert review would be meaningless because there is not enough information to make any judgments on whether the standards for approval have been met. Instead of a formal appeals process, section 508(h) of the Federal Crop Insurance Act provides a process whereby the Board provides notice of intent to disapprove a 508(h) submission outlining its concerns and reasons, and the submitter has the opportunity to address the Board's concerns with additional information or making changes as needed. In addition, the submitter can request a time delay to address issues raised by the Board.

Comment: A commenter stated that the request in § 400.705(c)(2) is redundant. It is the same request found in § 400.705(e)(4) rephrased. The commenter stated that redundancy is always problematic because it tends to precipitate questions if there is not precise agreement in the responses to the redundant requests. The commenter urges FCIC to list a requirement one time and especially that the RMA not repeat any requirement in the final rule.

Response: FCIC agrees with the commenter that these sections are somewhat redundant. Section 400.705(c)(2) requests similar information to what is required under § 400.705(e). FCIC has revised the final rule by consolidating the requirement in § 400.705(c)(2) under § 400.705(e).

Comment: A commenter states that the requirement in § 400.705(c)(3) seems better placed within § 400.705(e).

Response: FCIC agrees with the commenter that § 400.705(c)(3) would be better placed within § 400.705(e). FCIC has revised the final rule by moving the requirements in § 400.705(c)(3) to section § 400.705(e).

Comment: A commenter stated that the requirement in § 400.705(c)(5) seems better placed in § 400.705(d). Section 400.705(d) contains the Crop Provisions. It seems far more logical to describe the coverage in the section containing the very language creating the coverage, the Crop Provisions.

Response: FCIC disagrees with the commenter. Section 400.705(c) is related to clearly understanding the benefits the plan provides to producers and asks for a summary of such benefits. Section 400.705(c)(5) requests a detailed description of the coverage provided and its applicability to all producers, including targeted producers. Section 400.705(d) contains the actual policy. Although the information requested in § 400.705(c)(5) is relevant to policy referenced in § 400.705(d), it more appropriately resides in § 400.705(c) to allow the Board to assess the benefits provided.

Comment: A commenter stated that the language in § 400.705(d) suggests the 508(h) submission must be clearly written so that the producers are able to understand the coverage being offered and that the policy language permits actuaries to form a clear understanding of payment contingencies. The commenter stated that this is a good and reasonable standard and suggests that RMA apply the same standard to this proposed rule. The commenter states that the proposed rule is too vague for a submitter to form a clear understanding regarding what the FCIC considers sufficient quality. In approximately 12 locations within § 400.705 are 508(h) submission requirements lacking a definition that is either clear or understandable. Worse, the proposed rule resolves the problem by incorporating a statement regarding sufficient quality and then allows that determination to be arbitrary and capricious. And yet, here is a standard imposed on the submitter to be clear.

Response: FCIC understands the commenter's desire for clear standards. In § 400.705, FCIC attempted to clearly state the requirements for 508(h) submissions, as appropriate. Sufficient quality is a measurement of how well the submitters have supported the information provided in the 12 categories. FCIC has attempted to do this by revising the definition of ''sufficient quality'' to make it clear that all information provided and assertions made in § 400.705 must be supported by data or analysis. Bare assertions without establishing the basis for the assertions are no longer sufficient. This provides a more concrete standard and one submitters should be able to meet. However, because submissions vary so greatly, it is impossible to show standards for sufficiency in each subsection in § 400.705.

Comment: A commenter questioned whether the development of the proposed marketing plan, as required in § 400.705(e), is really in the best interest of taxpayers since it will significantly increase the cost of developing a 508(h) submission. The commenter would understand the need for a marketing plan if there was limited interest in a proposed insurance program. However, this seems to be largely unnecessary if there is an obvious and broad-based demand for the crop insurance program by the potential insureds. If the marketing plan requirement is ultimately included in the final rule, RMA should publish standards that a submitter can follow in order to meet the requirements and for the external expert reviewers to use in evaluating the marketing plan for the proposed program.

Response: As stated above, a ''marketing plan'' is a misnomer because the name suggests how a product will be marketed to producers. However, the purpose of § 400.705(e) is to provide information regarding the marketability of the policy or other coverage because now this is one of the criteria for approval of concept proposals and submissions. Concept proposals and submissions must be deemed marketable to be approved for reinsurance by the Board. The commenter claims that the marketing plan is unnecessary when there is an

obvious and broad-based demand for the product, but history has shown a substantial percentage of submissions where submitters provided letters stating there was great interest and demand for the product but only a very small percentage of producers actually bought the policy or coverage when it was available for sale. Therefore, § 400.705(e) is necessary to provide information to the Board to allow it to better make an assessment of marketability. Further, FCIC has revised the standards to allow a more meaningful assessment by looking at actual indicators of producer interest and marketability, such as the amount of data producers are willing to provide, their participation in the development process, etc. FCIC has made revisions in the final rule to § 400.705(e) in an attempt to clarify the marketability requirements. FCIC believes the standards published in the final rule are clearly defined and achievable.

Comment: A commenter stated that the requirement in § 400.705(e)(3) has two problems. First, the vague term ''reasonable estimate'' begs the question reasonable to whom. Rather than using vague terms, the commenter suggested FCIC describe reasonable in objective terms. Furthermore, the commenter finds the use of other similar products for comparison purposes likely to lead reviewers down the wrong path. Market acceptance increases with grower involvement and participation in the development process and decreases when growers' confidence in the product is diminished. For example, the fresh market bean insurance program began strong. Most acres were insured at the buy-up level. However, after growers made a request to correct a program feature they considered disadvantageous and the correction was not implemented, grower confidence in the program wavered and sales declined. One would not want to use the fresh market bean product for comparison purposes given that the wound is self-inflicted.

Response: ''Reasonable estimate'' means in the best judgment of the submitter based on all the information available to the submitter, and provided with the submission. RMA has revised the rule to require that submitters provide the information upon which they judge the reasonableness of the projected participation estimate, including the level of participation of producers in the development of the product, their type of participation, and whether they have provided the available data to assist the submitter in the development of the product. Although ''reasonable estimate'' is not an objective term, FCIC believes this is an appropriate standard to describe what is expected of the submitter. With respect to the requirement to estimate the market penetration of other similar products, FCIC agrees with the commenter that simply estimating the market penetration of other similar products may not adequately convey expected producer interest and participation. Therefore, FCIC has revised the final rule to require the submitter compare other similar products with the 508(h) submission and identify potential differences between the 508(h) submission and the similar products that might make the participation and level of coverage of the proposed product different.

Comment: A commenter stated that it seems unlikely the requirement in § 400.705(e)(5) provides real value within the 508(h) submission process and § 400.705(e)(5) should not be in the final rule. Given the requirement shown at § 400.705(e)(6), the commenter questioned what the vague requirement at § 400.705(e)(5) can add. In fact, the vagueness of this requirement indicates the drafters of the proposed rule are not entirely clear regarding what this requirement should contain.

Response: FCIC disagrees with the commenter that the focus group results requirement in § 400.705(e)(5) should not be included in the final rule. However, FCIC determined this requirement can be combined under § 400.705(e)(6). Therefore, FCIC deleted § 400.705(e)(5), redesignated the succeeding sections, and added the focus group requirement under the newly redesignated § 400.705(e)(5). FCIC also added provisions that add more detail so the results of focus groups can provide more useful information to the Board so it can be considered one of the tools to assist the Board in determining marketability. Focus group information to be provided will now include the type of coverage producers want and what they are willing to pay, which, with all the other available information, will allow the external expert reviewers, RMA, and the Board to make better judgments on whether the product is viable and marketable.

Comment: A commenter stated they believe it would be helpful for FCIC to describe its concept of a market research study at § 400.705(e)(6). The requirement in § 400.705(e)(6) to show demand and coverage levels for which producers are willing to pay introduces a complex problem for submitters because the standard itself lacks definition. According to the regulation, an estimate that shows demand and the level of coverage for which producers are willing to pay is sufficient to meet the standard. It is unlikely this is the intent. In short, it appears the concept of an acceptable market research study remains fuzzy even to the drafters of the proposed rule.

Response: FCIC has combined the focus group provisions with the market research study to allow submitters to provide data on its efforts to judge market interest in the product. Some policies approved under section 508(h) fail to sell because the coverage provided is not specifically desired by producers and the coverage they desire may not be insurable under the Act, or cannot be properly underwritten. Even when coverage may be available, it may not be available at a price producers are willing to pay. Collection of this information during the research and development process can provide more useful information to judge whether a product is marketable.

Comment: A commenter stated that nothing within the expertise of most submitters qualifies the submitter to estimate cost for organizations whose cost structures are unknown to the submitter as required at § 400.705(e)(8). This requirement appears to be the addition of a requirement that cannot be practically answered. It is possible to answer questions related to training requirements, whether the proposed program is amenable to current data record layouts. However, estimating the impact on 17 or 18 or 20 AIP computer systems, estimating administrative and training costs for 17 or 18 or 20 AIP's and determining whether any efficiency will be gained is not likely to net insightful answers. The commenter concludes that what does seem practical at § 400.705(e)(8) is a discussion of whether the proposed program will place new demands upon the computer system that go beyond existing database structures.

Response: FCIC agrees that it may be impractical to expect submitters to assess expected costs for these items. However, the effect of new products on the delivery system is statutorily mandated and given the limited resources available to RMA and AIPs, it is a serious consideration. For this and the other reasons stated herein, FCIC has revised the rule to require that submitters obtain an assessment from at least one AIP who is involved in the development of the product and that at least one other AIP is consulted. FCIC believes it is useful for the submitting AIP to provide insight not only marketability, but also on computer system impacts, administrative and training requirements, potential

efficiencies or effects on workload for AIPs or others participating in the program, and whether the policy or plan of insurance is consistent with the terms of the SRA. Therefore, FCIC added requirements to assess potential effects on the workload for AIPs or others participating in the program and whether the policy or plan of insurance is consistent with the terms of the SRA.

Comment: A commenter stated that the requirement to include correspondence from producers in § 400.705(e)(9) does not appear to provide valuable information. For example, at § 400.705(e)(5) of this proposed rule, the requirement is to provide focus groups results. In addition, at § 400.705(e)(6)(i) of the proposed rule requests evidence the proposed 508(h) submission will be positively received. At the very least, § 400.705(e)(9) requests information that is required in a different form at several other locations within the proposed rule. The commenter suggests that the RMA combine its requests regarding grower interest in the insurance program into a single unified requirement. Furthermore, if the 508(h) submission is from or includes a grower organization, then it appears the spirit of § 400.705(e)(9) is met. Asking for additional correspondence creates redundant effort, § 400.705(e)(9) should be required only in the absence of other means of demonstrating grower interest in the proposal.

Response: FCIC agrees with the commenter that the requirement in § 400.705(e)(9) to include correspondence from producers expressing the need for a policy or plan of insurance may not be as valuable as other information requested in the revised rule. There have been a number of submissions where producers have written letters in support or appeared in person to present the submission, but when the product is made available for sale there are few producers actually buying the product. There are a number of reasons for this, including the final product approved does not contain the coverage actually wanted by producers because of statutory or underwriting limitations or the price for the coverage is too high. Therefore, as stated above, FCIC has revised the information regarding the marketing research to address these and other issues so that the external expert reviewers, RMA and the Board can make more informed decisions on marketability before the submission is approved and before significant time, money and resources are invested in implementation of the product.

Comment: A commenter noted that it appears the information required in § 400.705(f)(1) through (5) should be contained within the underwriting guide. Rather than another redundant request, the commenter suggested FCIC require an underwriting guide with definitions that include and may expand upon items one through five in a manner similar to the information contained in § 400.705(f)(7).

Response: FCIC agrees the contents of § 400.705(f)(1) through (3) should be contained in the underwriting guide. However, the contents of § 400.705(f)(4) and (5) fit more appropriately in the loss adjustment standards handbook. FCIC agrees it is not necessary to have duplicate requirements that can be included in these handbooks. Therefore, FCIC revised the final rule to include the contents of § 400.705(f)(1) through (5) in the requirements for the underwriting guide and the loss adjustment standards handbook, as appropriate.

Comment: A commenter stated that § 400.705(f)(2) ''Relevant Dates'' is a nonspecific requirement. The commenter stated FCIC should list the dates it considers relevant in the final rule.

Response: FCIC agrees that it may be helpful to include example dates that may be relevant. Therefore, FCIC included in the final rule an example of dates that may be relevant in § 400.705(f).

Comment: A commenter noted that the proposed rule in § 400.705(g)(1) appears to contain a requirement to propose a specific premium rating methodology. If that is the intention of FCIC, the commenter suggests that the word ''specific'' be deleted from the final rule. As FCIC and expert reviewers have noted, many of the crops remaining to receive the benefits of a crop insurance program will require creative efforts to estimate rates.

Response: FCIC agrees the term ''specific'' is superfluous. Therefore, FCIC removed the term ''specific'' from § 400.705(g)(1) in the final rule.

Comment: A commenter noted that the requirement in § 400.705(h) appears to be a redundant requirement. If, for example, the underwriting guide and loss adjustment manual contain forms, and they will, those forms must be separated from the document and placed in § 400.705(h). Completing this section becomes an exercise in cut and paste with dubious relevance in a review process. A reviewer needs to review any form within the context of its use and the form has context within the document that contains the form and its instructions for use. The requirement at § 400.705(h) should be removed from the final rule.

Response: FCIC agrees the requirements in § 400.705(h) are redundant. Therefore, FCIC deleted this section in the final rule and redesignated the succeeding sections.

