

**§ 315.712 Conversion based on service as a Federal Career Intern.**

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a career intern who:

(1) Has successfully completed a Federal Career Intern Program, under § 213.3202(o) of this chapter, at the time of conversion; and

(2) Meets all citizenship, suitability, and qualification requirements.

(b) *Tenure on conversion.* An employee whose appointment is converted to career or career-conditional employment under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires competitive status on conversion.

[FR Doc. 05-15173 Filed 8-1-05; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 04-118-2]

**Karnal Bunt; Regulated Areas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in La Paz, Maricopa, and Pinal Counties, AZ, and Riverside County, CA, to the list of regulated areas and by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and Imperial County, CA, from the list of regulated areas. Those actions were necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

**EFFECTIVE DATE:** The interim rule became effective on March 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ,

APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6774.

**SUPPLEMENTARY INFORMATION:****Background**

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89-1 through 301.89-16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on March 28, 2005 (70 FR 15553-15557, Docket No. 04-118-1), we amended the regulations by adding certain areas in La Paz, Maricopa, and Pinal Counties, AZ, and Riverside County, CA, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. In the same interim rule, we also amended the regulations by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and Imperial County, CA, from the list of regulated areas based on our determination that those fields or areas had met our criteria for release from regulation.

Comments on the interim rule were required to be received on or before May 27, 2005. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 15553-15557 on March 28, 2005.

Done in Washington, DC, this 27th day of July 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05-15166 Filed 8-1-05; 8:45 am]

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

RIN 0563-AB84

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

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations, which implement the statutory mandates of the Agricultural Risk Protection Act of 2000 (ARPA) related to the submission of policies for approval for reinsurance and the reimbursement of research and development costs and maintenance costs.

**DATES:** Effective September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the Cost-Benefit Analysis, contact Louise Narber, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676, telephone (816) 926-7730.

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

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it

has not been reviewed by the Office of Management and Budget (OMB).

#### **Cost-Benefit Analysis**

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that the guidelines contained in the regulation are administrative in nature and in most cases, dictated by statutory requirement. They are intended to facilitate the submission and review of policy terms and conditions, endorsements, actuarial documents, underwriting rules, administrative procedures, and rates of premium of new insurance products submitted to FCIC under section 508(h) of the Federal Crop Insurance Act (Act) for approval or disapproval by the FCIC Board of Directors (Board), as well as reimbursement of research and development costs, maintenance costs, and setting of user fees. This regulation also requires approved insurance providers, reinsured by FCIC, who develop and market non-reinsured supplemental (NRS) policies to submit them to FCIC for review to be in compliance with the Standard Reinsurance Agreement (SRA). These provisions provide uniform guidance for FCIC's review and approval of NRS policies to assure the orderly business transaction and vitality of the crop insurance market place.

#### **Paperwork Reduction Act of 1995**

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563-0064 through August 31, 2007.

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

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

#### **Unfunded Mandates Reform Act of 1995**

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

(under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### **Executive Order 13132**

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

#### **Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because it merely clarifies the process to submit policies, plans of insurance or rates of premium to the FCIC Board of Directors for approval for reinsurance and subsidy and the process to obtain reimbursement of research and development costs and maintenance costs. The effect on small and large entities would be the same because all entities must provide the same information. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### **Federal Assistance Program**

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

#### **Executive Order 12372**

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

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to

require the approved insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

#### **Environmental Evaluation**

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

#### **Background**

On Monday, July 16, 2001, FCIC published a proposed rule in the **Federal Register** at 66 FR 36951-36960 to revise 7 CFR part 400, subpart V, General Administrative Regulations; Submission of Policies, Provisions of Policies, and Rates of Premium. On July 24, 2001, Congress enacted section 2103 of the Supplemental Appropriations Act, 2001, which exempted the implementation of section 522(b) of the Act, involving the reimbursement for products submitted under section 508(h) of the Act, from the rulemaking process. In response, on Monday, September 17, 2001, FCIC published an interim rule in the **Federal Register** at 66 FR 47949-47959 to revise 7 CFR part 400, subpart V, General Administrative Regulations; Submission of Policies, Provisions of Policies, and Rates of Premium. The interim rule was effective on September 17, 2001.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Following publication of the interim rule, the public was afforded 60 days to submit written comments and opinions. A total of 79 comments were received from a university, legal counsels, insurance companies, an agricultural association, and an insurance service organization for both rules. The comments received and FCIC's responses are as follows:

