

PART 400-GENERAL ADMINISTRATIVE REGULATIONS

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Subpart V - Submission of Policies, Provisions of Policies Rates of Premium, and Premium Reduction Plans

Authority: 7 U.S.C. 1506(1), 1506(p), 1508(e)(3).

§ 400.700 Basis, purpose, and applicability.

(a) This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board as authorized under section 508(h) of the Act and for nonreinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development costs, and maintenance costs for products and the approval process.

(b) The purpose of the premium reduction plan is to foster competition in the crop insurance program, thereby providing producers with an opportunity to receive a premium discount, as authorized in section 508(e)(3) of the Act. RMA has sought to accomplish this purpose, while still maintaining the financial stability of the delivery system and the integrity of the crop insurance program, by implementing a premium reduction plan where approved insurance providers participate in the premium reduction plan by requesting the opportunity to offer a premium discount and later requesting approval from RMA to pay a premium discount if

the insurance provider has achieved an efficiency based on the a actual savings it has attained through the reinsurance year.

- (1) Since the payment of any premium discount is determined based on actual reported cost information for the reinsurance year, and must be approved by RMA, the disclosure to policyholders of the amount of the premium discount and the payment of the premium discount will not occur until after the close of any given reinsurance year.
- (2) This premium reduction plan substantially limits the burden on approved insurance providers and RMA and provides for flexibility for approved insurance providers to choose the States in which they will offer premium discounts and vary the amount of premium discount between States.
- (3) Under the premium reduction plan, the payment and amount of premium discounts cannot be guaranteed, or identified as to amount or certainty of payment, in advance of the sale of an eligible crop insurance contract. However, producers will have the potential to receive monetary assistance in defraying the costs of their future premium.

§ 400.701 Definitions.

Act - The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.)

Actuarial documents - The material for the crop or insurance year which is available for public inspection in your agent's office and published on RMA's website at <http://www.rma.usda.gov/>, or a successor website, and which shows available coverage levels, information needed to determine premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or

agricultural commodity, insurable acreage or commodities, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

Actuarially appropriate - Premium rates expected to cover anticipated losses and a reasonable reserve based on valid reasoning, an examination of available risk data, which for new products may be scarce but must still be of sufficient quality and quantity to reasonably determine the anticipated losses, or thorough knowledge or experience of the expected value of future costs associated with the risk to be transferred.

Administrative and Operating (A&O) costs - The costs of the approved insurance provider, and any MGA and TPA, which are directly related to the delivery, loss adjustment and administration of the Federal crop insurance program. Costs associated with the sale or service of catastrophic risk protection (CAT) eligible crop insurance contracts in an amount equal to the loss adjustment expense subsidy for CAT eligible crop insurance contracts, ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer, and payments for the purchase of reinsurance and related credits are not considered as A&O costs.

Administrative and operating (A&O) subsidy - The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for CAT eligible crop insurance contracts, and any ceding commission received for ceding any portion of the risk associated with any

eligible crop insurance contract authorized under the authority of the Act with a reinsurer are not considered as A&O subsidy.

Agent - An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is employed by, or under contract with, the approved insurance provider, or its designee, to sell and service such eligible crop insurance contracts.

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

Approved insurance provider - A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Approved procedures - The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board. For purposes of §§ 400.714 through 400.722 only, approved procedures include all provisions of the SRA.

Board - The Board of Directors of FCIC.

Compensation - the total amount of any guaranteed salary or payment, commission, or anything that has a quantifiable value or benefit that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider or its contractor either

directly or indirectly through a third party. Payments conditioned upon something other than the underwriting gains of the approved insurance provider are considered as compensation, such as bonuses or other conditional payments or commission based upon whether an agent timely turns in applications, production reports or acreage reports, etc. A profit sharing arrangement will be considered compensation unless and only to the extent that:

- (1) Such profit sharing arrangement contains a provision that would require a pro rata reduction in the amount or percentage of profit contained in such arrangement if the total amount of underwriting gain paid by FCIC for the applicable reinsurance year is not sufficient to cover the amount or percentage of profit; or
- (2) At least one of the required triggers for the payment under the profit sharing arrangement is that the approved insurance provider receives from FCIC an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

Complete Submission - A submission determined by the Board to contain all necessary and appropriate documentation in accordance with § 400.705 and is of sufficient quality to conduct a meaningful review.

Complexity - Complexity takes into consideration such factors as originality, the number and type of factual determinations necessary to establish insurable interest, evaluate risk, and determine whether an indemnity is payable, the number of commodities and areas to which the product is applicable, the rating methodology, the number of risks covered, unique policy provisions or endorsements, the delivery process of the submission, and the process of creating rules, policy terms and

conditions, underwriting procedures, rating methodologies, administrative and operating procedures, and supporting materials.

Development - The process of drafting rules, new policy provisions, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a proposed policy or coverage.

Disinterested third party - A person who does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with anyone employed or contracted by the applicant or who will not benefit financially from the approval of the submission.

Efficiency - Monetary savings realized when the approved insurance provider's A&O costs are less than the amount of the A&O subsidy paid by FCIC. If the approved insurance provider is reducing agent compensation as a means to achieve an efficiency, not all of the efficiency can come from such reduction in agent compensation. Efficiency does not include any actual or projected underwriting gain earned from the SRA, private reinsurance revenues or expenses, or any investment returns on the approved insurance provider's reserves.

Eligible crop insurance contract - An insurance contract for an agricultural commodity authorized by the Act and approved by FCIC, with terms and conditions in effect as of the applicable contract change date, which is sold and serviced consistent with the Act, FCIC regulations and approved procedures, having a sales closing date within the reinsurance year, and with an eligible producer.

Eligible producer - A person who has an insurable interest in an agricultural commodity, who has not been determined ineligible to participate in the Federal crop insurance program, and who possesses a United States issued social security number (SSN), employer identification number (EIN), or such other identification as required by RMA.

Endorsement - A document that amends a policy reinsured under the Act in a manner that supplements or amends the insurance coverage provided by that policy.

FCIC - The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

Maintenance - For the purposes of this subpart only, the process of continual support and improvement, as needed, for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, and any other actions necessary to provide adequate and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes.

Maintenance costs - Specific expenses associated with the maintenance of a policy during the maintenance period.

Maintenance period - A period of time that begins on the date the Board approves the submission for maintenance and ends on the date that is not more than four reinsurance years after such approval.

Manager - The Manager of FCIC.

Managing General Agent (MGA) - An entity that meets the definition of managing general agent under the laws of the State in which such entity is incorporated and in

every other State in which it operates, or in the absence of such State law or regulation, meets the definition of a managing general agent or agency in the National Association of Insurance Commissioners Managing General Agents Act, or successor Act.

Marketable - A determination by the Board that a sufficient number of producers will purchase the product and approved insurance providers will sell the product to make it economical, based on credible evidence provided by the applicant and any other relevant information.

Marketing plan - A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, a prescribed insurance year cycle, the data upon which such information is based, such data may include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or ancillary participants, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be effected by the policy or plan of insurance demonstrating the number of producers likely interested in purchasing the product, and a commitment from at least one approved insurance provider to sell and support such a policy or plan of insurance.

Multiple peril crop insurance (MPCI) - All insurance policies reinsured by FCIC that offers coverage for loss of production, loss of revenue, or both.