Comment: A commenter suggested that the clause in § 400.705(i)(1) proposes to restrict open commerce. It seems unlikely this requirement is legal. The statement attempts to undo the long history of using insurance brokers to facilitate the creation of insurance. Insurance brokers are forbidden in crop insurance. The requirement is discriminatory. One who is a submitter is prohibited from marketing that which they developed. The statement attempts to restrict the AIP and its agents from selling the crop insurance they have signed up to support. The commenter questioned how a submitter who is not an AIP will be able to meet the requirement in § 400.705(e)(10) given that this would appear to bar the AIP from sales. The commenter stated the requirement serves no legitimate business purpose other than to discourage development of new insurance products.

Response: The proposed § 400.705(i)(1) requires a statement certifying the submitter and AIP, or its affiliates, will not solicit or market the 508(h) submission until at least 60 days after all policy materials are released to the public by RMA, unless otherwise specified by the Board. The purpose is to create a level playing field so the submitter does not have an unfair marketing or sales advantage. Section 508(h) of the Act states that any submission approved for reinsurance can be sold by any AIP wanting to do so. It would not be fair to other AIPs if the submitter was allowed to start soliciting sooner than the other AIPs. However, FCIC recognizes, as currently written the 60-day delay is not necessary and has generally not been enforced. Rather, it has been FCIC intent and past practice to allow marketing to commence once all policy materials are released to the public. FCIC strives to release policy materials at least 60 days prior to the earliest sales closing date. Therefore, FCIC has revised this provision to state that the submitter must certify that the submitter and any approved insurance provider or its affiliates will not solicit or market the submission until all policy materials are released to the public by RMA, unless otherwise specified by the Board.

Comment: With respect to the requirement in the proposed § 400.705(i)(3), a commenter questioned

when agent and loss adjuster training plans are applicable.

Response: Agent and loss adjuster training plans are not applicable to proposed rates of premium for a policy. Therefore, FCIC has revised newly redesignated § 400.705(h)(3) by removing the phrase ''if applicable'' and specifying agent and loss adjuster training plans must be provided, except for 508(h) submissions only proposing changes to rates of premium for an existing policy.

§ 400.706—Review

Comment: A few commenters expressed concern about the lack of a suitable appeal or review process for submitters who put together packages in good faith, but are then subject to a closed review process dependent on the Board and RMA being given the ability to determine ''at its sole discretion'' [in § 400.706(a)(3) and elsewhere in the rule] whether or not a proposal is complete or meets the subjective requirements outlined in the proposed rule. The commenters stated the proposed rule fails to give submitters a clear standard by which to judge the quality of a proposal. The commenters are concerned that as written the proposed rule eliminates due process, increases the potential for the intent of the Act to be administered inconsistent with its intent. One commenter stated the clause in § 400.706(a)(3) is hostile toward submitters. Another commenter requested FCIC provide clear, measurable standards in regards to the requirements that submitters must meet, as well as to ensure that the decisions they make are based on the same sound and transparent standards.

Response: The 2014 Farm Bill revised the criteria in the Act for review of submissions and expressly gave RMA the authority to determine whether the policy or plan of insurance will likely result in a viable and marketable policy that will provide crop insurance coverage in a significantly improved form and adequately protect the interests of producers. The provisions contained in the Act cannot be waived by this regulation. Unfortunately, over the years the Board has experienced addressing a number of submissions that were of poor quality that cost the Board, RMA and ultimately taxpayer's unnecessary funds to review numerous times before the submission morphed into a level of quality that could be sent to expert review or be considered for approval. FCIC agrees these standards are necessarily general but given all potential products have not been conceived, it is impossible to set tighter standards. However, FCIC will be reviewing the submitter's detailed description of why the terms have been met. Further, even if RMA were to use its discretion and reject a submission, it does not end the process. It simply means that the submitter must make improvements to the quality or contents of the submission.

Comment: A few commenters raised concerns with § 400.706(b)(2)(i), which indicates that no reviewer can be employed by an approved insurance provider (AIP) or be a representative of an AIP. The commenters stated they understand why a competing AIP should not be a reviewer, but question why an organization like the National Crop Insurance Services (NCIS) should be excluded from a confidential review. This is a review that the NCIS would conduct in a confidential manner without any involvement of their member AIPs. The commenters would recommend that RMA not exclude organizations like the NCIS from a possible review as it could add industry perspective that RMA would not otherwise be able to receive as a part of the expert review process.

Response: FCIC understands the commenter's perspective that an agency that is representative of AIPs could provide valuable reviews. However, the provision is intended to prevent bias that may result if an organization that represents interested stakeholders is involved in reviewing products that may be sold by those stakeholders. This provision was not proposed to be changed in the proposed rule. No change has been made in the final rule. However, in response to other comments, FCIC has increased the required involvement of the AIP in the process by requiring that at least one AIP be part of the submitter and that another AIP provide an assessment of the impacts of the submission on the delivery system and marketability of the submission.

Comment: A commenter stated that the use of the word ''appropriate'' in § 400.706(b)(2)(ii)(C) leads to subjective determinations. The commenter questioned who determines what is appropriate. The commenter suggested that a better wording would be ''follows recognized insurance principles.''

Response: FCIC agrees the provision would be better worded if the term ''appropriate'' was changed to ''recognized.'' FCIC has made this change in § 400.706(b)(2)(ii)(C) of the final rule.

Comment: A commenter asked what an ''excessive risk'' is, in reference to § 400.706(b)(2)(ii)(E).

Response: FCIC has clarified in the final rule that excessive risk includes, but is not limited to, risk that encourages adverse selection, moral hazard, or risks that cannot be properly rated. Examples of excessive risk might be proposing to insure commodities in an area where the commodity is not generally recognized as a suitable growing environment or in an area likely to be frequently adversely affected by a known peril.

Comment: A commenter stated that, including § 400.706(b)(2)(ii)(I), the term ''new kind of coverage'' appears in several locations throughout the proposed rule. The term is not entirely clear. For example, in the clause above new kind of coverage applies to a crop that previously had no available crop insurance, but it also applies to crops with low participation or that are insured at a low coverage level. Attempts to remedy low participation or low coverage levels may not involve ''a new kind of coverage.'' It is conceivable, and even likely, that efforts to improve participation may simply involve redesigned coverage, but not necessarily anything ''new.'' Certainly in the case of crops with low participation concerns, the term ''new kind of coverage'' could easily become problematic. The commenter suggests the RMA either define the term or reconsider its use for crops with existing insurance programs where low participation levels are a concern.

Response: FCIC agrees with the commenter that the provision in § 400.706(b)(2)(ii)(I) could be problematic if the phrase ''new kind of coverage'' applies to the second part of the sentence in § 400.706(b)(2)(ii)(I). FCIC has revised the provision by removing the term ''new kind of coverage'' and replacing it with the phrase ''new or improved coverage.'' This change clarifies that a policy or plan of insurance could fall under the context of this provision if it provides improved coverage that addresses low participation or high levels of participation at low coverage levels.

Comment: A commenter stated no marketing plan can demonstrate an insurance product is marketable as required in § 400.706(b)(2)(ii)(K). Marketability comes from the ability of the insurance instrument to adequately cover risk at a price growers will be willing to pay. The commenter stated the marketing plan is simply ''the delivery system will sell and service the insurance plan.'' The commenter asserts that within hours of the announcement of a new program, agents respond by chasing the new commission money. The commenter believes the real challenge is to give the agent something to sell.

Response: As stated above, FCIC has removed the concept of a marketing plan and replaced it with a marketability assessment of the policy or plan of insurance. Further, those provisions now will require submitters to provide additional indicators of marketability, such as producer interest as measured by their willingness to assist and provide the data necessary in the development process, whether the submission can provide the coverage desired by producers at a price producers are willing to pay, AIPs assessment of the ability to sell the product, etc. FCIC believes that looking at these additional factors will allow the Board to make better judgments in approving policies and plans of insurance agents can sell.

Comment: A commenter stated that it is not entirely clear from the regulation if the proposed requirement in § 400.706(b)(2)(ii)(K) to have a comprehensive ''marketing plan'' submitted is with the concept proposal or with the complete 508(h) submission. If it is with the concept proposal, this requirement is premature given that the policy has not been fully developed nor have the premium rates been established. The purpose of the concept proposal is to have a proof of concept approved prior to the majority of the investment of time and resources into developing a complete 508(h) submission. For the marketing plan to be complete for the concept proposal, it would essentially have to have been developed prior to the concept being approved, which is obviously in contradiction to the purpose of the concept proposal.

Response: Marketability is a consideration in both the concept proposal and submission stages. However, FCIC recognizes that more information will be available at the submission stage and scrutiny by the Board will be higher. Therefore, while the Board will consider marketability at both stages, requirements may differ. Those requirements and standards relating to concept proposals are contained in Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Cost. While the definition of submission excludes concept proposals, FCIC recognizes that the term ''submission'' is also commonly used when referring to concept proposals. Therefore, FCIC has changed the definition and all references of ''submission'' to ''508(h) submission.'' This change is expected to help eliminate potential confusion by providing a clearer distinction between 508(h) submissions and concept proposals in this regulation.

Comment: A commenter stated that the proposed rule in § 400.706(b)(5) establishes the unabashedly arbitrary rule. No standard applies. What seems most unsettling about this rule is the three items the rule applies to, lend themselves to an objective decision.

Response: FCIC determined the provision in § 400.706(b)(5) is out of place and is not needed because subsequent provisions describe the process for approval and disapproval. Therefore, to prevent confusion the provision in § 400.706(b)(5) relating to 508(h) submissions, and similar provisions in § 400.706(c)(9) and (d)(5) referencing concept proposals and index-based weather plans have been deleted in the final rule.

Comment: A commenter stated it is important to note that while the law allows the Board to prioritize the approval of policies or plans of insurance as described in § 400.706(g), the exercise of this authority must be performed in an open and transparent manner. Doing so is vital to the ongoing success of the 508(h) process and is necessary to avoid the perception that the 508(h) process is not being implemented in a manner as intended by Congress. Further, it is the commenter's belief that any products related to cotton should be included under the second priority of ''existing policies or plans of insurance for which there is inadequate coverage or there exists low levels of participation.'' While there are products available to cotton producers including STAX as well as yield and revenue policies; these products are the sole risk management tool for cotton producers. In 2014, 30 percent of cotton acres bought coverage at the 60 percent buy-up level or below—17 percent of acres either had no coverage or coverage at the lowest levels available. Any enhancements to these products or the addition of new products or endorsements would be a benefit for cotton growers.

Response: FCIC understands the concern of the submitter that provisions of the Act should be implemented in a transparent manner. However, the Act contains confidentiality standards that prevent FCIC from disclosing information about products that are under consideration for approval, which limits the transparency of the process. However, the Board is considering implementing procedures that will make the process more transparent. In the meantime, to assist the Board in determining if certain commodities such as cotton meet the provision in § 400.706(g)(2), for each policy or plan of insurance submitted for approval, RMA will research and present to the Board information on whether there are existing policies for that commodity and the level of coverage and participation.

Comment: With regard to § 400.706(k)(1), a commenter stated that because protecting the interests of agricultural producers is a review criterion, the Board, RMA, developers and external expert reviewers must share a common understanding of the standard for judging whether a 508(h) submission protects the interests of agricultural producers and taxpayers. This proposed rule does not provide such a standard. The commenter requested that FCIC clarify the meaning of protecting the interests of agricultural producers and taxpayers so that developers can provide America's farmers with 508(h) submissions of sufficient quality.

Response: FCIC disagrees with the commenter that provisions in § 400.706(k)(1) do not provide clear standards for what it means to protect the interests of producers and taxpayers. Because it is not possible to list every scenario that may not protect the interests of producers and taxpayers, the provision includes a list of activities that meet this criteria that is not all-inclusive. This list includes: The 508(h) submission does not provide adequate coverage or treats producers disparately; the applicant has not presented sufficient documentation that the 508(h) submission will provide a new kind of coverage likely to be viable and marketable; coverage would be similar to another policy or plan of insurance that has not demonstrated a low level of participation or does not contain a clear and identifiable flaw and the producer would not significantly benefit from the 508(h) submission; the 508(h) submission may create adverse market distortions or adversely impact other crops or agricultural commodities if marketed; the 508(h) submission will have a significant adverse impact on the private delivery system; or the 508(h) submission cannot be implemented, administered, and delivered effectively and efficiently using RMA's information technology and delivery systems. To address the commenters concern, FCIC included two additional items to describe what protecting producer and taxpayer interests mean. These include ensuring the 508(h) submission does not contain flaws that may encourage adverse selection, moral hazard, or vulnerabilities that allow indemnities to exceed the value of the crop.

§ 400.708—Post Approval

Comment: A commenter stated that § 400.708(a)(1)(ii) indicates that after the 508(h) submission has been approved, a reinsurance agreement must be executed if the terms and conditions differ from the available existing reinsurance agreements. If a separate reinsurance agreement needs to be developed this now creates a situation in which the person or organization who has submitted the product, is more than likely not an existing AIP, but will now be charged with establishing the reinsurance terms for all other AIPs who choose to participate in writing the approved 508(h) submission. This is a major flaw in this regulation as all AIPs who choose to participate in writing this approved 508(h) submission should be involved in the discussions establishing the reinsurance terms for such product or program. This would result in a reinsurance agreement that is more equitable to all parties involved and likely enhance the chances of the new product being successful in the marketplace. The AIPs who must administer and bear the risk of the new product or program need to be involved in the development of the new reinsurance agreement and this regulation should be revised to take this into consideration. An example of this is the flawed Livestock Price Reinsurance Agreement (LPRA) which was developed in accordance with this regulation. The structure of the LPRA provides the AIPs with very little incentive to actively pursue and write livestock policies as it is currently structured. This subsequently results in limited sales and reduces the potential success of the livestock program.