#### *Section 400.701*

*Comment:* A legal counsel stated the definition of "actuarially appropriate" should be amended to reflect the fact that 508(h) proposals often cover new and innovative concepts, or previously uncovered crops or risks for which underlying actuarial data might be scarce. The commenter stated Congress chose the lesser standard of "actuarially appropriate" for submissions submitted

under section 508(h) of the Act as opposed to the requirement that rates for established crop insurance policies be "actuarially sound." The commenter also stated the following clause should be added, "recognizing the potential relative scarcity of data for new or innovative coverages."

*Response:* While "actuarially appropriate" may not be as strict a requirement as "actuarially sound," there must still be at least a reasonable certainty that the premiums charged will cover the anticipated losses. FCIC has clarified the definition of "actuarially appropriate" and added provisions regarding the possible scarcity of data for new products.

*Comment:* An insurance service organization asked if there were any guidelines for determining a "reasonable reserve" in the definitions of "actuarially appropriate" and "rate of premium" such as from an actuarial society.

*Response:* It would be impossible to list any specific amount for a "reasonable reserve" for any submission submitted under this rule. The reasonable reserve is intended to cover unanticipated losses. The reliability of the data used to determine the expected losses is a factor that must be considered when setting the reserve. The less reliable the data, the higher the reasonable reserve must be. Since it is impossible to determine the type or reliability of data applicants will use, it is impossible to set one amount that would be appropriate to all submissions.

*Comment:* An insurance service organization stated "maintenance" refers to the support and improvement of the policy or plan of insurance, including terms and conditions, rates, expansion, and other measures necessary to assure financial viability and actuarial soundness or to respond to statutory or regulatory changes. The commenter stated that by comparing other defined terms, this appears to include underwriting and loss adjustment procedures (the definition of "policy" includes "related materials," which in turn includes the actuarial documents, special provisions, and any underwriting or loss adjustment manuals, handbooks, forms or other materials), and this could be better clarified and the use of these terms be more consistent. The commenter stated the definitions for "policy" and "related materials" include references to "actuarial documents" and as a result, the "policy" definition is redundant in referring to the actuarial documents for the insured commodity, and related materials. The inclusion of underwriting

and loss adjustment materials is not clear or consistent in all of the references to the "policy."

*Response:* FCIC agrees with the commenter and has revised the definitions of "actuarial documents," "policy," and "related materials" to ensure consistency among those provisions. FCIC has also revised the definitions of "development," "maintenance," "research," and "research and development costs" to eliminate the conflicts between those provisions and better reflect the activities associated with these processes.

*Comment:* An insurance company stated the definition of "maintenance period" states the period begins on the date the Board approves the submission and ends on the date that is not later than four reinsurance years after the date of Board approval. They suggested the regulation should address what will happen to the product and maintenance thereof if the submitting company that received approval of a product is no longer in business or is otherwise not able to fulfill the maintenance responsibilities before the expiration of the maintenance period.

*Response:* The maintenance period begins the date the Board approves the submission for maintenance, not approval of the submission for reinsurance. Section 400.712(m) has been added to specify that once the applicant no longer performs the maintenance responsibilities as determined by FCIC, or gives FCIC notice they no longer wish to maintain the submission, maintenance of the approved submission may be assumed by FCIC or reinsurance by FCIC may be withdrawn.

#### Section 400.702

*Comment:* An insurance company stated any reference to a competitor's product, including the Board meeting notices that announce the name of the submission, indicates key characteristics of the product and violates the principle of confidentiality and this regulation should prohibit the disclosure of such information.

*Response:* FCIC agrees the name of a plan of insurance may indicate key characteristics of the product and may give competitors an idea of the product being considered by the Board. In the past, FCIC asked submitters if they wanted the name of their product used. A new paragraph (d) has been added to § 400.702 to specify that the submission must state whether the name of the submission may be used. If the submission does not state the name may be used, it must remain confidential.

#### Section 400.703

*Comment:* An insurance company stated the requirement for the submission to be received a minimum of 180 days prior to the earliest proposed sales closing date translates to a March 30 deadline for winter crops and a September 15 deadline for spring crops. The commenter stated that while this may appear reasonable for a new complex plan of insurance, it appears arbitrarily lengthy for submissions categorized as non-significant.