National Agricultural Statistics Service (NASS) - An agency of the United States Department of Agriculture, or a successor agency.

Nonreinsured supplemental policy (NRS) - A policy, endorsement or other risk management tool that is not reinsured under the Act, or has not been submitted to FCIC under section 508(h) of the Act, that offers additional coverage, other than for loss related to hail, to a policy or plan of insurance that is reinsured by FCIC.

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, the interests of producers, FCIC's reinsurance risk, or any condition that does not affect liability or the amount of loss to be paid under the policy. Statutory or regulatory requirements are included in this category regardless of impact.

Plan of insurance - A class of policies, such as MPCCI or Group Risk Plan of Insurance, that offers a specific type of coverage to one or more agricultural commodities.

Plan of Operations - The documents and information the approved insurance provider must submit in accordance with section IV.F.2. and Appendix II of the SRA and applicable approved procedures.

Policy - A contract for insurance that includes an accepted application, Basic Provisions, applicable Commodity Provisions, other applicable options and endorsements, the Special Provisions, related materials, and the applicable regulations published in 7 CFR chapter IV.

Premium discount - A payment made by the approved insurance provider to the policyholder to help defray the cost of premium, in an amount equal to the dollar

amount or corresponding percentage of net book premium approved by RMA, as authorized by section 508(e)(3) of the Act.

Profit sharing arrangement - An arrangement to make a payment to an employee, agent, loss adjuster or other contractor conditioned upon whether the approved insurance provider receives an underwriting gain on the crop insurance business.

Payments made to commercial reinsurers or ceding commissions paid to the approved insurance provider for the reinsurance year for the crop insurance book of business are not considered as profit sharing arrangements for the purposes of determining A&O costs or A&O subsidy.

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.

Reduction in service - When the approved insurance provider, agent and loss adjuster, or any other contractor or employee of the approved insurance provider that assists in or provides any service for a Federally reinsured eligible crop insurance contract, sells, services or administers such eligible crop insurance contracts at a level of service less than that required under all applicable regulations and approved procedures. A violation of a provision in an approved procedure will be considered to be a reduction in service.

Related material - The actuarial documents for the insured agricultural commodity and any underwriting or loss adjustment manual, handbook, form or other information needed to administer the policy.

Research - For the purposes of development, the gathering of information related to: Producer needs and interests; the marketability of the policy or plan of insurance; the

appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, and the documentation, systems and software necessary to implement a policy or plan of insurance. 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 of a submission, as initially approved by the Board.

Risk Management Agency (RMA) - An agency of USDA responsible for the administration of all programs authorized under the Act and other authorities.

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

Sales closing date - The final calendar date on which an approved insurance provider may accept an application by a producer for insurance.

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 - The part of the policy that contains specific provisions of insurance for each insured commodity that may vary by geographic area.

Standard Reinsurance Agreement (SRA) - The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance

provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. All references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement, unless otherwise stated in such reinsurance agreement.

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 this subpart.

Third Party Administrator (TPA) - A person or organization that processes claims or performs other administrative services and holds licenses, as applicable, in States in which services are provided with respect to the Federal crop insurance business in accordance with a service contract or an affiliate or any other type of relationship.

Underwriting gain - For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, including but not limited to payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, service, loss adjustment and administration of the Federal crop insurance program.

Unfair discrimination - An approved insurance provider's implementation of the premium reduction plan will be considered unfairly discriminatory to a producer if the availability of eligible crop insurance contracts sold under the premium reduction plan, or the percentage of net book premium upon which the premium discount is paid, is based on the loss history of the producer, the amount of premium earned under the eligible crop insurance contract, the producer's size of the operation or

number of acres to be insured, or precludes in any manner producers from participating in the premium reduction plan in a State where an approved insurance provider is eligible for the opportunity to offer a premium reduction plan.

USDA - The United States Department of Agriculture.

User fees - Fees, approved by the Board, that can be charged to approved insurance providers for use of a policy or plan of insurance.

§ 400.702 Confidentiality of submission and duration of confidentiality.

- (a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from the submission, 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 submission, all information provided with the submission, or generated in the approval process, may be released to the public, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b).
- (c) Any submission disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b) and no information related to such submission will be released by FCIC unless authorized in writing by the applicant.
- (d) In the submission, the applicant must state if the name of the submission may be used in Board documents including but not limited to the agenda, minutes, and Board memoranda. The applicant cannot use false names to mislead the public

regarding the nature of the submission. If permission is not given to use the name of the submission, the submission will simply be referred to as a “Section 508(h) submission.”

§ 400.703 Timing of submission.

- (a) A submission may only be provided to FCIC, in either a hard copy or electronic format, during the first 5 business days of January, April, July, and October.
- (b) Any submission 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 the next month stated in paragraph (a). For example, if an applicant provides a submission on January 10, it will be considered to have been received on April 1.
- (c) Any submission must be provided to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.
- (d) The Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

§ 400.704 Type of submission.

- (a) An applicant may submit to the Board in accordance with § 400.705:
 - (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 submission prior to making the change.

§ 400.705 Contents required for a new submission or changes to a previously approved submission.

(a) A complete submission must contain the following material, as applicable, in the order given, in a 3-ring binder, with a table of contents, page numbers, and section dividers clearly labeling each section or in an electronic format that when printed will be an exact duplicate of the information that would have been found in the three-ring binder with the exception of section dividers.

(1) If a hard copy of the submission is provided, it must include six identical copies provided to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, and one identical copy of the submission provided to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, DC 20250-0801.

(2) Electronic submissions must be sent to the Deputy Administrator, Research and Development (or successor) at DeputyAdministrator@rma.usda.gov and the Administrator at Administrator@rma.usda.gov.

(b) The first section will contain general information, including, as applicable:

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

- (2) The type of submission (see § 400.704);
- (3) A statement of whether the applicant is requesting:
 - (i) Reinsurance, which includes risk subsidy and A&O subsidy;
 - (ii) Reimbursement for research and development costs, as applicable; or
 - (iii) Reimbursement for maintenance costs, as applicable;
- (4) The proposed agricultural commodities, including types, varieties, and practices covered by the submission;
- (5) The crop and reinsurance years in which the submission is proposed to be available for purchase by producers;
- (6) The proposed sales closing date, if applicable, or if not applicable, the earliest date the applicant expects to release the product to the public;
- (7) The proposed duration and scope of the plan of insurance;
- (8) A marketing plan;
- (9) Any known or anticipated future expansion plans;
- (10) Identification, including names, addresses, telephone numbers, and e-mail addresses, of the persons 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 administering the program after 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;and

- (11) A statement of whether the 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 submission will not be filed for review.
- (c) The second section must contain the benefits of the plan, including, as applicable, a statement about the plan that demonstrates:
- (1) How the submission offers coverage or other benefits not currently available from existing public and private programs;
 - (2) The projected demand for the submission, which must be supported by information from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand; and
 - (3) How the 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.
- (d) Except as provided in this section, the third section must contain the policy, including, as applicable:
- (1) If the submission involves a new insurance policy or plan of insurance:
 - (i) All applicable policy provisions; and
 - (ii) A list and description of any additional coverage that may be elected by the insured, including how such coverage may be obtained; and
 - (2) If the 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 information related to the marketing of the policy or plan of insurance, including, as applicable:
- (1) A list of counties and states where the submission is proposed to be offered;
 - (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) The expected liability and premium for each proposed county and state;
 - (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) Focus group results;
 - (6) Market research studies;
 - (7) Qualitative market estimates;
 - (8) Affects upon the delivery system or ancillary participants;
 - (9) Correspondence from producers expressing the need for such policy or plan of insurance;
 - (10) Responses from a reasonable representative cross-section of producers to be affected by the product or plan of insurance; and
 - (11) Commitment in writing from at least one approved insurance provider to sell and support the policy or plan of insurance.