Response: FCIC agrees the terms of the reinsurance agreement developed in accordance with this provision should be established in an equitable manner that takes into consideration the interests of all participating AIPs. However, it is not possible to involve all AIPs that will sell the product, because it is not known which AIPs will choose to sell the product and confidentiality rights of the submitter must be respected. However, if a new or different reinsurance agreement is needed for a newly developed product, FCIC will endure to establish the standard terms of such reinsurance agreement so that they apply equitably to all AIPs, and that no one AIP (including any AIP who is part of the product submission) has a marketing or financial advantage over another AIP. FCIC has revised the final rule to clarify that participating AIPs interests will be considered when the terms of the reinsurance agreement are established.

§ 400.712—Research and Development Reimbursement, Maintenance Reimbursement, Advance Payments for Concept Proposals, and User Fees

Comment: A commenter expressed support of the provision in § 400.712(c) that allows an advance payment of up to 50 percent of the projected total research and develop costs and the new provision which would allow the Board to provide up to an additional 25 percent advance payment. The commenter stated research and development costs of a major plan of insurance can be substantial, with many organizations unable to cover these up-front costs. The additional 25 percent advance payment could be instrumental in these situations, and the commenter encouraged FCIC to proactively use this authority to advance the ability of the RMA to provide growers with sound risk management options.

Response: FCIC appreciates the commenter's support of this provision.

Comment: A commenter stated that § 400.712(c)(1)(ii) is government sanctioned usury. The proposed rule attempts to collect interest at 18 percent per annum for submitters attempting to help American farmers achieve risk management goals. The commenter concludes that this is a shameful proposal.

Response: FCIC disagrees that § 400.712(c)(1)(ii) attempts to collect interest at 18 percent per annum. The provision requires interest to be charged at a rate of 1.25 percent simple interest per calendar month, which results in an annual rate of 15 percent. Furthermore, the referenced provisions are intended to protect taxpayer dollars if developers accept funding from FCIC, but then fail to deliver an acceptable product. Failure to collect interest on the funds provided for development would be fiscally irresponsible. This interest rate was previously included in 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses. This interest rate is also consistent with the rate charged in section 24(a) of the Common Crop Insurance Policy Basic Provisions for amounts owed to FCIC and in the Standard Reinsurance Agreement. No change has been made in the final rule.

Comment: A few commenters expressed concerns with the reduction in research and development costs contained in § 400.712(e) based on the plan of insurance, complexity of the policy and rates of premium. A common concern was that the proposed reductions in reimbursement for research and development will make it difficult for farm organizations to obtain the services of qualified individuals who can meet the complicated requirements of § 400.705. Another concern that was raised was that if agricultural organizations obtain the services of a developer who does not understand the requirements of this section, the agricultural organization may be required to make up the difference due to reimbursement reductions. Commenters were concerned the criteria used to gauge the level of program complexity may not always be representative of the actual challenges in developing a crop insurance program. Commenters were also concerned that the reductions will come as a surprise to submitters after they have already completed the work. Another concern was that the reductions are based on arbitrary standards. Several commenters recommended the provision be excluded from the final rule.

Response: FCIC understands the concerns of grower groups that may contract with other companies to develop insurance products under the 508(h) process. However, FCIC is statutorily required to consider complexity when making payments, and FCIC is striving to do that in a fair and equitable manner. This means that all submitters must be treated the same regardless of their experience. This rule requires that certain tasks be performed and those tasks are the same for all submitters. However, some of the tasks are simplified because the submitter uses existing policy materials, handbooks, procedures, or rating methodologies so that the hours required to perform the tasks are reduced. The Board takes this reduction into consideration. Therefore, FCIC has revised § 400.712(e) by eliminating the reduction percentages and giving the Board discretion to reduce reimbursement for research and development costs and maintenance costs, as necessary, when requested reimbursement is not commensurate with the complexity or the size of the area proposed to be covered.

Comment: A commenter stated that the proposed rule in § 400.712(i) speaks to the problem submitters will have with this proposed rule. A 508(h) submission may be determined to be of insufficient quality to refer to expert reviewers and the costs associated with perfecting the 508(h) submission may not be considered reimbursable. This may not be a disagreeable rule provided submitters have a clear target. If a submitter knows what the standard is

for sufficient quality, fails to meet the standard for sufficient quality then it may be reasonable for the Board to avoid payment for perfecting the 508(h) submission. However, with the standard that is almost completely arbitrary, this rule holds out the possibility of treating submitters disparately. Since the 508(h) process can be considered an invitation to perform work on behalf of the American farmer, FCIC should produce a clear and helpful rule. A substantial number of farmers rely upon the actions of the Board and RMA. Should they choose to become submitters, they deserve clear targets.

Response: The provision in 712(i) is intended to prevent FCIC from paying for the same activities numerous times before a submission is ready for review or consideration of approval due to insufficient quality to conduct a meaningful review, or for errors, omissions and incomplete materials preventing an independent third party from being able to fully read, comprehend and understand the components of a submission. FCIC has clarified provisions regarding sufficient quality to require that the submission include all data, analysis and justification for assumptions made and in support of the information provided in the submission. This is crucial for the conduct of a meaningful external expert review. Therefore, the standard is not arbitrary and can be met by submitters. For example, if the submitter uses a proxy crop, the submitter must include the data and analysis that shows why the proxy was selected, why a proxy is needed, why the proxy selected best correlates with the crop to be insured under the submission, etc. The same applies with premium rating. The submitter must explain all assumptions made and all adjustments. Simply stating math formulas or a complete listing of all types of methodologies is no longer sufficient.

§ 400.713—Non-Reinsured Supplemental (NRS) Policy

Comment: A commenter stated that language was added to § 400.713(a) requiring submission of any non-reinsured supplemental (NRS) policy that covers the same agricultural commodity as any policy reinsured by FCIC under the Federal Crop Insurance Act. The commenter questioned whether the changes now require Crop-Hail policies to be approved by RMA. The commenter stated the regulation should specifically state that Crop-Hail policies are excluded from these rules.

Response: The definition of ''non-reinsured supplemental'' contained in § 400.701 specifically excludes Crop Hail policies. Therefore, it is not necessary to state in § 400.713 that Crop-Hail policies are excluded. No change has been made in the final rule.

Comment: A commenter stated that the proposed rule in § 400.713(a) and (c) says that failure to provide such NRS policy or endorsement to RMA prior to its issuance shall result in the denial of reinsurance, A&O subsidy and risk subsidy on the underlying FCIC reinsured policy for which such NRS policy was sold. Because FCIC prohibits the tying of FCIC reinsured policies and private policies, the AIP that sold the FCIC reinsured policy may not be the AIP that sold the NRS policy. The commenter asked how this language will apply in these cases. The commenter adds that the regulation should exclude penalties from applying to the AIP that sold the underlying FCIC reinsured policy if the NRS is sold by a different AIP.

Response: FCIC agrees with the commenter that the regulation should exclude penalties from applying to AIPs that sold the FCIC reinsured policy if the NRS is sold by a different AIP. However, FCIC does not believe AIPs that sell an NRS policy that is not submitted in accordance with § 400.713 of this regulation or that is found to meet the conditions of § 400.713(c)(1) through (5), should be excluded from penalty. FCIC has revised § 400.713(a) and (c) by removing the penalty for denying reinsurance, A&O subsidy, and risk subsidy on the underlying FCIC reinsured policy if the AIP selling such underlying FCIC reinsured policy is not the company that sold the NRS. FCIC has added in its place a provision that makes the AIP that sold the NRS liable for an amount equal to the reinsurance, A&O subsidy, and risk subsidy on any underlying FCIC policies sold by other AIPs to which the NRS is attached.

Comment: A commenter stated § 400.713(a) states that any NRS policy that is issued before it is approved by RMA will result in a denial or reinsurance on the underlying FCIC reinsurance policy. The denial of reinsurance set-forth in paragraph (a) makes sense. However, in paragraph (c), which sets forth the approval process that RMA will go through 150 days prior to the sales closing date for any NRS policy, RMA states that reinsurance will also be denied on any FCIC reinsured policy not a meeting the prior approval criteria set forth in paragraphs (c)(1) through (5). Since it appears that RMA must approve NRS policies before they are sold, the commenter stated they do not understand the purpose of including a denial of reinsurance penalty in paragraph (c). The commenter suggested that the denial of reinsurance language in paragraph (c) be deleted and that the denial of reinsurance language in paragraph (a) be revised to read as follows: Reinsurance, A&O subsidy and risk subsidy on the underlying FCIC policy will be denied for any NRS policy issued without the prior approval of FCIC under this section.

Response: RMA does not approve NRS policies, rather RMA reviews the policy to determine if the conditions in § 400.713(c)(1) through (5) exist. Therefore, FCIC does not intend to add the suggested ''approval'' language. The provision in § 400.713(a) requires the NRS to be submitted, and if not submitted, provides consequences for not being submitted. The provision in § 400.713(c) requires FCIC to notify the submitter of the consequences if the NRS meets the conditions contained in § 400.713(c)(1) through (5). Therefore, both paragraphs are necessary because they contain different requirements. However, in response to a previous comment, FCIC has revised § 400.713(c)(1) to state that FCIC will notify the AIP that submitted the NRS policy that if they sell the NRS policy, it will result in denial of reinsurance, A&O subsidy, and risk subsidy on all underlying FCIC reinsured policies, unless the underlying FCIC policy was sold by another AIP. If the underlying FCIC reinsured policy is sold by another AIP, the AIP that sold the NRS may be required to pay FCIC an amount equal to the reinsurance, A&O subsidy, and risk subsidy on the underlying FCIC policy.

Comment: A commenter stated that the proposed rule indicates in § 400.713(b) that the NRS policy and related materials must be submitted at least 150 days prior to the first sales closing date applicable to the NRS policy, which is 30 days more lead time than what is currently required. Since the AIPs are being required to submit the NRS policy 30 days earlier, it would also be beneficial for the AIPs if the RMA also responded back to the AIP 90 days before the first sales closing date rather than 60 days as currently required. This would allow additional time to train the agents and to market the NRS product prior to the applicable sales closing date. The commenter recommended that § 400.713(d) of this regulation be changed to require that the RMA will respond back to the AIP not less than 90 days before the first sales closing date rather than 60 days as currently indicated.

Response: FCIC understands the commenter's desire for additional time to train agents and market the product. To give both the AIP and RMA

additional time, FCIC has revised § 400.713(d) in the final rule to require RMA to respond 75 days before the first sales closing date, or provide notice why RMA is unable to respond within the time frame allotted. This change gives both FCIC and the AIP an additional 15 days from what was allotted under the previous rule.

Comment: A commenter stated that § 400.713(b)(1) and (2) indicate that three hard copies and an electronic copy of the NRS policy must be sent to the Deputy Administrator for Product Management. If an electronic copy is sent, the commenter does not see the need or value in also sending three hard copies of the same material via regular postal mail. The commenter recommends that the regulation be clarified to indicate that either three hard copies or an electronic copy of the NRS policy be sent, but that both methods of submitting the NRS are not required.

Response: FCIC agrees with the commenter that both an electronic and a hard copy are not necessary. FCIC removed the hard copy requirement from the final rule.

Comment: A few commenters questioned the use of the term ''moral hazard'' in § 400.713(c)(1)(i). One commenter stated the term moral hazard was added with an example, but it is not a defined term. The commenter asked what constitutes a moral hazard and if moral hazard is applied on a product basis or on an individual insured behavior basis. The commenter asks for clarification on whether FCIC will determine a policy creates a moral hazard based on its performance over a period of time or based on a single instance of abuse. Another commenter suggested defining moral hazard as ''the tendency for an insured party to take less care to avoid an insured loss than the party would have taken if the loss had not been insured, or even to act intentionally to bring about that loss.''

Response: FCIC disagrees that the term ''moral hazard'' should be defined in the context of this provision. The term is commonly used in the insurance industry and because the term is not defined it takes on the common meaning. A moral hazard could be on an individual or product basis. FCIC may consider a policy to create a moral hazard if provisions lend themselves to abuse or if data collected shows the performance of the product over time creates an incentive for abuse. No change has been made in the final rule.

Comment: A commenter stated the phrase ''aggregate indemnities'' was added to § 400.713(c)(1)(i), but does not include a definition. The commenter asks, what is included in determining aggregate indemnities. The commenter adds that the regulation needs to specifically exclude hail insurance indemnities from the aggregate indemnities definition and to define what is included. A commenter also stated that the phrase ''expected value'' of the insured commodity was added to § 400.713(c)(1)(i). The commenter asks what the definition is of expected value and when the expected value is determined. The commenter stated the regulation needs to define expected value, including what information can be used to determine the expected value and what the time frame is around when the expected value is determined.

Response: FCIC agrees the provision should be revised to clarify what is included in the determination of aggregate indemnities. Hail policies and other policies not reinsured by FCIC would not be included. FCIC also agrees that the concept of expected value needs to be expanded upon in the final rule. FCIC intentionally did not include parameters for determining expected value because this can be defined differently by the submitter. However, the expected value must be based on parameters that represent the value a producer could reasonably expect to receive for the insured commodity. Therefore, FCIC has revised the provision in the final rule by removing the term ''aggregate'' and adding language stating that a policy will be considered to shift or increase risk if it: (1) Results in the underlying FCIC policy either triggering a loss sooner, or paying a larger indemnity than would otherwise be allowed by the terms and conditions of the underlying reinsured policy; or (2) allows for combined indemnities between the underlying FCIC reinsured policy and the NRS that are in excess of the value a producer would reasonably expect to receive for the insured commodity if a normal crop was produced and sold at a reasonable market price.