*Response:* In accordance with section 508(h)(4)(D) of the Act, the Board has 90 days to determine whether it will approve or disapprove a submission from the time it is accepted by the Board as a complete submission, unless additional time is negotiated with the applicant. While a single submission may be simple in design, the Board and Risk Management Agency (RMA) are frequently reviewing several submissions simultaneously. Given the workload issues, the Board may require all 90 days to make its decision. If intent to disapprove is provided, the applicant can submit modifications, which must be reviewed by the Board within 30 days. In addition, there must be time to make any revisions to the policy or plan of insurance after its approval and prior to its release, train agents, and offer the product for sale. Based on these timelines, FCIC has determined that even 180 days does not provide sufficient time to review, approve and sell the product. Section 400.703(c) has been revised to specify that a submission must be received at least 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year to allow the outside reviewers and FCIC a reasonable time to review and implement the submission. A new section (d) has been added to specify the Board, or RMA if authorized by the Board will determine when sales can begin for a submission approved by the Board.

#### Section 400.705

*Comment:* An insurance company stated the requirement to furnish FCIC with seven identical copies of a submission should be eliminated because submissions that are major new plans of insurance or significant changes to an existing program, require a large amount of documentation, not all of the internal RMA reviewers will have need for a complete version of the submission, and shipping costs dramatically outweigh the costs of RMA preparing its own working copies. The commenter also stated limiting the

number of copies required will reduce development costs for new submissions and will also reduce the reimbursement for research and development costs, therefore, a larger amount of money will remain in the fund to reimburse other submissions that are approved.

*Response:* FCIC agrees there is a cost for persons to supply RMA with seven identical copies of a submission. However, the seven copies are necessary. Five of the copies go to the five external reviewers, one copy goes to the RMA Deputy Administrator, in Kansas City, Missouri, and one copy goes to the FCIC Administrator in Washington DC. All of these people must receive the full copy of the submission. RMA makes working copies for RMA internal reviewers, Board members, and legal counsel. Receiving seven copies expedites the review of submissions, assures necessary and appropriate personnel of RMA and the Board receive all of the applicable materials. However, §§ 400.703(a), 400.705, and 400.713 have been revised to allow submissions to be sent in an electronic format in accordance with the Freedom to E-File Act (Pub. L. 106–222). They must contain all the information required of hard copy documents and be in the same order. However, this should substantially reduce the costs of transmitting such submissions.

*Comment:* An insurance company stated the word “or” in § 400.705(a)(3)(iii), redesignated as § 400.705(b)(3)(ii), of the proposed rule should be deleted because it indicates an applicant must select either reimbursement for research and development or reimbursement for maintenance, but not both, and this is inconsistent with the Act and other relevant sections of the proposed rule.

*Response:* Since requests for reinsurance, reimbursement for research and development, and reimbursement for maintenance is at the discretion of the applicant, the use of the term “and” would not be appropriate. Therefore, the word “or” is correct. However, nothing precludes the applicant from requesting reimbursement for both research and development and maintenance in the first year, just as nothing precludes the applicant from requesting reinsurance and reimbursement for research and development. The term “or” implies the term “and” unless its usage indicates otherwise, which is not the case with these provisions.

*Comment:* An insurance company stated § 400.705(a)(8), redesignated as § 400.705(b)(8), should be clarified to indicate any required marketing plan be limited solely to the intentions of the

applicant, if the applicant is an approved insurance provider or an entity representing or affiliated with an approved insurance provider. The commenter also stated there does not appear to be a requirement in the Act for an applicant to demonstrate any capacity to market the new insurance product.

*Response:* To be approved for reinsurance, there is no need for the applicant to demonstrate the policy or plan of insurance is marketable. However, in accordance with section 522(b)(3) of the Act, if the applicant wants to be reimbursed for research and development or maintenance costs, the applicant must demonstrate the policy or plan of insurance is marketable. The applicant is responsible for developing the marketing plan. If the applicant is not an approved insurance provider, the applicant must show that it has a commitment from an approved insurance provider to deliver the policy or plan of insurance. The definitions of “marketable” and “marketing plan” and redesignated § 400.705(e) have been revised to add to and clarify the information to be included in the marketing plan and the standards used in evaluating whether a product or plan of insurance is marketable.