- (f) The fifth section must contain the information related to the underwriting and loss adjustment of the submission, including as applicable:
- (1) Detailed rules for determining insurance eligibility, including all producer reporting requirements;
 - (2) Relevant dates, if not included in the proposed policy;
 - (3) Detailed 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;
 - (4) Detailed examples of calculations used to determine indemnity payments for all probable situations where a partial or total loss may occur;
 - (5) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded;
 - (6) Any statements to be included in the actuarial documents; and
 - (7) 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 divisions guidelines, if applicable; notice of damage or loss provisions; quality adjustment provisions; etc);

- (iv) A section that thoroughly explains appraisal methods, if applicable;
 - (v) Illustrative samples of all the applicable forms needed for insuring and adjusting losses in regards to the product plus detailed instructions for their use and completion;
 - (vi) Instructions, examples of calculations, and loss adjustment procedures that are necessary to establish the amounts of coverage and loss;
 - (vii) A section containing any special coverage information (i.e., replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and
 - (viii) 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 list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;
 - (2) A detailed description of the pricing and rating methodologies, including supporting documentation, all mathematical formulas, equations, and data sources used in determining rates and prices and an explanation of premium components that detail how rates were determined for each component, that demonstrate the rate is appropriate;
 - (3) An example of both a rate calculation and a price calculation;
 - (4) A discussion of the applicant's objective evaluation of the reliability of the data;

- (5) 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):
- (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 submission;
 - (ii) A simulation 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 submission under various scenarios depicting good and poor actuarial experience; and
- (6) A simulation of expected losses capturing both a probable loss and a total loss.
- (h) The seventh section must contain an evaluation and certification from a disinterested third party who is an accredited associate or fellow of the Casualty Actuarial Society, or other similarly qualified professional, who certifies the submission is actuarially appropriate and consistent with appropriate insurance principles and practices.
- (i) The eighth section must contain all forms applicable to the submission, including:
- (1) An application for insurance and procedures for accepting the application; and

- (2) All applicable policy forms, instructions and procedures that are necessary to establish the amounts of coverage or loss.
- (j) The ninth section must contain the following:
- (1) A statement specifying sales will not commence for any new or revised submission until at least 60 days after all policy provisions and related material 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;
 - (3) Agent and loss adjuster training plans; and
 - (4) A certification from the applicant's legal counsel that the submission meets and complies with all requirements of the Act, applicable regulations, and any reinsurance agreement.
- (k) The tenth section must contain a written plan, including specifications and details for the systems and software development necessary for the implementation of the submission, if applicable, and the documents that demonstrate the submitter has the capability and resources to develop systems that comply in all respects with the standards established for processing and acceptance of data by the FCIC Data Acceptance System, or successor system, unless otherwise authorized by FCIC. Unless otherwise determined by FCIC, the applicant must consult with FCIC to determine whether their submission can be implemented and administered through the current system;

- (1) If FCIC approves the submission and determines that its system has the capacity to implement and administer the submission, the applicant must provide acceptable computer requirements, code and software, consistent with that used by FCIC, to facilitate the acceptance of producer applications and all related data;
 - (2) If FCIC approves the submission and determines that its system lacks the capacity to implement and administer the submission, the applicant must provide acceptable computer systems, requirements, code and software necessary to implement and administer the policy or plans of insurance;
 - (3) Any computer systems, requirements, code and software must be consistent with that used by FCIC and comply with the standards established in Appendix III, or any successor document, of the Standard Reinsurance Agreement or other reinsurance agreement as specified by FCIC; and
 - (4) These requirements are available from the Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO, 64133-4676 or on RMA's website at <http://www.rma.usda.gov/data/#m13>, or a successor website.
- (l) The eleventh section must contain a training package. The training package must include a thorough discussion, explanations, written exercises, and examples covering the following topics:
- (1) Basic and catastrophic risk protection policy provisions;
 - (2) The commodity provisions and any endorsements;
 - (3) Underwriting under the underwriting guide;
 - (4) Eligibility requirements;

- (5) Guarantee, indemnity, and premium calculations;
 - (6) Special Provisions of Insurance;
 - (7) Actuarial documents;
 - (8) Loss adjustment under the loss adjustment standards handbook;
 - (9) Applicable additions to the Crop Insurance Handbook (CIH); and
 - (10) Applicable additions to the Loss Adjustment Manual (LAM).
- (m) The twelfth section submitted on separate pages and in accordance with § 400.712 must specify:
- (1) On one page, the total estimated amount that will be requested for reimbursement of research and development costs (for new products only) or the estimated amount for maintenance costs for the year for which the submission will be effective (for products that are within the maintenance period); and
 - (2) On another page, a comprehensive estimate of maintenance costs for each future year of the maintenance period and the basis for which such maintenance costs will be incurred, including, but not limited to:
 - (i) Any anticipated expansion;
 - (ii) The generation of rates, Special Provisions, underwriting rules, etc;
 - (iii) The determination of prices; and
 - (iv) Any other costs that the applicant anticipates will be requested for reimbursement;
- (n) The thirteenth section must contain executed certification statements in accordance with the following:

- (1) “{Applicant’s Name} hereby claim that the 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 submission of false or fraudulent statements or claims may result in civil and administrative sanctions.”

§ 400.706 Review of submission.

- (a) Prior to providing the submission to the Board to determine whether it is a complete submission, RMA will:
 - (1) Review the submission to determine if all necessary and appropriate documentation is included in accordance with § 400.705;
 - (2) Review the submission to determine whether the submission is of sufficient quality to conduct a meaningful review;
 - (3) Inform the applicant of the information RMA deems necessary for the submission to comply with paragraphs (a)(1) and (2) of this section; and
 - (4) Forward the submission and the results of RMA’s initial review to the Board.
- (b) Upon the Board’s receipt of the submission, the Board will:
 - (1) Determine if the submission is a complete submission (The date the Board votes to contract with independent reviewers is the date the submission is deemed to be a complete submission for the start of the 120 day time-period for approval);
 - (2) Forward the complete submission to at least five independent persons with underwriting or actuarial experience to review the submission:

- (i) Of the five 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 reviewers will each provide their assessment of whether the submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, follows sound, reasonable, and appropriate underwriting principles, as well as other items the Board may deem necessary;
- (3) Return to the applicant any submission the Board determines is not a complete submission, and provide documentation to the applicant explaining such. If the submission is resubmitted at a later date, it will be considered a new submission;
- (4) For all complete submissions:
- (i) Request review of the submission by RMA to provide its assessment of whether:
 - (A) The submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, is consistent with USDA's public policy goals, does not increase or shift risk to any other FCIC reinsured policy, offers coverage that is similar to another policy or plan of insurance and if

the producer would further benefit from the submission and can be administered and delivered efficiently and effectively;

(B) The marketing plan is reasonable;

(C) RMA has the resources to consider, implement, and administer the submission; and

(D) The requested amount of government reinsurance, risk subsidy, and administrative and operating subsidies is reasonable and appropriate for the type of coverage provided by the policy submission; and

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

(c) 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.