Comment: A commenter stated § 400.713(c)(2) can be better and more equitably phrased as follows: ''The NRS reduces or limits the rights of the insured with respect to the underlying policy or plan of insurance reinsured by FCIC. An NRS policy will be considered to reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance if it materially affects the terms or conditions of the underlying policy or otherwise materially undermines procedures issued by FCIC.''

Response: FCIC agrees with the commenter that including the terms ''affects'' and ''undermines'' help to describe when an NRS reduces or limits the rights of the insured. However, FCIC disagrees the phrasing proposed by the commenter to include the term ''materially'' is appropriate because this would allow for a determination of a degree of significance. FCIC maintains that if an NRS affects, alters, preempts, or undermines the terms or conditions of the underlying policy to any degree, such NRS policy is reducing or limiting the rights of the insured with respect to the underlying policy or plan of insurance. Therefore, FCIC revised the final rule by: Including the terms ''affects'' and ''undermines''; the terms ''alters'' and ''preempts'' has been retained; and the term ''materially'' has not been included.

Comment: A commenter stated that § 400.713(c)(3) may be improved and more equitably phrased by adding the term ''materially'' prior to the phrase ''in excess of normal market demand.''

Response: FCIC disagrees that including the term ''materially'' prior to the phrase ''in excess of market demand'' is appropriate. FCIC considers an NRS that encourages planting more acres of the insured commodity in excess of normal market demand to disrupt the marketplace, regardless of extent or degree. No change has been made in the final rule.

Comment: A commenter stated that an example of disruption in the marketplace was added in § 400.713(c)(3). The commenter asked what the basis will be for the evaluation. The commenter also asked if this will this be applied on an individual insured basis or a program basis and how much more than normal will be deemed to be excessive. The commenter questioned if the evaluation of excessive will be based on a single year or a certain number of years. A spike in planting may be attributable to factors other than the NRS policy.

Response: The determination will be based on the evaluation of the policy language and any available evidence that substantiates or verifies the NRS will or has disrupted the marketplace. This determination may be applied on an individual or collective basis. If the NRS encourages planting of more acres of the insured commodity in excess of market demand it will be considered to disrupt the marketplace and may be assessed based on a single year or multiple years. FCIC agrees that an increase in planting could be due to factors other than the NRS policy, so RMA will consider all other potential factors before concluding the NRS is the cause of the disruption in the marketplace. FCIC has added the phrase ''RMA determines'' in § 400.713(c)(1)

through (4) to indicate the decision is based on RMA's determination.

Comment: A commenter stated that language was added to the proposed rule in § 400.713(e) requiring a review if the NRS policy exceeds a 2.0 loss ratio. The commenter questions what are the parameters of the 2.0 (*e.g.,* a one year loss ratio, a rolling 3–5 year loss ratio, etc.). The commenter stated the current year loss ratio will be unknown when the required 150 days prior to sales closing date is applied. A gap year must be included in evaluation of loss ratio. The commenter asked if RMA will approve private product rating methodology and/or rates. The commenter also questioned if state department of insurance approval of the rate methodology and/or rates will be superseded by RMA's rejection of the same. The commenter stated that states regulate and approve private product rates. If a state approves the rates associated with a private product, the commenter questioned whether FCIC has the authority under the McCarran-Ferguson Act to reject or dispute those rates.

Response: RMA will not review the premium rates of an NRS policy. Rather, FCIC was proposing to use the loss ratio as a possible indication there could be an underlying issue that may result in risk being shifted to the underlying FCIC reinsured policy. However, FCIC agrees with the commenter that a one year loss ratio would not be sufficient to determine if there was an underlying issue and FCIC already requires a NRS policy to be submitted for review in accordance with § 400.713(c)(1) through (5). FCIC also agrees the AIP may not know the loss ratio 150 days prior to the sales closing date. Because these issues were not addressed in the proposed rule, FCIC has not included this provision in the final rule.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule.

Paperwork Reduction Act of 1995

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

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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, except as required by law.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. FCIC has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FCIC will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. No matter the size of the submitter, all submitters are required to perform the same tasks and those tasks are necessary to ensure that the concept proposal can be made into a viable and marketable 508(h) submission and any 508(h) submission can be made into viable and marketable, actuarially sound insurance product. 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.

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

Final Rule

Accordingly, as set forth in the preamble, FCIC amends 7 CFR part 400 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. Revise subpart V to read as follows:

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies

Sec.

Authority: 7 U.S.C. 1506(l), 1506(o), 1508(h), 1522(b), 1523(i).

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies

§ 400.700 Basis, purpose, and applicability.

This subpart establishes guidelines, the approval process, and responsibilities of FCIC and the applicant for policies, provisions of policies, and rates of premium submitted to the Board as authorized under section 508(h) of the Act. It also provides procedures for reimbursement of research and development costs and maintenance costs for concept proposals and approved 508(h) submissions. Guidelines for submitting concept proposals and the standards for approval and advance payments are provided in this subpart. This subpart also provides guidelines and reference to procedures for submitting index-based weather plans of insurance as authorized under section 523(i) of the Act. The procedures for submitting non-reinsured supplemental policies in accordance with the Standard Reinsurance Agreement (SRA) are also contained within.

§ 400.701 Definitions.

508(h) submission. A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of § 400.705.508(h) submissions as referenced in this subpart do not include concept proposals, index-based weather plans of insurance, or non-reinsured supplemental policies.

Act. Subtitle A of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1524).

Actuarial documents. The information for the crop or insurance year that is available for public inspection in an agent's office and published on RMA's Web site, and that shows available insurance policies, coverage levels, information needed to determine amounts of insurance and guarantees, prices, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or agricultural commodity, insurable acreage, and other related information regarding insurance in the county or state.

Actuarially appropriate. A term used to describe premium rates when such rates are expected to cover anticipated losses and establish a reasonable reserve based on valid reasoning, an examination of available risk data, or knowledge or experience of the expected value of future costs associated with the risk to be covered. This will be expressed by a combination of data including, but not limited to liability, premium, indemnity, and loss ratios based on actual data or simulations reflecting the risks covered by the policy.

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 catastrophic risk protection (CAT) eligible crop insurance contracts is not considered as A&O subsidy.

Advance payment. A portion, up to 50 percent, of the estimated research and development costs, that may be approved by the Board under section 522(b) of the Act for an approved concept proposal. Upon request of the submitter the Board may at its sole discretion provide up to an additional 25 percent advance payment of the estimated research and development costs after the applicant begins research and development activities if:

(1) The concept proposal will provide coverage for a region or crop that is underserved, including specialty crops; and

(2) The submitter is making satisfactory progress towards developing a viable and marketable 508(h) submission.

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.

Applicant. Any person or entity that submits to the Board for approval a 508(h) submission under section 508(h) of the Act, a concept proposal under section 522 of the Act, or an index-based weather plan of insurance under section 523(i) of the Act, who must include the AIP that has committed to be involved in the development and submission process and to market, sell and service the policy or plan of insurance.

Approved insurance provider (AIP). A legal entity, including the Company, which has entered into a reinsurance

agreement with FCIC for the applicable reinsurance year.

Approved procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board.

Board. The Board of Directors of FCIC.

Commodity. Has the same meaning as section 518 of the Act.

Complete. A 508(h) submission, concept proposal, or index-based weather plan of insurance determined by RMA and the Board to contain all required documentation in accordance with § 400.705 and is of sufficient quality.

Complexity. Consideration of factors such as originality of policy materials, underwriting methods, actuarial rating methodology, and the pricing methodology used in design, construction and all other steps required for the full development of a policy or plan of insurance.

Concept proposal. A written proposal for a prospective 508(h) submission, submitted under section 522(b) of the Act for advance payment of research and development costs, and containing all the information required in this regulation and the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs, which can be found on the RMA Web site at *www.rma.usda.gov,* such that the Board is able to determine that, if approved, will be developed into a viable and marketable policy consistent with Board approved procedures, these regulations, and section 508(h) of the Act.

Delivery system. The components or parties that make the policy or plan of insurance available to the public for sale.

Development. The process of composing documentation and procedures, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a 508(h) submission.

Endorsement. A document that amends or revises an insurance policy reinsured under the Act in a manner that changes existing, or provides additional, coverage provided by such policy.

Expert reviewer. Independent persons contracted by the Board who meet the criteria for underwriters or actuaries that are selected by the Board to review a concept proposal, 508(h) submission, or index-based weather plan of insurance and provide advice to the Board regarding the results of their review.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA, whose programs are administered by RMA.

Index-based weather plan of insurance. A risk management product in which indemnities are based on a defined weather parameter exceeding or failing to meet a given threshold during a specified time period. The weather index is a proxy to measure expected loss of production when the defined weather parameter does not meet the threshold.

Limited resource producer. Has the same meaning as the term defined by USDA at: *www.lrftool.sc.egov.usda.gov/LRP_Definition.aspx* or a successor Web site.

Livestock commodity. Has the same meaning as the term in section 523(i) of the Act.

Maintenance. For the purposes of this subpart only, the process of continual support, revision or improvement, as needed, for an approved 508(h) submission, including the periodic review of premium rates and prices, updating or modifying the rating or pricing methodologies, updating or modifying policy terms and conditions, adding a new commodity under similar policy terms and conditions with similar rating and pricing methodology, or expanding a plan or policy to additional states and counties, and any other actions necessary to provide adequate, reasonable and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes. A concept proposal that is similar to a previously approved 508(h) submission will be considered maintenance for the similar approved 508(h) submission if submitted by the same person.

Maintenance costs. Specific expenses associated with the maintenance of an approved 508(h) submission as authorized by § 400.712.

Maintenance period. A period of time that begins on the date the Board approves the 508(h) submission and ends on the date that is not more than four reinsurance years after such approval.

Manager. The Manager of FCIC.

Marketable. A determination by the Board, based on a detailed, written marketability assessment provided in accordance with § 400.705(e), that demonstrates a sufficient number of producers will purchase the product to justify the resources and expenses required to offer the product for sale and maintain the product for subsequent years.

Multiple peril crop insurance (MPCI). Policies reinsured by FCIC that provide protection against multiple causes of loss that adversely affect production or revenue, such as to natural disasters, such as hail, drought, and floods.

National Agricultural Statistics Service (NASS). An agency within USDA, or its successor agency that collects and analyzes data collected from producers and other sources.

Non-reinsured supplemental policy (NRS). A policy, endorsement, or other risk management tool not reinsured by FCIC under the Act, that offers additional coverage, other than for loss related to hail.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount or type of coverage, FCIC's reinsurance risk, or any other condition that does not affect liability or the amount of loss to be paid under the policy. Revisions to approved plans required by statutory or regulatory changes are included in this category. Changes to the policy that involve concepts that have been previously sent for expert review are also included in this category.

Plan of insurance. A class of policies, such as yield, revenue, or area based that offers a specific type of coverage to one or more agricultural commodities.

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

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

Reinsurance year. The term beginning July 1 and ending on June 30 of the following year and, for reference purposes, identified by reference to the year containing June.

Related material. The actuarial documents for the insured commodity and any underwriting or loss adjustment manuals, handbooks, forms, instructions or other information needed to administer the policy.

Research. For the purposes of development, the gathering of information related to: Producer needs and interests for risk management; the marketability of the policy or plan of insurance; appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, documentation, and the systems and software necessary to implement a

policy or plan of insurance. The gathering of information to determine whether it is feasible to expand a policy or plan of insurance to a new area or to cover a new commodity under the same policy terms and conditions, price, and premium rates is not considered research.

Research and development costs. Specific expenses incurred and directly related to the research and development activities of a 508(h) submission as authorized in § 400.712.

Risk Management Agency (RMA). An agency within USDA that is authorized to administer the crop insurance program on behalf of FCIC.

Risk subsidy. The portion of the premium paid by FCIC on behalf of the insured.

Sales closing date. A date contained in the Special Provisions by which an application must be filed and the last date by which the insured may change the crop insurance coverage for a crop year.

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

Significant change. Any change to the policy or plan of insurance that may affect the rating and pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy.

Special Provisions. Has the same meaning as the term in section 1 of the Basic Provisions (7 CFR 457.8).

Specialty crops. Fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

Socially disadvantaged producer. Has the same meaning as section 2501(E) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)).

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 eligible crop insurance contracts. For the purposes of this subpart, all references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement.

Submitter. Same meaning as applicant.

Sufficient quality. A determination made by RMA and the Board that the material presented is clearly written in plain language in accordance with the Plain Writing Act of 2010 (5 U.S.C. 301), unambiguous, and is supported by detailed analysis and data so that expert reviewers, RMA and the Board can understand, comprehend and make calculations, draw substantiated conclusions or results to determine whether the 508(h) submission, concept proposal, or index-based weather plan of insurance meets the standards required for approval.

Targeted producer. Producers who are considered small, socially disadvantaged, beginning and limited resource or other specific aspects designated by FCIC for review.

USDA. The United States Department of Agriculture.

User fees. Fees, approved by the Board, that can be charged to approved insurance provider for use of a policy or plan of insurance once the period for maintenance has expired that only covers the expected maintenance costs to be incurred by the submitter.

Viable. A determination by the Board that the concept proposal, index-based weather plan of insurance, or 508(h) submission is or can be developed into a policy or plan of insurance that can be implemented by the delivery system with actuarially appropriate rates in accordance with Board procedures.