*Comment:* An insurance service organization stated § 400.705(a)(10)(i), redesignated as § 400.705(b)(10)(i), requires contact information for those who can answer questions regarding the policy, underwriting rules and procedures, rate and price methodologies, data processing and record keeping requirements, and any other questions. The commenter states that if the underwriting rules and procedures are listed separately from the policy, it seems loss adjustment procedures should be listed as well.

*Response:* FCIC agrees and has added the phrase “loss adjustment” before the word “procedures” in redesignated § 400.705(b)(10)(i).

*Comment:* An insurance company stated language in § 400.705(b)(2), redesignated as § 400.705(c)(2) should specify in detail what constitutes “verifiable evidence of demand” because costs for market research will increase submission costs considerably if more than simple requests from producers, producer groups, or agents are mandated. The commenter also stated credentialed marketing studies should be discouraged, as their increased costs will inevitably lead to higher reimbursement appropriations.

*Response:* When developing a product that will be accepted and bought by producers, market research must be completed to determine what is needed

or what is desired. If the producers do not see a benefit, they will not purchase the policy. Provisions have been added to the definition of “marketing plan” and redesignated § 400.705(e) to specify that focus group results, market research studies, qualitative market estimates, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be affected by the product or plan of insurance and commitments from approved insurance providers to sell and support the policy or plan of insurance must be included in the submission. While market research studies may increase the costs and reimbursements, at a time when resources are scarce and the systems are straining to handle the existing product load, the information obtained will be invaluable to ensuring that only marketable products are offered.

*Comment:* An insurance service organization stated §§ 400.705(c)(1)(i) and (ii), redesignated as §§ 400.705(d)(1)(i) and (ii), indicates what needs to be provided as part of the “policy” but makes no mention of the underwriting and loss adjustment procedures that are considered part of the policy according to the “policy” definition. Section 400.705(e), redesignated as § 400.705(f), mentions “underwriting” information but only touches briefly on loss adjustment examples in § 400.705(e)(5), redesignated as § 400.705(f)(5). The commenters state that this raises concerns relating to past problems with new products that are issued before their loss adjustment procedures are developed and issued. To be more consistent with the “policy” definition, the commenter suggests it might help to clarify that paragraph (c) deals only with the policy provisions and endorsements, and that paragraph (e) addresses both underwriting and loss adjustment information.

*Response:* FCIC agrees and has revised the provisions to clarify that paragraph (c) involves the policy provisions related to the terms of insurance and paragraph (e) involves the underwriting and loss adjustment information.

*Comment:* An insurance company stated language in § 400.705(c)(2), redesignated as § 400.705(d)(2), should be clarified by defining “impact” of changes to cut down on procedural delay since assumptions made by the applicant may not be sufficient for RMA reviewers.

*Response:* It is impossible to define the impact of the change because it will be dependent on the type of change.

However, the applicant must consider all possible impacts, including on the policy, participants and the crop insurance program. If all impacts are considered and addressed, there should not be any procedural delays. However, if reviewers question some important aspect of the change that has not been identified, the applicant will be required to respond or take the chance of the submission being disapproved. Therefore, no change has been made.

*Comment:* An insurance company stated language in § 400.705(d)(3), redesignated as § 400.705(e)(3), should be amended to include regions or other geographic areas that may apply to a particular plan of insurance.

*Response:* Since the premiums are generally calculated on a county basis, FCIC usually requires the expected liability and premium for each county and state be listed rather than by large areas such as multi-state regions or geographic areas. If the information is desired by region or geographical area it would be simple to derive from county and state data. Therefore, no change has been made.

*Comment:* An insurance company stated language in § 400.705(d)(5), redesignated as § 400.705(e)(5) of the proposed rule is redundant with paragraphs (e) and (f), redesignated as paragraphs (f) and (g) respectively, and should be eliminated.

*Response:* The language in the proposed rule was changed in the interim rule so the request was not redundant. Redesignated paragraph (e) contains information related to the marketing of the policy or plan of insurance, redesignated paragraph (f) contains information related to underwriting and loss adjustment, and redesignated paragraph (g) contains information related to prices and rates of premium. To clarify the information required, FCIC removed § 400.705(d)(5) of the interim rule and added paragraph (g)(6) to the final rule, which will require a simulation of expected losses capturing both a probable loss and a total loss.