(d) 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 independent reviewers or the applicant.

(e) An applicant may request, at any time, a time delay before the Board provides a notice of intent to disapprove the submission. The Board is not required to agree to such an extension.

(1) Any requested time delay will not be limited in the length of time or the number of delays. However, delays may make implementation of the submission for the targeted crop year impractical or impossible.

- (2) The time period during which the Board must make a decision to approve or disapprove shall be extended commensurately with any time delay requested by the applicant.
- (3) If the Board agrees to an extension of time, the Board and the applicant must agree to a time period in which the Board must make its decision to approve or disapprove after the expiration of any requested time delay.
- (f) The applicant may withdraw a submission or a portion of a submission at any time by written request to the Board. A withdrawn submission that is resubmitted will result in the submission being deemed a new submission for the purpose of determining the amount of time that the Board must act on such submission.
- (g) The Board will render a decision to approve the submission with or without revision or give notice of intent to disapprove within 90 days after the date the submission is considered complete by the Board in accordance with paragraph (b)(1) of this section, unless the applicant and Board agree to a time delay in accordance with paragraph (e) of this section.
- (h) The Board may disapprove a submission if it determines that:
 - (1) The interests of producers and taxpayers are not protected, including but not limited to:
 - (i) The submission does not provide adequate coverage or treats producers disparately;
 - (ii) The applicant has not presented sufficient documentation that the submission is marketable;

- (iii) Coverage would be similar to another policy or plan of insurance and the producer would not further benefit from the submission; or
 - (iv) The resources of FCIC or RMA are not sufficient to support the review and implementation of the product;
- (2) The premium rates are not actuarially appropriate;
 - (3) The submission does not conform to sound insurance and underwriting principles;
 - (4) The risks associated with the submission are excessive or it increases or shifts risk to any other FCIC reinsured policy;
 - (5) The submission does not meet the requirements of the Act or is not in accordance with USDA's public policy goals; or
 - (6) There is insufficient time before the submission would become effective under section 508(h) of the Act for the Board to make an informed decision with respect to whether the interests of producers are protected, the premium rates are actuarially appropriate, or the risks associated with the submission are excessive;
- (i) If the Board intends to disapprove the submission, the applicant will be notified in writing at least 30 days prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.
 - (j) After written notice of intent to disapprove all or part of a submission has been provided by the Board, the applicant must provide written notice to the Board not later than 30 days after the Board provided such notice, if the submission will be

modified. Except as provided in paragraph (j)(3) of this section, the applicant must also include an anticipated date that the modification will be provided to the Board. If the applicant does not respond within the 30-day period, the Board will send the applicant a letter stating the submission is disapproved.

- (1) If the modification is in direct response to reviewer comments, the Board may act on the modification immediately or seek further review within the 30-day time period allowed.
- (2) The Board will approve or disapprove a modified submission not later than 30 days after receiving a modified submission from the applicant, unless the applicant and the Board agree to a time delay. If a time delay is agreed upon, the time period during which the Board must act on the modified submission will not be in effect during the delay.
- (3) The Board will disapprove a modified submission if:
 - (i) All causes for disapproval stated by the Board in its notification of intent to disapprove the submission are not satisfactorily addressed;
 - (ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or
 - (iii) Modification is so substantial that the Board determines that additional independent review is required and a time delay can not be agreed upon to allow for such review.

- (k) A submission will be disapproved if the applicant does not present a modification of the submission to the Board on the date the applicant anticipated presenting the modification or does not request an additional time delay.
- (l) If the Board fails to take action on a new submission within the prescribed 90-day period in paragraph (g) of this section, or within the time period in accordance with paragraph (e)(3) of this section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission 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 submission to the Board in person. The applicant must confirm, in writing, whether the applicant will present the submission to the Board.
- (c) If the applicant elects, at any time, not to present the submission to the Board, the Board will make its decision based on the submission and the reviews provided in accordance with § 400.706(b).

§ 400.708 Approved submission.

- (a) After a submission is approved by the Board, and prior to it being made available for sale to producers, the following items, as applicable, must be completed:
 - (1) If FCIC requires, an agreement between the applicant and FCIC that specifies:

- (i) The responsibilities of each with respect to the implementation, delivery and oversight of the submission; and
 - (ii) That the property rights to the submission automatically transfers to FCIC if the applicant elects not to maintain the submission and FCIC has paid any amounts under § 400.712.
- (2) A reinsurance agreement if terms and conditions differ from the available existing reinsurance agreements.
- (b) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance and subsidy terms and conditions as received by the applicant.
- (c) Any solicitation, sales, marketing, or advertising of the approved submission by the applicant before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected.

§ 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, and supporting materials, including actuarial documents, are submitted to FCIC in the form approved by the Board;
 - (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, unless FCIC assumes maintenance of the product;

(iii) Addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions will be communicated to all approved insurance providers through FCIC's official issuance system); and

(iv) Annually reviewing the policy's performance and providing a report on the policy's performance to the Board by each anniversary date of when the product was first available to be purchased by the public;

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board (Any changes, both non-significant and significant, must be submitted to FCIC 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. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new 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 the policy or plan of insurance is transferred to FCIC. 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 not less 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; and
- (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 deemed not accepted as of the date that FCIC publishes the notice of withdrawal on its website at www.rma.usda.gov; and
- (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 the applicant's responsibilities may result in the denial of reinsurance for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Conducting the best review of the submission possible in the time allowed;

(ii) 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);

(iii) Ensuring that all 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

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

(3) 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 will exist against FCIC as a result of such mistake, error, or flaw in a submission submitted under this subpart;

- (4) 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 denial of reinsurance contained in § 400.706(h) exists, FCIC will deny reinsurance to such policy or plan of insurance. If reinsurance is denied, a written notice of the denial of reinsurance will be provided to the approved insurance providers;
- (5) If reinsurance is denied under paragraph (b)(4) of this section, the approved insurance provider will have the option of:
 - (i) Selling and servicing the policy or plan of insurance at its own risk and without any subsidy; or
 - (ii) Canceling the policy or plan of insurance in accordance with its terms; and
- (6) After maintenance of the policy or plan of insurance is transferred to FCIC, FCIC will be liable for any mistakes, errors, or flaws that occur after the date the policy or plan of insurance has been transferred.

§ 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.

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

At any time after approval, the Board may review any policy, plan of insurance, related material, and rates of premium approved under this subpart and request additional information to determine whether the policy, plan of insurance, related

material, and rates of premium comply with statutory or regulatory changes or court orders, are still actuarially appropriate, and protect program integrity and the interests of producers. 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. The Board may deny reinsurance for the applicable policy, plan of insurance or rate of premium if the applicant:

- (a) Fails to perform the responsibilities stated under § 400.709(a); or
- (b) Does not satisfactorily provide materials or resolve any issue so that necessary changes can be made prior to the earliest contract change date.

§ 400.712 Research and development reimbursement, maintenance reimbursement, and user fees.

- (a) For submissions approved by the Board for reinsurance under section 508(h) of the Act:
 - (1) If it is determined to be marketable by the Board, the 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, after the date such costs have been approved by the Board.
 - (2) Reimbursement of research and development costs or maintenance costs will be considered as payment in full by FCIC for the submission
 - (3) If the applicant elects at any time not to continue to maintain the submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the submission.