§ 400.702 Confidentiality and duration of confidentiality.

(a) Pursuant to section 508(h)(4)(A) of the Act, prior to approval by the Board, any 508(h) submission submitted to the Board under section 508(h) of the Act, concept proposal submitted under section 522 of the Act, or index-based weather plan of insurance submitted under section 523(i) of the Act, including any information generated from the 508(h) submission, concept proposal, or index-based weather plan of insurance, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a 508(h) submission or an index-based weather plan of insurance, information provided with the 508(h) submission (including information from the concept proposal) or the index-based weather plan of insurance, or generated in the approval process, may be released to the public, as applicable, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b)(4). While the expert reviews are releasable once the 508(h) submission or an index-based weather plan of insurance has been approved, the names of the expert reviewers may be redacted to prevent any undue pressure on the expert reviewers.

(c) Any 508(h) submission, concept proposal, or index-based weather plan of insurance disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b)(4) (no information related to such 508(h) submission, concept proposal, or index-based weather plan of insurance will be released by FCIC unless authorized in writing by the applicant).

(d) All 508(h) submissions, concept proposals, and index-based weather plans of insurance, will be kept confidential until approved by the Board and will be given an identification number for tracking purposes, unless the applicant advises otherwise.

§ 400.703 Timing and format.

(a) A 508(h) submission, concept proposal, or index-based weather plan of insurance may only be provided to FCIC during the first five business days in January, April, July, and October.

(b) A 508(h) submission, concept proposal, or index-based weather plan of insurance must be provided as an electronic file to FCIC in Microsoft Office compatible format, sent to either the address in paragraph (d)(1) or (d)(2) of this section by the due date in paragraph (a) of this section. The electronic file must contain a document with a detailed index that, in sequential order, references the location of the required information that may either be contained within the document or in a separate file. The detailed index must clearly identify each required section and include the page number if the information is contained in the document or file name if the information is contained in a separate file; and

(c) Any 508(h) submission, concept proposal, or index-based weather plan of insurance not provided within the first 5 business days of a month stated in paragraph (a) of this section will be considered to have been provided in the next month stated in paragraph (a). For example, if an applicant provides a 508(h) submission on January 10, it will be considered to have been received on April 1.

(d) Any 508(h) submission, concept proposal, or index-based weather plan of insurance must be provided to one of the following addresses, but not both:

(1) By email to the Deputy Administrator for Product Management (or successor) at *DeputyAdministrator@rma.usda.gov;* or

(2) By mail on a removable storage device such as a compact disk or

Universal Serial Bus (USB) drive, sent to the Deputy Administrator for Product Management (or any successor position), USDA/Risk Management Agency, 2312 East Bannister Road, Kansas City, MO 64131–3011.

(e) In addition to the requirements in paragraph (a) of this section, a 508(h) submission must be received not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

(f) To be offered for sale in a crop year, there must be at least sixty days between the date the policy is ready to be made available for sale and the earliest sales closing date, unless this requirement is expressly waived by the Board.

(g) Notwithstanding, paragraph (f) of this section, the Board, or RMA if authorized by the Board, shall determine when sales can begin for a 508(h) submission approved by the Board after consideration of the analysis provided by the applicant AIP of the impact of the proposed implementation date on the delivery system.

§ 400.704 Covered by this subpart.

(a) An applicant may submit to the Board, in accordance with § 400.705, a 508(h) submission that is:

(1) A policy or plan of insurance not currently reinsured by FCIC;

(2) One or more proposed revisions to a policy or plan of insurance authorized under the Act; or

(3) Rates of premium for any policy or plan of insurance authorized under the Act.

(b) An applicant must submit to the Board, any significant change to a previously approved 508(h) submission, including requests for expansion, prior to making the change in accordance with § 400.705.

(c) An applicant may submit a concept proposal to the Board prior to developing a full 508(h) submission, in accordance with this subpart and the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs, which can be found on the RMA Web site at *www.rma.usda.gov.*

(d) An applicant who is an approved insurance provider may submit an index-based weather plan of insurance for consideration as a pilot program in accordance with this subpart and the Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance, which can be found on the RMA Web site at *www.rma.usda.gov.*

(e) An applicant must submit a non-reinsured supplemental policy or endorsement to RMA in accordance with § 400.713.

§ 400.705 Contents for new and changed 508(h) submissions, concept proposals, and index-based weather plans of insurance.

(a) A complete 508(h) submission must contain the following material, as applicable, submitted in accordance with § 400.703(b). A complete 508(h) submission must be a viable and marketable insurance product that protects the interests of producers, is actuarially appropriate and ensures program integrity. The material must contain adequate information as required in this section, that is presented clearly to ensure the Board and RMA can determine whether RMA and the delivery system have the resources to implement, administer, and deliver the 508(h) submission effectively and efficiently. Calculations, procedures and methodologies must be consistent throughout the submission and appropriate for the commodity and the risks covered.

(b) The first section will contain general information numbered as follows (1, 2, 3, etc.), including, as applicable:

(1) The applicant's name(s), address or primary business location, phone number, and email address;

(2) The type of 508(h) submission (see § 400.704) and a notation of whether or not the 508(h) submission was approved by the Board as a concept proposal;

(3) A statement of whether the applicant is requesting:

(i) Reinsurance;

(ii) Risk subsidy;

(iii) A&O subsidy;

(iv) Reimbursement for research and development costs, as applicable and, if the 508(h) submission was previously submitted as a concept proposal, the amount of the advance payment for expected research and development costs; or

(v) Reimbursement for expected maintenance costs, if applicable;

(4) The proposed agricultural commodities to be covered, including types, varieties, and practices covered by the 508(h) submission;

(5) The crop or insurance year and reinsurance year in which the 508(h) submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date, if applicable, or the sales window or the earliest date the applicant expects to release the product to the public;

(7) The proposed states and counties where the plan of insurance is proposed to be offered;

(8) Any known or anticipated future expansion plans;

(9) Identification, including names, addresses, telephone numbers, and email addresses, of the person(s) responsible for:

(i) Addressing questions regarding the policy, underwriting rules, loss adjustment procedures, rate and price methodologies, data processing and record-keeping requirements, and any other questions that may arise in implementing or administering the program if it is approved; and

(ii) Annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC;

(10) A statement of whether the 508(h) submission will be filed with the applicable office responsible for regulating insurance in each state proposed for insurance coverage, and if not, reasons why the 508(h) submission will not be filed for review; and

(11) A statement of whether the submitter wants the 508(h) submission to remain confidential.

(c) The second section must contain the benefits of the plan, including, as applicable, a summary that includes:

(1) How the 508(h) submission offers coverage or other benefits not currently available from existing public or private programs;

(2) How the 508(h) submission meets public policy goals and objectives consistent with the Act and other laws, as well as policy goals supported by USDA and the Federal Government; and

(3) A detailed description of the coverage provided by the 508(h) submission and its applicability to all producers, including targeted producers.

(d) Except as provided in this section, the third section must contain the policy, that is clearly written in plain language in accordance with the Plain Writing Act of 2010 (5 U.S.C. 301) such that producers will be able to understand the coverage being offered. The policy language permits actuaries to form a clear understanding of the payment contingencies for which they will set rates. The policy language does not encourage an excessive number of disputes or legal actions because of misinterpretations.

(1) If the 508(h) submission involves a new insurance policy or plan of insurance:

(i) All applicable policy provisions; and

(ii) A list of any additional coverage that may be elected by the insured in conjunction with the 508(h) submission such as applicable endorsements

(include a description of the coverage and how such coverage may be obtained).

(2) If the 508(h) submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(e) The fourth section must contain the following:

(1) Potential impacts the 508(h) submission may have on producers both where the new plan will and will not be available (include both positive and negative impacts) and if applicable, the reasons why the 508(h) submission is not being proposed for other areas producing the commodity;

(2) The amount of commodity (acres, head, board feet, etc.), the amount of production, and the value of each agricultural commodity proposed to be covered in each proposed county and state;

(3) A reasonable estimate of the expected number of potential buyers, liability and premium for each proposed county and state, total expected liability and premium by crop year based on the detailed assessment of producer interest, including a description of the number of producers involved in the development of the product, their level of participation, their type of participation, how many producers have provided data to assist the submitter in the development of the product, and a comparison with other similar products, including differences between the 508(h) submission and the similar products that may make participation different;

(4) If available, any insurance experience for each year and in each proposed county and state in which the policy has been previously offered for sale including an evaluation of the policy's performance and, if data are available, a comparison with other similar insurance policies reinsured under the Act;

(5) Market research studies; ''market research'' is the systematic gathering and interpretation of information about individuals or organizations using statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making, and that must include:

(i) Focus group results (both positive and negative reactions) where a discussion is facilitated amongst a group of stakeholders in order to gain insight into their perceptions, opinions, beliefs, and attitudes towards a product, which must include the number of focus group sessions held, where they were held, when they were held, the number of attendees at each session, the attendees affiliation (producer, agent or other), and specific feedback from the attendees regarding levels of coverage the product should include to cover anticipated risks or perils encountered, the range of costs the producer is willing to pay, what coverages the producers are specifically looking for and an assessment of whether that coverage can be provided at the price the producers are willing to pay, what shortfall or gap in risk protection the product may address, tolerance of risk, perceptions of other similar products, policy features producers may desire, and quality issues;

(ii) Other evidence the proposed 508(h) submission will be positively received by producers, agents, lending institutions, and other interested parties, including correspondence from producers, agents, grower organizations, or other stakeholders expressing the need for a certain risk management strategy, desired coverage for perils faced, and willingness to provide critical information for developing a product;

(iii) An assessment of factors that could negatively or adversely affect the market and responses from a reasonable representative cross-section of producers or significant market segment to be affected by the policy or plan of insurance; and

(iv) For 508(h) submissions proposing products for specialty crops a consultation report must be provided that includes a summary and analysis of discussions with groups representing producers of those agricultural commodities in all major producing areas for commodities to be served or potentially impacted, either directly or indirectly, and the expected impact of the proposed 508(h) submission on the general marketing and production of the crop from both a regional and national perspective including evidence that the 508(h) submission will not create adverse market distortions; and

(6) A marketability assessment from the applicant AIP who is part of the applicant and from at least one other AIP. If a marketability assessment is not provided by a separate AIP who is not part of the applicant, the applicant must provide information regarding the names of the persons and AIPs contacted and the basis for their refusal to provide the marketability assessment. The marketability assessment will include:

(i) An assessment of whether producers will buy the proposed 508(h) submission;

(ii) An assessment of whether AIPs and their agents will want to sell and service the proposed 508(h) submission;

(iii) An assessment of the risks associated with the proposed 508(h) submission and its likely effect under the SRA;

(iv) Estimated computer system impacts and costs;

(v) Estimated administrative and training requirement and costs;

(vi) An analysis of the complexity of the product; and

(vii) What, if any, efficiency will be gained or potential effects on the workload of AIPs or others participating in the program.

(f) The fifth section must contain the information related to the underwriting and loss adjustment of the 508(h) submission, prepared in accordance with the RMA–14050 Risk Management Agency External Standards Handbook located at *http://www.rma.usda.gov/handbooks/14000/index.html,* including as applicable:

(1) An underwriting guide that includes:

(i) A table of contents and introduction;

(ii) A section containing abbreviations, acronyms, and definitions;

(iii) Relevant dates, including as applicable, sales closing, cancellation, termination, earliest planting, final planting, acreage reporting, premium billing, and end of insurance;

(iv) A section containing insurance contract information (insurability requirements; producer elections, Crop Provisions not applicable to Catastrophic Risk Protection, specific unit division guidelines, etc.);

(v) Detailed rules for determining insurance eligibility, including all producer reporting requirements;

(vi) All form standards needed for inspections and producer certifications, plus detailed instructions for their use and completion;

(vii) Step-by-step examples of the data and calculations needed to establish the insurance guarantee (liability) and premium per acre or other unit of measure, including worksheets that provide the calculations in sufficient detail and in the same order as presented in the policy to allow verification that the premiums charged for the coverage are consistent with policy provisions;

(viii) A section containing any special coverage information (*i.e.,* replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and

(ix) A section containing all applicable reference material (*i.e.,*

minimum sample requirements, row width factors, etc.).

(2) Any statements to be included in the actuarial documents including any intended Special Provisions statements that may change any underlying policy terms or conditions; and

(3) The loss adjustment standards handbook for the policy or plan of insurance that includes:

(i) A table of contents and introduction;

(ii) A section containing abbreviations, acronyms, and definitions;

(iii) A section containing insurance contract information (insurability requirements; Crop Provisions not applicable to catastrophic risk protection; specific unit division guidelines, if applicable; notice of damage or loss provisions; quality adjustment provisions; etc.);

(iv) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded;

(v) A section that thoroughly explains appraisal methods, if applicable;

(vi) Illustrative samples of all the applicable forms needed for insuring and adjusting losses in regards to the 508(h) submission in a format compatible with the Document and Supplemental Standards Handbook (FCIC 24040) located at *http://www.rma.usda.gov/handbooks/24000/index.html,* plus detailed instructions for their use and completion;

(vii) Instructions, step-by-step examples of calculations used to determine indemnity payments for all probable situations where a partial or total loss may occur, and loss adjustment procedures that are necessary to establish the amounts of coverage and loss;

(viii) A section containing any special coverage information (*i.e.,* replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and

(ix) A section containing all applicable reference material (*i.e.,* minimum sample requirements, row width factors, etc.).