*Comment:* An insurance company stated language in § 400.705(e)(1) in the interim rule is unnecessary for the purpose of reviewing the submission and impractical for the applicant because it would necessitate additional cost on the part of the applicant to produce marketing materials that may become obsolete before the submission is approved. Providing a sample of each document that will be used raises the prospect that FCIC must approve all marketing materials. The commenter also asked what the implications are of developing and using additional

marketing materials after approval of the submission.

*Response:* FCIC agrees advertising material and brochures do not need to be included in the submission. Therefore, § 400.705(e)(1) of the interim rule has been removed.

*Comment:* An insurance company stated language in § 400.705(e)(5) in the interim rule is overreaching as it is impossible to anticipate every unique situation. It would be much more reasonable to require an acceptable and reasonable number of examples to most probable situations.

An insurance service organization also asked how many unique situations occur and if FCIC considers all possible unique situations now.

*Response:* FCIC agrees with the comment. The applicant should determine all the probable situations there may be. The language in § 400.705(e)(5) of the interim rule, redesignated as (f)(4) in the final rule has been revised accordingly.

*Comment:* An insurance company stated language in § 400.705(f)(4), redesignated as 400.705(g)(4), is impractical for applicant response because anticipating the questions of internal RMA and external contract reviewers is unlikely and will be unnecessarily burdensome. The commenter stated most applicants are expected to have a high degree of faith in the reliability of the data used.

*Response:* Redesignated section 400.705(g)(4) does not require the applicant to anticipate questions of the reviewers. As stated above, there will be situations where the data will be scarce or related data will be used. This section requires the applicant to objectively evaluate the quality, quantity and applicability of the data relied upon in the submission to assess its reliability and provide that assessment in its submission. Since the amounts and types of data can differ widely between submissions, the submitter is in the best position to make this assessment. Further, this provides the applicant an opportunity to explain why they have a high degree of faith in the reliability of the data used. The provision has been revised to clarify that an objective assessment of the data is required.

*Comment:* An insurance company stated language in § 400.705(f)(5)(i), redesignated as § 400.705(g)(5)(i), raises questions regarding whether coverage of the same crop constitutes "similar or comparable" insurance plans and what would be the necessity in conducting calculations comparing a new submission with every product available for a crop. The commenter stated the review process is meant to ensure the

interests of producers are protected, the interests of the public are protected, the submission is compliant with the Act, is actuarially appropriate and complies with industry standards and practices. Comparison outside this realm of review may be inappropriate or unnecessary.

*Response:* Redesignated § 400.705(g)(5)(i) requests a recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act. It does not ask for a comparison with every product available for a crop. Further, the applicant is not required to conduct this analysis. Redesignated § 400.705(g)(5) only requires that one or more of the three analyses be performed. If the analysis in redesignated § 400.705(g)(5)(i) is chosen, the applicant must determine which insurance plan offered under the Act is the most similar or comparable to the applicant's submission so an analysis can be made on the proposed premium rates and commodity prices, as applicable. Such analysis is necessary for FCIC in its evaluation of whether the interests of producers are protected, the interests of the public are protected, the submission is compliant with the Act, is actuarially appropriate, and does not introduce any program vulnerabilities. Therefore, no change has been made.

*Comment:* An insurance company and an insurance service organization suggested FCIC require detailed loss adjustment procedures/forms be included with the initial submission and subject to the same approval scrutiny as the policy provisions, rates, etc. The commenter stated major problems have been incurred in the past because claims-handling procedures were not finalized until after a product had been sold.

*Response:* FCIC agrees loss adjustment procedure should be included with the initial submission. FCIC has revised redesignated § 400.705(f) accordingly and has also added a new § 400.705(l) so approved insurance providers will have the information available to immediately train personnel, including loss adjusters, on loss adjustment procedures.

*Comment:* An insurance company stated language in § 400.705(i)(4), redesignated as § 400.705(j)(4), which requires the applicant's legal counsel to certify compliance with the Act, applicable regulations, and the SRA, is not necessary because the Board relies solely on the Office of General Counsel (OGC) for legal recommendations and it is difficult to see any value to the applicant, FCIC, or the public. The

commenter also asked what the implications are of a conflict between the certification and the opinions of OGC.