- (b) For submissions submitted to the Board for reinsurance after publication of the interim rule on September 17, 2001, an estimated amount of the total cost for reimbursement of research and development costs and maintenance costs must be included with the original submission to the Board in accordance with this section. These estimates will be used by FCIC to evaluate if the interests of producers are protected and to track potential expenditures and will not provide a basis for making any reimbursements under this section. Documentation of actual costs allowed under this section will be used to determine any reimbursement.
- (c) To be eligible for any reimbursement under this section, FCIC must determine that a submission is marketable.
- (d) To be considered for reimbursement of:
- (1) Research and development costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 immediately following the date the submission was first available to be purchased by producers;
 - (2) Maintenance costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 of each year of the maintenance period;
 - (3) The procedure and time-frame in paragraphs (d)(1) and (2) of this section, as applicable, must be followed or research and development costs and maintenance costs may not be reimbursed; and

- (4) 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.
- (e) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (f), (g), (h), and (k) of this section, if all applicants' requests for reimbursement of research and development costs 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 authorized under these paragraphs; and
 - (2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (f) (g), (h) and (k) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (f), (g), (h) and (k) of this section for that year and multiplying the result by the amount of reimbursement authorized under the Act.
- (f) The amount of reimbursement for research and development costs will be determined based on the amount of reimbursement authorized under paragraph (e) of this section, adjusted for the complexity of the policy, plan of insurance, or rates of premium, as determined by FCIC, and the size of the area in which the policy, plan of insurance, or rates of premium may be offered.

- (1) Policies or plans of insurance that offer new and innovative coverages that are not currently available will be eligible for a higher reimbursement than policies or plans of insurance that are, or have components that are, based on existing policies or plans of insurance.
- (2) Policies or plans of insurance that offer new premium rating or market price methodologies will be eligible for a higher reimbursement than policies or plans of insurance that use existing premium rating or market price methodologies.
- (3) Policies or plans of insurance that cover new commodities that are not otherwise covered by crop insurance or that offer innovative coverage and original policy language will be eligible for a higher reimbursement than policies or plans of insurance for commodities for which insurance is currently available.
- (4) Policies or plans of insurance that may be offered for sale nationwide or in large geographical regions will be eligible for higher reimbursement than those that are applicable to only a few counties or states or a small geographical region.
- (5) Any reimbursement under this subpart will be scored as follows:
 - (i) Complexity scores:
 - (A) Basic or Common Provisions:
 - (1) Uses existing policies or plans of insurance: 0.05
 - (2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (f)(3) of this section):	0.20
(B) Commodity Provisions and Special Provisions:	
(1) Uses existing policies or plans of insurance:	0.05
(2) Contains modifications to existing policies or plans of insurance:	0.10
(3) Original (See paragraph (f)(3) of this section):	0.20
(C) Market prices:	
(1) Uses existing policies or plans of insurance:	0.05
(2) Contains modifications to existing policies or plans of insurance:	0.10
(3) Original (See paragraph (f)(3) of this section):	0.20
(D) Rates of Premium:	
(1) Uses existing policies or plans of insurance:	0.05
(2) Contains modifications to existing policies or plans of insurance:	0.10
(3) Original (See paragraph (f)(3) of this section):	0.20
(E) Underwriting:	
(1) Uses existing policies or plans of insurance:	0.05
(2) Contains modifications to existing policies or plans of insurance:	0.10
(3) Original (See paragraph (f)(3) of this section):	0.20
(ii) Geographic scope scores:	
(A) Potential national availability:	0.10

B) Potential county, state or regional availability: 0.05

(6) Policies or plans of insurance that receive a summed total score for both complexity and geographic scope that is:

(i) Equal to or greater than 0.6 may receive the full amount of reimbursement approved by the Board under paragraph (g) of this section;

(ii) Greater than 0.25 but lower than 0.60 will receive a reimbursement that is not greater than 75 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section; and

(iii) Equal to or less than 0.25 will receive a reimbursement that is not greater than 50 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section.

(g) For those submissions submitted to the Board for approval after September 17, 2001, research and development costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.). Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items (directly related to research and development of the submission only) may include the following:

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total dollars. Compensation amounts will be compared with the Occupational Employment Statistics Survey (published each January by the U.S.

Department of Labor, Bureau of Labor Statistics) or other substantial wage information as deemed appropriate by the Board);

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics); and

(iii) Contracted expenses if fully disclosed, documented, and:

(A) The applicant provides a copy of the contract, billing statements, accounting records, etc;

(B) The applicant provides the relationship, if any, between the applicant and the contractor, such as parent company, subsidiary, etc.

(Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any and all other involvement of the contractor with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc.

(Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The contracted expenses are broken out by line item (including all persons who make up the contracted party who had a substantive involvement in the development of the submission), such as:

- (1) Individual names;
- (2) Rate of pay;
- (3) Hours allocated to the submission;
- (4) Benefit rate; and
- (5) Overhead;

(iv) Professional fees if fully disclosed, documented, and;

(A) The applicant provides the job title, straight-time hourly wage, total hours, and total dollars;

(B) The applicant provides the relationship, if any, between the applicant and the professional, such as parent company, subsidiary, etc.

(Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any other involvement of the professional with the applicant, such as being a director, officer, employee, etc., or

having common directors, officers, employers, employees, etc.

(Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The professional fees are broken out by line item (including all persons who make up the professional party who had a substantive involvement in the development of the submission), such as:

- (1) Individual names;
- (2) Rate of pay;
- (3) Hours allocated to the submission;
- (4) Benefit rate; and
- (5) Overhead;

(v) 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);

(vi) 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); and

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

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

- (i) Copyright or patent fees;
 - (ii) Training costs;
 - (iii) State filing fees and expenses;
 - (iv) Normal ongoing administrative expenses;
 - (v) Paid or incurred losses;
 - (vi) Loss adjustment expenses;
 - (vii) Sales commission;
 - (viii) Marketing costs;
 - (ix) Indirect overhead costs;
 - (x) Lobbying costs;
 - (xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;
 - (xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;
 - (xiii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance; and
 - (xiv) Costs associated with building rents or space allocation.
- (h) Requests for reimbursement of maintenance costs for submissions approved after September 17, 2001, must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period. Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board. Maintenance costs for the following activities may be reimbursed:

- (1) Expansion of the original submission into additional counties or states;
 - (2) Non-significant changes to the policy and any related material;
 - (3) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and
 - (4) Any other activity that qualifies as maintenance.
- (i) If the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not follow the criteria set forth in this regulation, the product may be withdrawn at the discretion of the Board and no further maintenance reimbursement will be paid.
 - (j) Not later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, the applicant must notify FCIC regarding its election of the treatment of the policy or plan of insurance for subsequent reinsurance years.
 - (1) The applicant must notify FCIC 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. It is the sole responsibility of the applicant to collect such fees from the approved insurance providers and any indebtedness for such fees must be resolved by the applicant and approved insurance provider. Applicants may request that FCIC provide the number of policies sold by each approved insurance provider. 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; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) 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.

(3) Requests for approval of the user fee must be accompanied by written documentation to support that the amount requested will only cover maintenance costs.

(4) The Board will approve the amount of user fee 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 other approved insurance providers.