(g) The sixth section must contain information related to prices and rates of premium, including, as applicable:

(1) A detailed description of the premium rating methodology proposed to be used and the basis for selection of the rating methodology;

(2) A list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;

(3) A detailed description of the pricing and rating methodologies, including:

(i) Supporting documentation needed for the rate methodology;

(ii) All mathematical formulas and equations;

(iii) Data and data sources used in determining rates and prices and a detailed assessment of the data (including availability, access, long term reliability, and the percentage of the total commercial production that the available data represents) and how it supports the proposed rates and prices;

(iv) A detailed explanation of how the rates account for each of the risks covered by the policy; and

(v) A detailed explanation of how the prices are applicable to the policy;

(4) An example of both a rate calculation and a price calculation;

(5) A discussion of the applicant's objective evaluation of the accuracy of the data, the short and long term availability of the data, and how the data will be obtained (if the data source is confidential or proprietary explain the cost of obtaining the data); and

(6) An analysis of the results of simulations or modeling showing the performance of proposed rates and commodity prices, as applicable, based on one or more of the following (Such simulations must use all years of experience available to the applicant and must reflect both partial losses and total losses):

(i) A recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act with modifications, as needed, to represent the components of the 508(h) submission;

(ii) A simulation that shows liability, premium, indemnity, and loss ratios for the proposed insurance product based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or

(iii) Any other comparable simulation that provides results indicating both aggregate and individual performance of the 508(h) submission including expected liability, premium, indemnity, and loss ratios for the proposed insurance product, under various scenarios depicting good and poor actuarial experience.

(h) The seventh section must contain the following:

(1) A statement certifying that the submitter and any approved insurance provider or its affiliates will not solicit or market the 508(h) submission until after all policy materials are released to the public by RMA, unless otherwise specified by the Board;

(2) An explanation of any provision of the policy not authorized under the Act and identification of the portion of the rate of premium due to these provisions; and

(3) Agent and loss adjuster training plans, except for 508(h) submissions proposing only changes to rates of premium to an existing policy.

(i) The eighth section must contain a statement from the submitter that, if the 508(h) submission is approved, the submitter will work with RMA and its computer programmers as needed to assure an effective and efficient implementation process. This section must also contain a description of any expected implementation or administration issues. The applicant must consult with RMA prior to providing the 508(h) submission to determine whether or not the 508(h) submission can be effectively and efficiently implemented and administered through the current information technology systems and that all reporting requirements, terminology, and dates conform to USDA standards and initiatives.

(1) If FCIC approves the 508(h) submission and determines that its information technology systems have the capacity to implement and administer the 508(h) submission, the applicant must provide a document detailing acceptable computer processing requirements consistent with those used by RMA as shown on the RMA Web site in the Appendix III/M–13 Handbook. This information details the acceptable computer processing requirements in a manner consistent with that used by RMA to facilitate the acceptance of producer applications and related data.

(2) Any computer systems, requirements, code and software must be consistent with that used by RMA and comply with the standards established in Appendix III/M–13 Handbook, or any successor document, of the SRA or other reinsurance agreement as specified by FCIC.

(3) These requirements are available from the USDA/Risk Management Agency, 2312 East Bannister Road, Kansas City, MO 64131–3011, or on RMA's Web site at *http://www.rma.usda.gov/data/m13,* or a successor Web site.

(j) The ninth section submitted on separate pages and in accordance with § 400.712 and any applicable Board procedures must specify:

(1) The following amounts, which may be limited to the amount originally

estimated in the submission, unless the applicant can justify the additional costs:

(i) For new products, the amount received for an advance payment, and a detailed estimate of the total amount of reimbursement for research and development costs; or

(ii) For products that are within the maintenance period, an estimate for maintenance costs for the year that the 508(h) submission will be effective; and

(2) A detailed estimate of maintenance costs for future years of the maintenance period and the basis that such maintenance costs will be incurred, including, but not limited to:

(i) Any anticipated expansion;

(ii) Anticipated changes or updates to policy materials;

(iii) The generation of premium rates;

(iv) The determination of prices; and

(v) Any other costs that the applicant anticipates will be requested for reimbursement of maintenance costs or expenses;

(k) The tenth section must contain executed (signed) certification statements in accordance with the following:

(1) ''{Applicant's Name} hereby claim that the basis and amounts set forth in this section and § 400.712 are correct and due and owing to {Applicant's Name} by FCIC under the Federal Crop Insurance Act''; and

(2) ''{Applicant Name} understands that, in addition to criminal fines and imprisonment, the 508(h) submission of false or fraudulent statements or claims may result in civil and administrative sanctions.''

(l) The contents required for concept proposals are found in the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs. In addition, the proposal must provide a detailed description of why the concept provides insurance:

(1) In a significantly improved form;

(2) To a crop or region not traditionally served by the Federal crop insurance program; or

(3) In a form that addresses a recognized flaw or problem in the program;

(m) The contents required for index-based weather plans of insurance are found in the Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance. In accordance with the Board approved procedures, the approved insurance provider that submits the index-based weather plan of insurance must provide evidence they have:

(1) Adequate experience in underwriting and administering policies or plans of insurance that are comparable to the proposed policy of plan of insurance;

(2) Sufficient assets or reinsurance to satisfy the underwriting obligations of the approved insurance provider, and a sufficient insurance credit rating from an appropriate credit rating bureau; and

(3) Applicable authority and approval from each State in which the approved insurance provider intends to sell the insurance product.

§ 400.706 Review.

(a) Prior to providing a 508(h) submission, concept proposal, or index-based weather plan of insurance to the Board, RMA will:

(1) Review the 508(h) submission, concept proposal, or index-based weather plan of insurance to determine if all required documentation is included in accordance with § 400.705;

(2) Review the 508(h) submission, concept proposal, or index-based weather plan of insurance to determine whether it is of sufficient quality to conduct a meaningful review such that the Board will be able to make an informed decision regarding approval or disapproval;

(3) In accordance with section 508(h)(1)(B) of the Act, at its sole discretion, determine if the policy or plan of insurance:

(i) Will likely result in a viable and marketable policy;

(ii) Will provide crop insurance coverage in a significantly improved form; and

(iii) Adequately protect the interests of producers.

(4) RMA may reject and return any 508(h) submission, concept proposal, or index based weather plan of insurance that:

(i) Is not complete;

(ii) Is unlikely to result in a viable and marketable policy;

(iii) Will not provide crop insurance coverage in a significantly improved form; and

(iv) Will not adequately protect the interests of producers.

(5) Except as provided in paragraph (a)(4) of this section, forward the 508(h) submission, concept proposal, or index-based weather plan of insurance, and the results of RMA's initial review, to the Board for its determination of completeness and quality.

(b) Upon the Board's receipt of a 508(h) submission, the Board will:

(1) Determine if the 508(h) submission is complete (the date the Board votes to contract with expert reviewers is the date the 508(h) submission is deemed to be complete for the start of the 120 day time-period for approval);

(2) Unless the 508(h) submission makes non-significant changes to a policy or plan of insurance, or involves policy provisions that have already undergone expert review, forward the complete 508(h) submission to at least five expert reviewers to review the 508(h) submission:

(i) Of the five expert reviewers, no more than one will be employed by the Federal Government, and none may be employed by any approved insurance provider or their representative; and

(ii) The expert reviewers will each provide their individual assessment of whether the 508(h) submission:

(A) Protects the interests of agricultural producers and taxpayers;

(B) Is actuarially appropriate;

(C) Follows recognized insurance principles;

(D) Meets the requirements of the Act;

(E) Does not contain excessive risks (risks may be considered excessive if they encourage adverse selection, moral hazard, or if premium rates cannot be adequately or appropriately determined);

(F) Follows sound, reasonable, and appropriate underwriting principles;

(G) Will provide a new kind of coverage that is likely to be viable and marketable;

(H) Will provide crop insurance coverage in a manner that addresses a clear and identifiable flaw or problem in an existing policy;

(I) Will provide a new or improved coverage for a commodity that previously had no available crop insurance, or has demonstrated a low level of participation or coverage level under existing coverage;

(J) May have a significant adverse impact on the crop insurance delivery system;

(K) The marketability assessment reasonably demonstrates the product would be viable and marketable (if the applicant cannot obtain a marketability assessment by another AIP, the Board shall presume that the submission is unmarketable);

(L) If applicable, contains a consultation report that provides evidence the 508(h) submission will not create adverse market distortions; and

(M) Meets any other criteria the Board may deem necessary;

(3) Return to the applicant any 508(h) submission the Board determines is not complete, along with an explanation of the reason for the determination and:

(i) With respect to 508(h) submissions developed from approved concept proposals, the provisions in § 400.712(c)(1) shall apply; and

(ii) Except for 508(h) submissions developed from concept proposals, if the 508(h) submission is resubmitted at a later date, it will be considered a new 508(h) submission solely for the purpose of determining the amount of time that the Board must take action; and

(4) For complete 508(h) submissions:

(i) Request review by RMA to provide its assessment of whether the 508(h) submission:

(A) Meets the criteria listed in subsections (b)(2)(ii)(A) through (M);

(B) Is consistent with USDA's public policy goals;

(C) Does not increase or shift risk to any other FCIC reinsured policy;

(D) Can be implemented, administered, and delivered effectively and efficiently using RMA's information technology and delivery systems; and

(E) Contains requested amounts of government reinsurance, risk subsidy, and administrative and operating subsidies that are reasonable and appropriate for the type of coverage provided by the policy; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine if the 508(h) submission conforms to the requirements of the Act and all applicable Federal statutes and regulations.

(c) Upon the Board's receipt of a concept proposal, the Board will:

(1) Determine whether the concept proposal is complete (the date the Board votes to contract with expert reviewers is the date the concept proposal is deemed to be a complete concept proposal for the start of the 120 day time-period for approval);

(2) If complete, forward the concept proposal to at least two expert reviewers with underwriting or actuarial experience to review the concept in accordance with section 522(b)(2) of the Act, this subpart, and Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs;

(3) Return to the applicant any concept proposal the Board determines is not complete, along with an explanation of the reason for the determination (If the concept proposal is resubmitted at a later date, it will be considered a new concept proposal solely for the purposes of determining the amount of time that the Board must take action);

(4) Determine whether the concept proposal, if developed into a policy or plan of insurance would, in good faith, would meet the requirement of being likely to result in a viable and marketable policy consistent with section 508(h) (if the applicant cannot obtain a marketability assessment by another AIP, the Board shall presume that the submission is unmarketable);

(5) At its sole discretion, determine whether the concept proposal, if developed into a policy or plan of insurance would meet the requirement of providing coverage:

(i) In a significantly improved form;

(ii) To a crop or region not traditionally served by the Federal crop insurance program; or

(iii) In a form that addresses a recognized flaw or problem in the program;

(6) Determine whether the proposed budget and timetable are reasonable;

(7) Determine whether the concept proposal meets all other requirements imposed by the Board or as otherwise specified in Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs; and

(8) Provide a date by which the 508(h) submission must be provided in consultation with the applicant.

(d) Upon the Board's receipt of an index-based weather plan of insurance, the Board will:

(1) Determine whether the index-based weather plan of insurance is complete (the date the Board votes to contract with expert reviewers is the date the index-based weather plan of insurance is deemed to be complete for the start of the 120-day time-period for approval);

(2) If determined to be complete, contract with five expert reviewers and review the index-based weather plan of insurance in accordance with section 523(i) of the Act, this subpart, and Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance;

(3) Return to the applicant any index-based weather plan of insurance the Board determines is not complete, along with an explanation of the reason for the determination (if the index-based weather plan of insurance is resubmitted at a later date, it will be considered a new index-based weather plan of insurance solely for the purposes of determining the amount of time that the Board must take action); and

(4) Give the highest priority for approval of index-based weather plans of insurance that provide a new kind of coverage for specialty crops and livestock commodities that previously had no available crop insurance, or have demonstrated a low level of participation under existing coverage.

(e) All comments and evaluations will be provided to the Board by a date determined by the Board to allow the Board adequate time for review.

(f) The Board will consider all comments, evaluations, and recommendations in its review process. Prior to making a decision, the Board may request additional information from RMA, OGC, the expert reviewers, or the applicant.

(g) In considering whether to approve policies or plans of insurance and when such policies or plans of insurance will be offered for sale, the Board will:

(1) First, consider policies or plans of insurance that address underserved commodities, including commodities for which there is no insurance;

(2) Second, consider existing policies or plans of insurance for which there is inadequate coverage or there exists low levels of participation; and

(3) Last, consider all policies or plans of insurance submitted to the Board that do not meet the criteria described in paragraph (g)(1) or (2) of this section.

(h) At any time an applicant may request a time delay after the 508(h) submission, concept proposal, or index-based weather plan of insurance has been placed on the Board meeting agenda. The Board is not required to agree to such an extension.

(1) With respect to 508(h) submissions from concept proposals approved by the Board for advanced payment, the applicant must provide good cause why consideration should be delayed.

(2) Any requested time delay is not limited in the length of time unless a date is set by the Board by which all revisions to the 508(h) submission, concept proposal or index-based weather plan of insurance must be made. However, delays may make implementation of the 508(h) submission for the targeted crop year impractical or impossible as determined by the Board.

(3) The time period during which the Board will make a decision to approve or disapprove the 508(h) submission, concept proposal or index-based weather plan of insurance shall be extended commensurately with any time delay requested by the applicant.

(i) The applicant may withdraw a 508(h) submission, concept proposal, index-based weather plan of insurance, or a portion of a 508(h) submission or concept proposal, at any time by presenting a request to the Board. A withdrawn 508(h) submission, concept proposal or index-based weather plan of insurance that is resubmitted will be deemed a new 508(h) submission, concept proposal, or index-based weather plan of insurance solely for the

purposes of determining the amount of time that the Board must take action.