*Response:* The goal is for the submission to be as accurate, comprehensible, and complete as possible. Requiring the applicant's legal counsel to review the submission allows the applicant to revise the submission if necessary before it is submitted to FCIC. This requirement should improve the quality of the product and expedite the review process by identifying and resolving issues prior to submitting the product. OGC provides advice to the Board; it does not make decisions for the Board. Regardless of whether there is a conflict between the opinions of counsel, OGC will continue to provide its advice and the Board will make its decision based on all the information it receives. Therefore, no change has been made.

*Comment:* An insurance company and an insurance service organization stated it is imperative that the submission fit into the existing Data Acceptance System, so accurate programming may be accomplished by other approved insurance providers with minimal time and expense.

*Response:* Redesignated § 400.705(k) requires the submission to comply in all respects with the standards established for processing and acceptance of data as specified in the FCIC Data Acceptance System Handbook (Appendix III), unless otherwise authorized by FCIC. New provisions have also been added to require applicants to provide the system or software necessary to allow FCIC to implement the product as part of the research and development of such product. If the applicant has the ability to deliver the policy or plan of insurance and has developed a new system for processing and data acceptance that is functional with FCIC, FCIC cannot limit the availability of innovative products that may be advantageous to producers solely on the basis of the time required for other approved insurance providers to program data automation systems in order to sell and service the product. However, the key is that any new system is functional and this will be taken into consideration by FCIC and the Board when determining reasonable timeframes for program implementation. Therefore, no change has been made.

*Comment:* An insurance company stated this regulation does nothing to minimize the burden of preparing a submission on the part of the applicant, it will lengthen the time required to develop a submission which will drive up costs significantly, the complexity

required will prove a hindrance to anyone desiring to casually submit a plan of insurance and it will limit the opportunity to respond to last minute market indications with any degree of flexibility.

*Response:* This regulation was designed to specify the information necessary to properly evaluate a submission to ensure the interests of producers are protected, the interests of the public are protected, the submission is compliant with the Act, is actuarially appropriate, and does not introduce any program vulnerabilities. While this may appear burdensome and complex, the information requested should already have been developed and considered by the applicant in the development of the policy or plan of insurance. The costs associated with providing such information are much less than the costs the program could incur if a flawed policy or plan of insurance were offered to the marketplace. Therefore, no change has been made.

#### Section 400.706

*Comment:* An insurance company stated it is not appropriate for the requirement in § 400.706(a)(2) to be implemented without a deadline for action by RMA. The commenter suggested the requirement be within 10 business days of receipt. The commenter stated the questions of quality of documentation may be subjective and asked what standard of measure is to be applied and under whose responsibility will it fall. The commenter stated the quality of documentation is best addressed during the review process (not before) and includes the prospect that a submission review be delayed or that it be disapproved. The commenter also stated § 400.706(a)(3) and (a)(4) should be amended to reflect comments and revisions to paragraph (a)(2).

*Response:* The time frames for providing submissions are limited and any number of submissions may be submitted each time frame. Further, the submissions have varying levels of complexities from changes to existing policies to introducing new and innovative plans of insurance. Therefore, it is not possible for FCIC to set a time frame to review the quality of the submissions. RMA agrees that the review of the quality of the submission may be subjective but such a review is necessary to ensure that the resources of the agency and expert reviewers are not wasted on products that have not been sufficiently developed. Such review is only intended to determine if there is sufficient information to allow a meaningful review. This initial review

process is the responsibility of the Deputy Administrator of RMA's Office of Research and Development. Without the initial review process and a determination by the Board the submission is complete, approval by the Board could be delayed for months or longer if the submission goes to the experts and receives poor reviews or reviews that state it is impossible to determine whether the standards for approval have been met because there is insufficient information. An initial determination of quality could preclude the need for multiple expert reviews. A definition of "complete submission" has been added for clarity. Further, § 400.706(b) has been revised to clarify that the Board will determine if a submission is complete.

*Comment:* An insurance company questioned if the language in § 400.706(c)(3) of the interim rule requiring the Board to render a decision to approve or give notice of an intent to disapprove within 90 days after acceptance of the submission and requiring the applicant to be notified in writing at least 30 days prior to the Board taking such action would require written notification of intent to disapprove within 60 days of acceptance.