(5) Reasonableness of the user fees will be determined by the Board based on a comparison with 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.

- (6) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other approved insurance providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.
- (7) 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.
- (8) If the applicant does not notify FCIC at least six months prior to the last day of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, ownership of the policy or plan of insurance will be automatically transferred to FCIC beginning with the next reinsurance year.
- (k) 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 submission for reimbursement of research and development costs, or maintenance costs under this section or the amount of reimbursement.
- (l) 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.

(m) Notwithstanding the definition in § 400.701, the maintenance period ends for an approved submission once the applicant no longer performs the maintenance responsibilities, as determined by FCIC, or the applicant gives FCIC notice they no longer wish to maintain the submission.

(n) 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.

§ 400.713 Nonreinsured supplemental (NRS) policy.

(a) Unless notified by FCIC, three hard copies, or an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, at least 120 days prior to the first sales closing date applicable to the policy.

(b) FCIC will review the NRS policy to determine that it does not materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC.

(1) An NRS policy will be considered to disrupt the marketplace if it adversely affects the sales or administration of reinsured policies, undermines

producers' confidence in the Federal crop insurance program, decreases the producer's willingness or ability to use Federally reinsured risk management products, or harms public perception of the Federal crop insurance program.

(2) The applicant, at a minimum must provide worksheets and examples that establish liability and determine indemnities that demonstrate the performance of the NRS policy under differing scenarios. When the review is complete, FCIC will forward their findings to the applicant.

(c) If the approved insurance provider sells an NRS policy that RMA determines materially increases or shifts risk to the underlying FCIC reinsured policy, reduces or limits the rights of the insured with respect to the underlying policy, or causes disruption in the marketplace for products reinsured by FCIC, reinsurance, A&O subsidy and risk subsidy will be denied on the underlying FCIC reinsured policy for which such NRS policy was sold.

(d) FCIC will respond to the submitter not less than 60 days before the first sales closing date or provide notice why FCIC is unable to respond within the time frame allotted.

§ 400.714 Requests for the opportunity to offer a premium discount.

(a) To participate in the premium reduction plan, approved insurance providers must make a request to RMA for the opportunity to offer a premium discount for the reinsurance year in accordance with § 400.716.

(b) If RMA determines that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan for the

reinsurance year, the approved insurance provider will only be allowed to pay a premium discount if:

- (1) The approved insurance provider has submitted the required information applicable for that reinsurance year in accordance with § 400.720;
- (2) The approved insurance provider has demonstrated to RMA that it has operated sufficiently below its A & O subsidy to support the payment of such discount; and
- (3) RMA has approved the dollar amount, and the corresponding percentage of net book premium, for the premium discount.

(c) For the 2006 reinsurance year:

- (1) For an approved insurance provider with an approved SRA for the 2005 reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than August 4, 2005; and
- (2) For an approved insurance provider that did not have an approved SRA for the 2005 reinsurance year and did not request such agreement until after the deadline contained in paragraph (c)(1) of this section, requests for the opportunity to offer a premium discount must be provided with the application for approval of a SRA.

(d) For all subsequent reinsurance years:

- (1) For an approved insurance provider with an approved SRA for the previous reinsurance year, requests for the opportunity to offer a premium discount must be received by RMA not later than April 1 before the reinsurance year, or the date RMA otherwise determines the Plan of Operations is due; and

- (2) For an approved insurance provider that did not have an approved SRA for the previous reinsurance year and did not request such agreement until after the deadline contained in paragraph (d)(1) of this section, requests for the opportunity to offer a premium discount under the premium reduction plan must be provided with the application for approval of a SRA.
- (e) Any request for the opportunity to offer a premium discount under the premium reduction plan that is not submitted by the applicable deadlines contained in paragraphs (c) and (d) will not be considered until the next reinsurance year.
- (f) The request for the opportunity to offer a premium discount under the premium reduction plan must be sent to the Director, Reinsurance Services Division (or designee).

§ 400.715 Limitations and prohibitions

- (a) For the first two reinsurance years that RMA approves the payment of a premium discount, the approved insurance provider may not pay a premium discount under the premium reduction plan to a producer greater than 4.0 percent of the net book premium for the eligible crop insurance contract. For subsequent reinsurance years, the 4.0 percent of the net book premium for the eligible crop insurance contract will remain the maximum amount of premium discount authorized to be approved by RMA unless otherwise stated by RMA.
- (b) All premium discounts must be based on an actual accounting of efficiencies achieved by the approved insurance provider for the reinsurance year and may not be distributed to policyholders until the payment and the amount of such discounts have been approved by RMA in writing in accordance with § 400.720.

- (c) The approved insurance provider may not impose any term or condition upon the distribution or amount of any premium discount (such as conditioning the premium discount based upon the renewal of the eligible crop insurance contract with the approved insurance provider or not having a loss for the crop year), except those included in §§ 400.714 through 400.722.
- (d) Premium discounts under the premium reduction plan are not available for:
- (1) Eligible crop insurance contracts at CAT level of coverage; and
 - (2) Ineligible producers.
- (e) No approved insurance provider or its representatives, agents, employees or contractors may advertise or otherwise communicate to any producer the availability, potential availability, or existence of:
- (1) The opportunity to offer a premium discount under the premium reduction plan until the approved insurance provider receives written notice from RMA that it is eligible for the opportunity to offer a premium discount;
 - (2) A specific amount of premium discount prior to such amount being approved in writing by RMA in accordance with § 400.720; and
 - (3) Past or projected ability of the approved insurance provider to operate at less than the approved insurance provider's A&O subsidy.
- (f) After RMA has determined that the approved insurance provider is eligible for the opportunity to offer a premium discount in a State, the approved insurance provider and its representatives, agents, employees or contractors may advertise and communicate to producers that there is an opportunity for the approved insurance provider to offer a premium discount in that State and:

- (1) If they advertise or otherwise communicate that there is an opportunity to offer a premium discount in that State, such advertisements or other communications:
 - (i) Can only state the dollar amounts or corresponding percentage of net book premium of premium discount actually paid to producers in the State for each reinsurance year for which the approved insurance provider paid a premium discount; and
 - (ii) Must contain a prominently displayed disclaimer that:
 - (A) States “The past payments of premium discounts are not a guarantee that future payments will be made or an indication of the amount of future premium discounts”; or
 - (B) States a similar statement that must be approved in writing by RMA; and
- (2) RMA may impose a sanction authorized in § 400.719(j) if:
 - (i) RMA determines that the approved insurance provider or its representative, agent, employee or contractor is not in compliance with the provisions of this section; or
 - (ii) Any State regulatory authority determines that an approved insurance provider or its representatives, agents, employees or contractors has violated any State law regarding the advertising, marketing or solicitation of customers with respect to a premium discount under the premium reduction plan.

(g) The approved insurance provider shall not distribute any premium discount payment:

- (1) Until the dollar amount, and corresponding percentage of net book premium, for the premium discount have been approved by RMA in writing (For example, RMA may approve a dollar amount of premium discount in a State of \$500,000, which corresponds to a percentage of premium discount of 3% of the net book premium for the State); and
- (2) In an amount that is greater than the dollar amount, and corresponding percentage of net book premium, for the premium discount approved by RMA.