(j) The Board will render a decision on a 508(h) submission or index-based weather plan of insurance, with or without revision or give notice of intent to disapprove within 90 days after the date the 508(h) submission or index-based weather plan of insurance is considered complete by the Board, unless the Board agrees to a time delay in accordance with paragraph (h) of this section.

(k) The Board may provide a notice of intent to disapprove a 508(h) submission if it determines:

(1) The interests of producers and taxpayers are not protected, including but not limited to:

(i) The 508(h) submission does not provide adequate coverage or treats producers disparately;

(ii) The applicant has not presented sufficient documentation that the 508(h) submission will provide a new kind of coverage that is likely to be viable and marketable (if the applicant cannot obtain a marketability assessment by another AIP, the Board shall presume that the submission is unmarketable);

(iii) Coverage would be similar to another policy or plan of insurance that has not demonstrated a low level of participation or does not contain a clear and identifiable flaw, and the producer would not significantly benefit from the 508(h) submission;

(iv) The 508(h) submission may create adverse market distortions or adversely impact other crops or agricultural commodities if marketed;

(v) The 508(h) submission will have a significant adverse impact on the private delivery system;

(vi) The 508(h) submission cannot be implemented, administered, and delivered effectively and efficiently using RMA's information technology and delivery systems;

(vii) The 508(h) submission contains flaws that may encourage adverse selection or moral hazard; or

(viii) The 508(h) submission contains vulnerabilities that allow indemnities to exceed the value of the crop;

(2) The premium rates are not actuarially appropriate;

(3) The 508(h) submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the 508(h) submission are excessive or it increases or shifts risk to another reinsured policy;

(5) The 508(h) submission does not meet the requirements of the Act; or

(6) The 90-day deadline under subsection (j) will expire before the Board has time to make an informed decision to approve or disapprove the 508(h) submission.

(l) The Board may disapprove a concept proposal if it determines:

(1) The concept, in good faith, will not likely result in a viable and marketable policy consistent with section 508(h);

(2) At the sole discretion of the Board, the concept, if developed into a policy and approved by the Board, would not provide crop insurance coverage:

(i) In a significantly improved form;

(ii) To a crop or region not traditionally served by the Federal crop insurance program; or

(iii) In a form that addresses a recognized flaw or problem in the program;

(3) The proposed budget and timetable are not reasonable, as determined by the Board; or

(4) The concept proposal fails to meet one or more requirements established by the Board.

(m) The Board shall provide a notice of intent to disapprove an index-based weather plan of insurance if it determines there is not:

(1) Adequate experience in underwriting and administering policies or plans of insurance that are comparable to the proposed policy or plan of insurance;

(2) Sufficient assets or reinsurance to satisfy the underwriting obligations of the approved insurance provider, and possess a sufficient insurance credit rating from an appropriate credit rating bureau, in accordance with Board procedures; and

(3) Applicable authority and approval from each State in which the approved insurance provider intends to sell the insurance product.

(n) Unless otherwise provided for in this section:

(1) If the Board intends to disapprove a 508(h) submission or index-based weather plan of insurance, the Board will provide the applicant with a written explanation outlining the basis for the intent to disapprove; and

(2) Any approval or disapproval of a 508(h) submission, concept proposal, or index-based weather plan of insurance must be made by the Board in writing not later than 120 days after the Board has determined it to be complete.

(o) If a notice of intent to disapprove all or part of a 508(h) submission or index-based weather plan of insurance has been provided by the Board, the applicant must provide written notice to the Board not later than 30 days after the Board provides such notice if the 508(h) submission or index-based weather plan of insurance will be modified. If the applicant does not respond within the 30-day period, the Board will send the applicant a letter stating the 508(h) submission or index-based weather plan of insurance is disapproved.

(p) If the applicant elects to modify the 508(h) submission or index-based weather plan of insurance:

(1) The applicant must advise the Board of a date by which the modified 508(h) submission or index-based weather plan of insurance will be presented to the Board; and

(2) The remainder of the time left between the Board's notice of intent to disapprove and the expiration of the 120-day deadline is paused until the modified 508(h) submission or index-based weather plan of insurance is received by the Board.

(3) The Board will disapprove a modified 508(h) submission or index-based weather plan of insurance if the:

(i) Causes for disapproval stated by the Board in its notification of intent to disapprove the 508(h) submission or index-based weather plan of insurance are not satisfactorily addressed;

(ii) Board determines there is insufficient time for the Board to finish its review before the expiration of the 120-day deadline for disapproval of a 508(h) submission or index-based weather plan of insurance, unless the applicant grants the Board an extension of time to adequately consider the modified 508(h) submission or index-based weather plan of insurance (If an extension of time is agreed upon, the time period during which the Board must act on the modified 508(h) submission or index-based weather plan of insurance will paused during the extension); or

(iii) Applicant does not present a modification of the 508(h) submission or index-based weather plan of insurance to the Board on the date the applicant specified and the applicant does not request an additional time delay.

(q) If the Board fails to render a decision on a new 508(h) submission or index-based weather plan of insurance within the time periods specified in paragraph (j) or (n) of this section, such 508(h) submission or index-based weather plan of insurance will be deemed approved by the Board for the initial reinsurance year designated for the 508(h) submission or index-based weather plan of insurance. The Board must approve the 508(h) submission or index-based weather plan of insurance for it to be available for any subsequent reinsurance year.

§ 400.707 Presentation to the Board for approval or disapproval.

(a) The Board will inform the applicant of the date, time, and place of the Board meeting.

(b) The applicant will be given the opportunity and is encouraged to present the 508(h) submission, concept proposal, or index-based weather plan of insurance to the Board in person. The applicant must confirm in writing, email or fax whether the applicant will present in person to the Board.

(c) If the applicant elects not to present the 508(h) submission, concept proposal, or index-based weather plan of insurance to the Board, the Board will make its decision based on the information provided in accordance with § 400.705 and § 400.706.

§ 400.708 Post approval.

(a) After a 508(h) submission is approved by the Board, and prior to it being made available for sale to producers:

(1) The following must be executed, as applicable:

(i) If required by FCIC, an agreement between the applicant and FCIC that specifies:

(A) In addition to the requirements in § 400.709, responsibilities of each with respect to the implementation, delivery and maintenance of the 508(h) submission; and

(B) The required timeframes for submitting any information and documentation needed to administer the approved 508(h) submission;

(ii) A reinsurance agreement if the approved submission does not meet, or is not expected to perform in a financial manner consistent with the terms and conditions of the Standard Reinsurance Agreement or any other existing reinsurance agreement offered by FCIC in effect for the crop year, and that considers the interests of all participating AIPs; and

(iii) A training package to facilitate implementation of the approved 508(h) submission;

(2) The Board may limit the availability of coverage, for any policy or plan of insurance developed under the authority of the Act and this regulation, on any farm or in any county or area;

(3) A 508(h) submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance, subsidy, and terms and conditions as received by the applicant;

(4) Any solicitation, sales, marketing, or advertising of the approved 508(h) submission by the applicant before FCIC has made the policy materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected; and

(5) The property rights to the 508(h) submission will automatically transfer to FCIC if the applicant elects not to maintain the 508(h) submission under § 400.712(a)(3) or fails to notify FCIC of its decision to elect or not elect maintenance of the program under § 400.712(l).

(b) Requirements and procedures for approved index-based weather plans of insurance are contained in Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance. In accordance with the Board approved procedures, index-based weather plans of insurance are not eligible for federal reinsurance, but may be approved for risk subsidy and A&O subsidy.

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, prices, and supporting materials, including actuarial documents, are submitted by the deadline specified by FCIC, in the form approved by the Board, and are in compliance with section 508 of the Rehabilitation Act;

(ii) Annually updating and providing maintenance changes no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold;

(iii) Timely addressing questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions for approved 508(h) submissions will be communicated to all approved insurance providers through FCIC's official issuance system); and

(iv) If requested by the Board, providing an annual review of the policy's performance, in writing to the Board, 180 days prior to the contract change date for the plan of insurance (The first annual report will be submitted one full year after implementation of an approved policy or plan of insurance, as agreed to by the submitter and RMA);

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board:

(i) Any changes to approved 508(h) submissions, both non-significant and significant, must be submitted to FCIC in the form of a 508(h) submission for review in accordance with this subpart no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold; and

(ii) Significant changes will be considered a new 508(h) submission;

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless, or until, the policy or plan of insurance is transferred to FCIC in accordance with § 400.712(l) (the applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC);

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered more than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider, or any other person will have a right of action against the applicant;

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been withdrawn by the applicant, in accordance with paragraph (a)(4) of this section is deemed canceled and applications are deemed not accepted as of the date that FCIC publishes the notice of withdrawal on its Web site at *www.rma.usda.gov.*

(i) Approved insurance providers will be notified in writing by FCIC that the policy, plan of insurance, or premium rates have been withdrawn; and

(ii) Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in the area by the sales closing date for such policy or plan of insurance; and

(6) Failure of the applicant to perform all of the applicant's responsibilities may result in the withdrawal of approval for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Conducting a review in accordance with § 400.706 and providing its recommendations to the Board;

(ii) With respect to 508(h) submissions:

(A) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related material, for sale to producers in a timely manner (All such information shall be communicated to all approved insurance providers through FCIC's official issuance system);

(B) As applicable, ensuring that approved insurance providers receive reinsurance under the same terms and conditions as the applicant (Approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement) if required; and

(C) Reviewing the activities of approved insurance providers, agents, loss adjusters, and producers to ensure that they are in accordance with the terms of the policy or plan of insurance, the reinsurance agreement, and all applicable procedures;

(2) FCIC will not be liable for any mistakes, errors, or flaws in the policy, plan of insurance, their related materials, or the rates of premium and no cause of action may be taken against FCIC as a result of such mistake, error, or flaw in a 508(h) submission or index-based weather plan of insurance submitted under this subpart;

(3) If at any time prior to the cancellation date, FCIC discovers there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium, or any other reason for withdrawal of approval contained in § 400.706(k) exists, FCIC will withdraw reinsurance for such policy or plan of insurance to all AIPs for the subsequent crop year (If reinsurance is denied, a written notice will be provided on RMA's Web site at *www.rma.usda.gov*);

(4) If maintenance of the policy or plan of insurance is transferred to FCIC in accordance with § 400.712(l), FCIC will assume liability for the policy or plan of insurance for any mistake, error, or flaw that occur after the date the policy is transferred.

(c) If approval by the Board is withdrawn or reinsurance is denied for any 508(h) submission, RMA will provide such notice on its Web site and the approved insurance provider must cancel the policy or plan of insurance in accordance with its terms.

§ 400.710 Preemption and premium taxation.

A policy or plan of insurance that is approved by the Board for FCIC reinsurance is preempted from state and local taxation. This preemption does not apply to index-based weather plans of insurance approved for premium subsidy or A&O subsidy under this part.

§ 400.711 Right of review, modification, and the withdrawal of approval.

(a) At any time after approval, the Board may review any policy, plan of insurance, related material, or rates of premium approved under this subpart, including index-based weather plans of insurance and request additional information to determine whether the policy, plan of insurance, related material, or rates of premium comply with the requirements of this subpart.

(b) The Board will notify the applicant of any problem or issue that may arise and allow the applicant an opportunity to make any needed change. If the contract change date has passed, the applicant will be liable for such problems or issues for the crop year in accordance with § 400.709 until the policy may be changed.

(c) The Board may withdraw approval for the applicable policy, plan of insurance or rate of premium, including index-based weather plans of insurance, as applicable, if:

(1) The applicant fails to perform the responsibilities stated under § 400.709(a);

(2) The applicant does not timely and satisfactorily provide materials or resolve any issue to the Board's satisfaction so that necessary changes can be made prior to the earliest contract change date;

(3) The Board determines the applicable policy, plan of insurance or rate of premium, including index-based weather plans of insurance is not in conformance with the Act, these regulations or the applicable procedures;

(4) The policy, plan of insurance, or rates of premium are not sufficiently marketable according to the applicant's estimate or fails to perform sufficiently as determined by the Board; or

(5) The interest of producers or tax payers is not protected or the continuation of the program raises questions or issues of program integrity.

§ 400.712 Research and development reimbursement, maintenance reimbursement, advance payments for concept proposals, and user fees.

(a) For 508(h) submissions approved by the Board for reinsurance under section 508(h) of the Act:

(1) The 508(h) submission may be eligible for a one-time payment of research and development costs and reimbursement of maintenance costs for up to four reinsurance years, as determined by the Board;

(2) Reimbursement of research and development costs or maintenance costs will be considered as payment in full by FCIC for the 508(h) submission, and no additional amounts will be owed to the applicant if the 508(h) submission is transferred to FCIC in accordance with paragraph (l) of this section; and

(3) If the applicant elects at any time not to continue to maintain the 508(h) submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the 508(h) submission and will not receive any user fees for the plan of insurance;

(b) The Board approved procedures and time-frames must be followed, or research and development costs and maintenance costs may not be reimbursed.

(1) After a 508(h) submission has been approved by the Board for reinsurance, to be considered for reimbursement of:

(i) Research and development costs, the applicant must submit the total amount requested and all supporting documentation to FCIC by electronic method or by hard copy and such information must be received by FCIC on or before August 1 immediately following the date the 508(h) submission was released to approved insurance providers through FCIC's issuance system; or

(ii) Maintenance costs, the applicant must submit the total amount requested and all supporting documentation to FCIC by electronic method or by hard copy and such information must be received by FCIC on or before August 1 of each year of the maintenance period.