*Response:* Section 508(h)(4)(D) of the Act allows the Board 120 days after a complete submission is received to make a determination whether to approve or disapprove the submission. Section 508(h)(4)(C)(i) of the Act directs the Board to give notification of its intent to disapprove a submission not later than 30 days prior to making the disapproval. This means the Board must initially act not later than 90 days after determining the submission is complete, as reflected in § 400.706(c)(3) of the interim rule. Due to other revisions made to § 400.706, the 90 day notice of intent to disapprove is now contained in § 400.706(g) and the 30 day time frame for the applicant to be notified if the Board intends to disapprove the submission is now contained in § 400.706(i) of this regulation.

*Comment:* A legal counsel stated § 400.706(f)(3) which states, "The submission does not conform to sound insurance and underwriting principles;" should be deleted because many coverages explicitly mandated by Congress extend beyond traditional insurance concepts and do not conform to sound insurance and underwriting principles. For instance, crop insurance production risks for drought, price risks under Crop Revenue Coverage (CRC), Group Risk Protection (GRP) allowing a producer to collect an indemnity even though the producer did not sustain a

loss, Catastrophic Risk Protection (CAT) coverage allowing a producer to obtain a coverage guarantee possibly worth millions of dollars for no premium and a token administrative fee, and the Agricultural Risk Protection Act (ARPA) mandating the use of futures and options contracts designed to provide reasonable protection from the financial risks of price for income fluctuations inherent in the production and marketing of livestock, transcend traditional insurance and underwriting principles. Federal Crop Insurance is not simply a business-based insurance system but a Federally subsidized program with a social policy element and a mandate to address the full range of agricultural risk management, not simply traditional insurance. Trying to apply traditional insurance models as a legal standard for new products under ARPA 2000 inevitably will result in selective enforcement and arbitrary judgments. FCIC has the responsibility to assure itself that any proposed new tool is technically sound and protects the interests of both the taxpayers and farmers.

*Response:* Section 400.706(f)(5) has been redesignated as § 400.706(h)(6). FCIC agrees ARPA encourages the development of products that may be non-traditional and innovative in design. FCIC agrees that not all traditional principles of insurance apply to these types of products. However, there is express statutory authority to offer the coverage referred to by the commenter. Absent express authority to the contrary, the sound principles of insurance and underwriting continue to apply since they are one of the underpinnings of a determination of actuarial soundness. In addition to the requirements of the Act, FCIC must protect taxpayer dollars. This means that insurance cannot provide coverage in excess of the value of the commodity and no known program vulnerabilities can be introduced as a result of the implementation of the submission. Therefore, FCIC will review the submission to determine whether it is in accordance with sound insurance and underwriting principles and if it is not, FCIC will determine whether the Act authorizes an exception. Redesignated section 400.706(h) has been revised for clarity.

*Comment:* An insurance company stated language in § 400.706(f)(5) should include a limitation that would prevent use of this provision to deny approval of a submission when the time constraint was created due to the action or inaction of RMA or the Board, and not the applicant.

*Response:* Congress has set very tight time limits on the approval process. In some quarters there may be many products submitted. This provision was specifically intended to permit denial of a submission if, even after due diligence, there is insufficient time to properly evaluate the submission. For example, expert reviewers may not be available because they are working on other projects or the submission is so complex or requires such significant changes that it is impossible to determine what changes are necessary in the available time frame. To the extent that the applicant believes that RMA or the Board is stalling on acting on a submission in order to utilize this provision, the applicant always has recourse to challenge such actions are arbitrary and capricious. Therefore, no change has been made.

#### Section 400.708

*Comment:* An insurance company suggested language be added to § 400.708 to give SRA holders the option to not offer specific products that the Board has approved. This decision by the SRA holder may be based on the approved insurance provider's assessment of the product, the reinsurance terms for the product, or any other reason.

Another insurance company and an insurance service organization asked if all approved insurance providers reinsured by FCIC will be required to offer every product that is approved or will a separate SRA addendum be optional for each such product. The commenter also asked if an insurance company reinsured by FCIC could opt out of a program if the company deems the user fees to be excessive.

*Response:* Section II.A.2. of the 2005 Standard Reinsurance Agreement, states in part “\* \* \* The Company is not required to offer such plans of insurance as may be approved by FCIC under the authority of section 508(h) of the Act. However, if the Company chooses to offer any such plan, it must offer the plan in all approved states in which it writes an eligible crop insurance contract and it must comply with all provisions of this paragraph as to such plan.” This means that approved insurance providers can opt not to offer any policy or plan of insurance approved under section 508(h) of the Act. However, if the approved insurance provider opts to offer the policy or plan of insurance, it must offer it everywhere. Separate SRAs or addendums to the existing SRA will be used as appropriate. Therefore, no change has been made.