(h) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount in a State:

- (1) All producers insured by the approved insurance provider in that State for the corresponding reinsurance year will automatically receive that percentage of net book premium of premium discount (For example, if an approved insurance provider is approved to pay a percentage of premium discount of 3% of the net book premium for efficiencies attained during the 2006 reinsurance year in a State, all producers insured with that approved insurance provider during the 2006 reinsurance year in that State will receive a premium discount that is 3% of the net book premium for their eligible crop insurance contract); and
- (2) That same RMA approved premium discount percentage of net book premium must be paid for all crops, coverage levels except the CAT coverage

level, and plans of insurance written by the approved insurance provider in that State.

- (i) The approved insurance provider must be in compliance with all requirements of the approved procedures to be able to pay a premium discount.

§ 400.716 Contents of the Request for the Opportunity to Offer a Premium Discount.

Each request for the opportunity to offer a premium discount under the premium reduction plan must include all of the following:

- (a) The name of the approved insurance provider; the person who may be contacted for further information regarding the request for an opportunity to offer a premium discount under the premium reduction plan; and the person who will be responsible for the administration of the premium reduction plan.
- (b) A list of the States where the approved insurance provider wants the opportunity to offer a premium discount under the premium reduction plan.
- (c) A detailed marketing plan that describes how the approved insurance provider will promote the premium reduction plan to all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers. With respect to the marketing plan, it must:
 - (1) Identify and utilize the appropriate media with the capacity to reach all producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, in the State in which the premium reduction plan will be offered,

such as advertising through farm journals, farm radio, community based organizations, etc.;

- (2) Be in addition to any solicitation or advertising done by agents of the approved insurance provider; and
- (3) Contain a certification by the person responsible for signing the SRA that any cost saving measures will not result in a reduction in service to any producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers in the State in which the premium reduction plan will be offered.
- (d) A report of the total dollar amount of premium discount and the corresponding premium discount percentage by State paid for the previous reinsurance year (Such report must be provided to RMA not later than 15 days after making the premium discount payments); and
- (e) Such other information as deemed necessary by RMA.

§ 400.717 New approved insurance providers.

There may be instances where a new approved insurance provider is entering the crop insurance program for the first time and such approved insurance provider is not affiliated with an MGA, a TPA, another approved insurance provider, or any other entity that possesses the infrastructure necessary to deliver the crop insurance program, that is currently or has previously participated in the crop insurance program.

- (a) In such instances, the one time start-up costs that are associated with entering the crop insurance business (e.g., creation of a claims system, interface with RMA's

data acceptance system, initial marketing costs, set up charges) must be included in the Expense Exhibits required by the SRA, or the applicable regulations or approved procedures, but the costs may be amortized in equal annual amounts for a period of up to three years for the purpose of determining the efficiency on the documents described in § 400.720, in a manner determined by RMA.

- (b) If the approved insurance provider is affiliated with a MGA, a TPA, another approved insurance provider that previously participated in the crop insurance program but such MGA, TPA, or other approved insurance provider can demonstrate that it no longer has the infrastructure to operate the program, the FCIC Board of Directors, in its sole discretion, can authorize the amortization of start-up costs in accordance with paragraph (a) of this section.

§ 400.718 RMA Review

If an insurance provider requests eligibility for the opportunity to offer a premium discount under the premium reduction plan:

- (a) For the 2006 reinsurance year, RMA will notify the approved insurance provider not later than 30 days after the date the approved insurance provider submits its request for eligibility for the opportunity to offer a premium discount under a premium reduction plan, whether it is eligible.
- (b) For all subsequent reinsurance years, RMA will notify the approved insurance provider at the same time it approves the Plan of Operations whether it is eligible.
- (c) An approved insurance provider may be determined to be eligible for the opportunity to offer a premium discount under the premium reduction plan if, in the sole determination of RMA, all of the following criteria are met:

- (1) All information required in § 400.716 is included in the request for the opportunity to offer a premium discount under the premium reduction plan;
 - (2) The marketing plan is designed to be effective at reaching all producers in the State, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers;
 - (3) The implementation of any activities to enable the approved insurance provider to pay a premium discount does not impede the approved insurance provider's ability to comply with all requirements of the approved procedures, law, and regulation;
 - (4) There must be a reasonable assurance that producers, especially small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers, insured by the approved insurance provider will not experience a reduction in service;
 - (5) The insurance provider can demonstrate that it is operationally and financially capable and ready to serve, all producers in that State; and
 - (6) The approved insurance provider's resources, procedures, and internal controls are adequate to provide a premium discount under the premium reduction plan, make approved premium discount payments in a timely manner, prevent unfair discrimination, and comply with all applicable laws, regulations and approved procedures.
- (d) If the approved insurance provider is determined by RMA to be eligible for the opportunity to provide a premium discount under the premium reduction plan, the

approved insurance provider will be notified in writing by the Director, Reinsurance Services Division, or a designee or successor.

- (e) Notification that an approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan is not a guarantee that a premium discount payment will be approved by RMA for the reinsurance year. Approval of a premium discount cannot be provided by RMA until the actual A&O costs and A&O subsidy are reported for the reinsurance year and RMA determines that all the requirements of §§ 400.714 through 400.722 have been met.

§ 400.719 Terms and conditions for the Premium Reduction Plan.

The following terms and conditions apply to all approved insurance providers that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan:

- (a) RMA's determination that the approved insurance provider is eligible for the opportunity to offer a premium discount under the premium reduction plan will only be effective for one reinsurance year. Approved insurance providers must reapply each reinsurance year in accordance with §§ 400.714 through 400.716.
- (b) All procedural issues, questions, problems or clarifications with respect to implementation of the premium reduction plan must be addressed by the approved insurance provider by the deadline determined by RMA.
- (c) The agents employed or under contract with an approved insurance provider that RMA has determined is eligible for the opportunity to offer a premium discount under the premium reduction plan must disclose to all producers, insured with the

agent or inquiring about insuring with the agent, in writing the names of all approved insurance providers that the agent represents that RMA has determined are eligible for the opportunity to offer a premium discount under the premium reduction plan.

(d) The approved insurance provider must provide to the Director, Reinsurance Services Division semi-annual reports, or more frequent reports as determined by RMA, that, along with other information obtained by RMA, permit RMA to accurately evaluate the effectiveness of the approved insurance provider's implementation of the premium reduction plan, in the manner specified by RMA. At a minimum, each report must contain for each State listed by the approved insurance provider under § 400.716(b):

(1) The number of small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers making application; and

(2) The number, substance, and final or pending resolution of complaints from producers regarding the service received under the premium reduction plan.

(e) RMA will monitor the approved insurance provider's efforts to market the premium reduction plan to small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers.

(1) RMA may compare the composition of the approved insurance provider's book of business in a State with the composition of the books of business of other approved insurance providers in that State to assist in determining

whether the marketing plan has been effective or there is credible evidence of unfair discrimination by the approved insurance provider or its agents.