(2) Given the limitation on funds, regardless of when the request is received, no payment will be made prior to September 15 of the applicable fiscal year.

(c) Applicants submitting a concept proposal may request an advance payment of up to 50 percent of the projected total research and development costs, and after the applicant has begun research and development activities, the Board may, at its sole discretion, provide up to an additional 25 percent advance payment of the estimated research and development costs, if the requirements in the definition of advance payment are met and the additional advance payment is requested in accordance with Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs.

(1) If a concept proposal is approved by the Board for advance payment, the applicant is responsible for

independently developing a 508(h) submission that is complete as specified in this subpart by the deadline set by the Board.

(i) If an applicant fails to fulfill the obligation to provide a 508(h) submission that is complete by the deadline set by the Board, the Board shall provide a notice of non-compliance to the applicant and allow not less than 30 days for the applicant to respond;

(ii) If the applicant fails to respond, to the satisfaction of the Board, with just cause as to why a 508(h) submission that is complete was not provided by the deadline set by the Board, the applicant shall return the amount of the advance payment plus interest at the rate of 1.25 percent simple interest per calendar month;

(iii) If the applicant responds, to the satisfaction of the Board, with just cause as to why a 508(h) submission that is complete was not provided by the deadline set by the Board, the applicant will be given a new deadline by which to provide a 508(h) submission that is complete; and

(iv) If the applicant fails to provide a 508(h) submission that is complete by the deadline, no additional extensions will be approved by the Board and the applicant shall return the amount of the advance payment plus interest at the rate of 1.25 percent simple interest per calendar month.

(2) If an applicant receives an advance payment for a portion of the expected research and development costs for a concept proposal that is developed into a 508(h) submission and determined by the Board to be complete, but the 508(h) submission is not approved by the Board following expert review, the Board will not:

(i) Seek a refund of any advance payments for research and development costs; and

(ii) Make any further research and development cost reimbursements associated with the 508(h) submission.

(d) Under section 522 of the Act, there are limited funds available on an annual fiscal year basis to pay for reimbursements of research and development costs (including advance payments for concept proposals) and maintenance costs. Consistent with paragraphs (e) through (j) of this section if all applicants' requests for reimbursement of research and development costs (including advance payments for concept proposals) and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement determined reasonable by the Board; or

(2) Exceed the amount authorized by law, each applicant's reimbursement determined reasonable by the Board will be determined by dividing the total amount of each individual applicant's reimbursable costs authorized in paragraphs (e) through (j) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (e) through (j) for the year and multiplying the result by the amount of reimbursement authorized under the Act.

(e) The amount of reimbursement for research and development costs and maintenance costs requested by the applicant may be reduced as necessary when the requested amount is not commensurate with the complexity or the size of the area proposed to be covered.

(f) Research and development costs and maintenance costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.).

(1) Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(2) Allowable research and development costs and maintenance costs (directly related to research and development or maintenance of the 508(h) submission only) may include the following:

(i) Wages and benefits, exclusive of bonuses, overtime pay, or shift differentials;

(A) One line per employee or contractor, include job title, total hours, and total dollars;

(B) The rates charged must be commensurate with the tasks performed (For example, a person performing the task of data entry should not be paid at the rate for performing data analysis);

(C) The wage rate and benefits shall not exceed two times the hourly wage rate plus benefits provided by the Bureau of Labor Statistics; and

(D) The applicant must report any familial or business relationship that exists between the applicant and the contractor or employee (Reimbursement may be limited or denied if the contractor or employee is associated to the applicant and they may be considered as one and the same. This includes a separate entity being created by the applicant to conduct research and development. Reimbursement may be limited or denied if the contractor is paid a salary or other compensation);

(ii) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(iii) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost. Software developed to send or receive data between the producer, agent, approved insurance provider or RMA or such other similar software may not be included as an allowable cost);

(iv) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars); and

(v) Training costs expended to facilitate implementation of a new approved 508(h) submission (Include instructor(s) hourly rate, hours, and cost of materials and travel) conducted at a national level, directed to all approved insurance providers interested in selling the 508(h) submission, and approved prior to the training by RMA).

(3) The following expenses are specifically not eligible for research and development and maintenance cost reimbursement:

(i) Copyright fees, patent fees, or any other charges, costs or expenses related to the use of intellectual property;

(ii) Training costs, excluding training costs to facilitate implementation of the approved 508(h) submission in accordance with subsection (f)(2)(v);

(iii) State filing fees and expenses;

(iv) Normal ongoing administrative expenses or indirect overhead costs (for example, costs associated with the management or general functions of an organization, such as costs for internet service, telephone, utilities, and office supplies);

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Lobbying costs;

(x) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;

(xi) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;

(xii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance;

(xiii) Costs associated with building rents or space allocation;

(xiv) Costs in paragraphs (i) and (j) of this section determined by the Board to be ineligible for reimbursement; and

(xv) Local, State, or Federal taxes.

(g) Requests for reimbursement of maintenance costs must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period.

(1) Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(2) Maintenance costs for the following activities may be reimbursed:

(i) Expansion of the original 508(h) submission into additional crops, counties or states;

(ii) Non-significant changes to the policy and any related material;

(iii) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and

(iv) Any other activity that qualifies as maintenance.

(h) Projected costs for research and development for concept proposals shall be based on a detailed estimate of the costs allowed in paragraph (f) of this section. Since costs are one measurement of the viability to develop an efficient policy, the Board may limit reimbursements for research and development to the estimated costs contained in the concept proposal, unless the submitter can justify a higher reimbursement in accordance with Board procedures.

(i) If a 508(h) submission is determined to be incomplete and is subsequently resubmitted and approved, the costs to perfect the 508(h) submission may not be considered reimbursable costs depending on the level of insufficiency or incompleteness of the 508(h) submission, as determined at the sole discretion of the Board.

(j) Reimbursement of costs associated with addressing issues raised by the Board, expert reviewers and RMA will be evaluated based on the substance of the issue and the amount of time reasonably necessary to address the specific issue. Delays and additional costs caused by the inability or refusal to adequately address issues may not be considered reimbursable, as determined at the sole discretion of the Board.

(k) If the Board withdraws its approval for reinsurance at any time during the period that reimbursement for maintenance is being made or user fees are being collected, no maintenance reimbursement shall be made nor any user fee be owed after the date of such withdrawal.

(l) Not later than 180 days prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid for the approved 508(h) submission, the applicant must notify FCIC in writing regarding its decision on future ownership and maintenance of the policy or plan of insurance.

(1) The applicant must notify FCIC in writing whether it intends to:

(i) Continue to maintain the policy or plan of insurance and charge approved insurance providers a user fee to cover maintenance expenses for all policies earning premium; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) If the applicant fails to notify FCIC in writing by the deadline, the policy or plan of insurance will automatically transfer to FCIC beginning with the next reinsurance year.

(3) If the applicant elects to:

(i) Continue to maintain the policy or plan of insurance, the applicant must submit a request for approval of the user fee by the Board at the time of the election; or

(ii) Transfer the policy or plan of insurance to FCIC, FCIC may at its sole discretion, continue to maintain the policy or plan of insurance or elect to withdraw the availability of the policy or plan of insurance.

(4) Requests for approval of the user fee must be accompanied by written documentation to support the amount requested will only cover direct costs to maintain the plan of insurance. Costs that are not eligible for research and development and maintenance reimbursements under this section are not eligible to be considered for determining the user fee.

(5) The Board will approve the amount of user fee, including the maximum amount of total maintenance that may be collected per year, that is payable to the applicant by approved insurance providers unless the Board determines that the user fee charged:

(i) Is unreasonable in relation to the maintenance costs associated with the policy or plan of insurance; or

(ii) Unnecessarily inhibits the use of the policy or plan of insurance by approved insurance providers.

(6) If the total user fee exceeds the maximum amount determined by the Board, the maximum amount determined by the Board will be divided by the number of policies earning premium to determine the amount to be paid by each approved insurance provider.

(7) Reasonableness of the initial request to charge a user fee will be determined by the Board based on a comparison of the amount of reimbursement for maintenance previously received, the number of policies, the number of approved insurance providers, and the expected total amount of user fees to be received in any reinsurance year.

(8) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that approved insurance providers will not sell the policy, or the user fee represents an unreasonable portion of the A&O subsidy paid to the AIP such that it prevents the AIP from meeting its other obligations under the SRA.

(9) The user fee charged to each approved insurance provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(10) It is the sole responsibility of the applicant to collect such fees from an approved insurance provider and any indebtedness for such fees must be resolved by the applicant and approved insurance provider.

(i) Applicants may request that FCIC provide the number of policies sold by each approved insurance provider.

(ii) Such information will be provided not later than 90 days after such request is made or not later than 90 days after the requisite information has been provided to FCIC by the approved insurance provider, whichever is later.

(11) Every two years after approval of a user fee, or if the applicant has made a significant change to the approved 508(h) submission, applicants must submit documentation to the Board for review in determining if the user fee should be revised.

(12) The Board may review the amount of the user fee at any time at its sole discretion.

(m) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a 508(h) submission for reimbursement of research and development costs, maintenance costs, or user fees.

(n) For purposes of this section, rights to, or obligations of, research and development cost reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

(o) Applicants requesting reimbursement for research and development costs, maintenance costs,

or user fees, may present their request in person to the Board prior to consideration for approval.

(p) Index-based weather plans of insurance are not eligible for reimbursement from FCIC for maintenance costs or research and development costs. Submitters of approved index-based weather plans of insurance may collect user fees from other approved insurance providers in accordance with Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance.

§ 400.713 Non-reinsured supplemental (NRS) policy.

(a) Unless otherwise specified by FCIC, any NRS policy that covers the same agricultural commodity as any policy reinsured by FCIC under the Act must be provided to RMA to ensure it does not shift any loss or risk that does not exist under the FCIC reinsured policy. Failure to provide such NRS policy or endorsement to RMA prior to its issuance shall result in the denial of reinsurance, A&O subsidy, and risk subsidy on all underlying FCIC reinsured policies unless the underlying FCIC policy was sold by another AIP. If the underlying FCIC reinsured policy is sold by another AIP, the AIP that sold the NRS may be required to pay FCIC an amount equal to the reinsurance, A&O subsidy, and risk subsidy on the underlying FCIC policy.

(b) An electronic copy in Microsoft Office compatible format, of the new or revised NRS policy and related materials must be submitted at least 150 days prior to the first sales closing date applicable to the NRS policy. At a minimum, examples that demonstrate how liability and indemnities are calculated under differing scenarios must be included. Electronic copies of the NRS must be sent to the Deputy Administrator for Product Management (or successor) at *DeputyAdministrator@rma.usda.gov.*

(c) RMA will review the NRS policy. If any of the conditions found in paragraphs (c)(1) through (5) of this section are found to occur, FCIC will notify the AIP that submitted the NRS policy that if they sell the NRS policy, it will result in denial of reinsurance, A&O subsidy, and risk subsidy on all underlying FCIC reinsured policies, unless the underlying FCIC policy was sold by another AIP. If the underlying FCIC reinsured policy is sold by another AIP, the AIP that sold the NRS may be required to pay FCIC an amount equal to the reinsurance, A&O subsidy, and risk subsidy on the underlying FCIC policy.

(1) If the NRS policy materially increases or shifts risk to the underlying policy or plan of insurance reinsured by FCIC.

(i) An NRS policy will be considered to materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC if RMA determines it:

(A) Creates a moral hazard, such as a financial incentive for the policyholder to behave in a way that increases the number or size of losses;

(B) Results in the underlying FCIC policy either triggering a loss sooner, or paying a larger indemnity than would otherwise be allowed by the terms and conditions of the underlying reinsured policy; or

(C) Allows for combined indemnities between the underlying FCIC reinsured policy and the NRS that are in excess of the value a producer would reasonably expect to receive for the insured commodity if a normal crop was produced and sold at a reasonable market price.

(ii) The NRS must include language that clearly states no indemnity will be paid in excess of the initial value of the insured commodity.

(2) The NRS reduces or limits the rights of the insured with respect to the underlying policy or plan of insurance reinsured by FCIC. An NRS policy will be considered to reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance if RMA determines it affects, alters, preempts, or undermines the terms or conditions of the underlying policy or procedures issued by FCIC.

(3) The NRS disrupts the marketplace. An NRS policy will be considered to disrupt the marketplace if RMA determines it encourages planting more acres of the insured commodity in excess of normal market demand, adversely affects the sales or administration of reinsured policies, undermines producers' confidence in the Federal crop insurance program, or harms public perception of the Federal crop insurance program.

(4) The NRS is an impermissible rebate. An NRS may be considered to be an impermissible rebate if RMA determines that the premium rates charged are insufficient to cover the expected losses and a reasonable reserve or it offers other benefits that are generally provided at a cost.

(5) The NRS policy is conditioned upon or provides incentive for the purchase of the underlying policy or plan of insurance reinsured by FCIC with a specific agent or approved insurance provider.

(d) RMA will respond not less than 75 days before the first sales closing date or provide notice why RMA is unable to respond within the time frame allotted.

(e) NRS policies reviewed by RMA will need to be submitted once every five years unless a change is made to the NRS or the underlying policy. Once any changes are made to either policy, or the five year period has concluded, the NRS must be resubmitted for review.

Signed in Washington, DC, on August 2, 2016.

Timothy J. Gannon,

Acting Manager, Federal Crop Insurance Corporation.

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