- (2) If at any time RMA determines that the marketing activities of the approved insurance provider are not effective in reaching small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or there is credible evidence of unfair discrimination by the approved insurance provider or its agents in any State listed by the approved insurance provider under § 400.716(b), RMA will take the appropriate action authorized in paragraph (j) of this section (Remedial measures may include additional targeted advertising by the approved insurance provider or other appropriate measures to ensure the insurance provider is adequately serving small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or that such unfair discrimination has been discontinued and corrective action taken).
- (f) In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.
- (g) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount for a State in accordance with § 400.720, it will be applicable to the reinsurance year in which the efficiencies were attained and the approved insurance provider must pay that dollar amount, and corresponding percentage of net book premium, for the premium discount to its

policyholders in that State for that reinsurance year. If the approved insurance provider fails to pay this amount, the approved insurance provider:

- (1) Will not be eligible for the opportunity to offer a premium discount for the reinsurance year immediately following RMA's approval of the payment of a premium discount; and
 - (2) Must disclose in all its promotional and advertising material that it was approved to pay a premium discount by RMA but elected not to pay such discount, unless approval to pay the premium discount was withdrawn by RMA, for the next two reinsurance years subsequent to the failure to pay the premium discount.
- (h) For policyholders that were insured with the approved insurance provider in the reinsurance year from which the approved premium discount is applicable but are not currently insured with the approved insurance provider, any premium discount payments must be sent to the last known address of the policyholder.
- (i) The approved insurance provider and its representatives, agents, employees and contractors must fully cooperate with RMA and any State or Federal government agencies in any review of the operations or activities of the approved insurance provider and its representatives, agents, employees and contractors, with respect to the premium reduction plan.
- (j) At its sole discretion and upon written notice, RMA may withdraw a determination of eligibility for the opportunity to offer a premium discount under the premium reduction plan or approval of all or a part of a premium discount payment, preclude eligibility for the opportunity to offer a premium discount, or otherwise

participate, under the premium reduction plan for a period determined by RMA commensurate with offense, take such other actions as authorized under the SRA, or require appropriate remedial measures as determined by RMA, if RMA determines that:

- (1) Any approved insurance provider or its representative, agent, employee or contractor has failed to comply with any term or condition contained in 7 CFR 400.714 through 400.721; or
- (2) The payment of a premium discount could adversely affect the financial or operational stability of the approved insurance provider, its MGA or TPA as required by applicable regulations or approved procedures.

(k) The insurance provider may be held solely responsible for the actions of its representatives, agents, employees or contractors with respect to any violation of any term or condition contained in §§ 400.714 through 400.721 or action under paragraph (j) of this section may be taken individually against the insurance provider or its representatives, agents, employees or contractors.

§ 400.720 Standards for approval of a premium discount.

For approval of a premium discount:

- (a) If the approved insurance provider intends to offer a premium discount in a State listed by the approved insurance provider under § 400.716(b) based on efficiencies attained during the reinsurance year, the approved insurance provider must, not later than December 31 after the annual settlement for the reinsurance year, submit to RMA:

- (1) An audit, in a format approved by RMA, of the Expense Exhibits provided with the Plan of Operations, and the estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits, certified by an independent certified public accountant with experience in insurance accounting, who must certify to the accuracy and completeness of the costs stated therein and the Expense Exhibits' conformance with the requirements of the SRA (The costs associated with such audit and certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's A&O costs for the purposes of determining an efficiency);
 - (2) A detailed description of all profit sharing arrangements that the approved insurance provider claims are not to be included as compensation (RMA reserves the right to request copies of such profit sharing contracts or other agreements); and
 - (3) The dollar amount, and corresponding percentage of net book premium, for the premium discount that the approved insurance provider will pay in the State.
- (b) RMA will use the Expense Exhibits required to be submitted as part of the Plan of Operations to determine:
- (1) Whether the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year for the entire book of business; and
 - (2) The actual dollar amount of efficiency attained by the approved insurance provider for the reinsurance year for each State where the approved insurance

provider was eligible for the opportunity to offer a premium discount under the premium reduction plan. The dollar amount of efficiency and the dollar amount, and corresponding percentage of net book premium, for the premium discount must be prepared and submitted in accordance with approved procedures.

(i) For the 2006 reinsurance year, such approved procedures will be issued within 5 days after July 20, 2005; and

(ii) For all subsequent reinsurance years, such procedures will remain in effect unless revised and if such approved procedures will be revised, these approved procedures will be issued not later than January 1 before the start of the reinsurance year.

(c) For each State listed by the approved insurance provider under § 400.716(b) for which the insurance provider requests approval to pay a premium discount, RMA will compare the dollar amount, and corresponding percentage of net book premium, for the premium discount determined in accordance with applicable approved procedures with the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider.

(d) RMA may approve the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider if and to the extent that:

(1) The dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider does not

exceed the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section; and

(2) If all other requirements of §§ 400.714 through 400.722 have been met.

(e) If the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider exceeds the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section, the approved insurance provider will be limited to paying the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA.

§ 400.721 Determinations and Reconsiderations.

(a) If RMA takes any action authorized in § 400.719(j), the Director, Reinsurance Services Division, or a designee or successor will notify the approved insurance provider or its representatives, agents, employees or contractors against whom such action is taken, as applicable, in writing:

(1) Of the action taken;

(2) The date such action is effective; and

(3) The basis for such action.

(b) If eligibility for the opportunity to offer a premium discount, or to participate, under the premium reduction plan is withdrawn, the approved insurance provider or agent, as applicable, must notify its policyholders it is no longer eligible to offer a premium discount, cease any advertising or other communication

regarding a premium discount effective for the next sales closing date, and no premium discount may be distributed to any producer of the insurance provider or agent, as applicable, for the reinsurance year.

(c) If notice is provided under paragraph (a) of this section to an approved insurance provider or its representatives, agents, employees or contractors:

(1) The approved insurance provider or its representatives, agents, employees or contractors, as applicable, may request, in writing, reconsideration of the decision with the Deputy Administrator of Insurance Services, or a designee or successor, within 30 days of the date stated on the notice provided in paragraph (a) of this section;

(2) Such request must provide a detailed narrative of the basis for reconsideration; and

(3) The Deputy Administrator of Insurance Services, or a designee or successor will issue its reconsideration decision not later than 45 days after receipt of the request for reconsideration.

(d) Reconsideration decisions issued in accordance with paragraph (c) of this section are considered as final administrative determinations rendered under § 400.169(a) and if the approved insurance provider or its representatives, agents, employees or contractors who received such reconsideration decision disagrees with this final administrative determination, it may appeal in accordance with § 400.169(d).

(e) If eligibility to offer a premium discount plan has been withdrawn by RMA under § 400.719(j), the approved insurance provider may request eligibility for the

opportunity to offer a premium discount for the next applicable reinsurance year if the condition which was the basis for such withdrawal has been remedied.

§ 400.722 Consumer Complaints

Consumer complaints regarding an approved insurance provider's violation of the requirements of §§ 400.714 through 400.721 should be sent in confidence to RMA, attention: the Director of the Reinsurance Services Division, or a designee or successor.

(a) Consumer complaints must include:

- (1) A specific citation of the requirement in §§ 400.714 through 400.721 that has allegedly been violated;
- (2) A detailed listing of the actions alleged to have taken place that violate the requirement;
- (3) Specific identification of persons involved in the violation, and
- (4) The date, place and circumstances under which such violation allegedly occurred.

(b) Any complaint that does not meet the requirements in paragraph (a) of this section may be returned to the sender for further details before RMA can pursue investigation of the complaint.

(c) RMA may seek additional information to assist in investigating the complaint.

(d) If RMA's investigation determines there has been a violation of a requirement in §§ 400.714 through 400.721, it may take the appropriate action authorized under § 400.719(j).