*Comment:* An insurance company and an insurance service organization stated § 400.708(a)(1) needs to be clarified because it seems to require a post approval disposition of property rights from the payment for said property rights manifested in the reimbursement for research and development costs articulated in § 400.712(a) and it appears the applicant ultimately gives up the property rights.

*Response:* The applicant continues to have property rights to the submission until responsibility for maintenance is relinquished to FCIC, as determined by the applicant. However, if research and development or maintenance costs have been paid by RMA, section 522(b)(5) of the Act makes it very clear that if the applicant elects not to continue to maintain the product, the research and development or maintenance costs paid by RMA are payment in full for the product and RMA has the property rights to the product. Section 400.708(a)(1) simply incorporates this provision. Section 400.708(a)(1) has been revised to clarify when property rights are transferred.

#### Section 400.709

*Comment:* An insurance company stated § 400.709(a)(1)(ii) requires the applicant to annually update and provide maintenance changes to the insurance product and they suggested the regulation should address what happens if the applicant is no longer able or willing to continue to maintain or offer the product prior to the end of the maintenance period.

*Response:* As previously stated, § 400.712(m) has been added to specify 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. Maintenance of the approved submission may be assumed by FCIC or the Board may withdraw reinsurance, risk subsidy and A&O subsidy.

*Comment:* An insurance service organization stated § 400.709(a)(2) requires any changes be submitted to FCIC no later than 180 days prior to the earliest sales closing date and asked how this compares to the current requirement.

*Response:* Before this regulation was effective, specific deadlines for changes were contained in a Memorandum of Understanding (MOU) between the applicant and FCIC. For example, currently the CRC and RA MOU's allow 153 days for changes to spring crop provisions and 122 days for changes to

fall crop provisions; except, in the event of unforeseen circumstances, changes may be made if they are submitted 30 days prior to the contract change date. Given that RMA will be reviewing new submissions, revising existing submissions, and maintaining its own products, the 180 day deadline is necessary to allow adequate time for the review process and Board approval and treat all products consistently. However, since some submissions may allow producers to obtain insurance coverage at various times during the year, the references to sales closing dates have been changed to contract change dates in §§ 400.709(a)(1)(ii) and (2).

*Comment:* An insurance company and an insurance service organization stated § 400.709(b)(1)(ii) indicates approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement for approved products and they suggested this language be modified to require FCIC/RMA to contact approved providers and make them aware of products that have been approved because the responsibility for advising providers should fall to FCIC/RMA, as FCIC/RMA holds the approval authority over the products.

*Response:* Section 400.709(b)(1)(ii) of the interim rule has been redesignated as § 400.709(b)(1)(iii). The fact that FCIC holds the approval authority does not mean it is required to provide notice to the approved insurance providers that products have been approved. The approved insurance providers have notice throughout the process. When products are considered by the Board, they are placed on the Board meeting agenda, which is made public. Any approval of the product is made in an open Board session and all resolutions are published on RMA's public Web site at <http://www.rma.usda.gov/> as soon as new products are approved. Further, FCIC notifies all approved insurance providers via a Manager's Bulletin when the product is released. Since participation is voluntary, once RMA makes the information available, it is the approved insurance providers who are appropriately responsible for requesting and executing a copy of the reinsurance agreement for the approved product. The specified section has been redesignated as § 400.709(b)(1)(iii) for clarity, however, no other change has been made.

*Comment:* An insurance company and an insurance service organization suggested the language in § 400.709(b)(1)(iii) which states, "Conducting the best review of the submission possible in the time allowed" should be revised to state,

"Conducting a thorough review of the submission." Since FCIC/RMA has approval authority, and exercise of that authority does have consequences, the language should reflect the full responsibility that accompanies the authority. The commenter asked if the best review possible in the brief time allowed will always be adequate.

*Response:* Section 400.709(b)(1)(iii) of the interim rule has been redesignated as § 400.709(b)(1)(i). RMA has a limited time frame to conduct its review and must conduct as thorough a review as possible within that time frame. RMA acknowledges that its review may not catch all the mistakes, errors, or flaws. However, since RMA is not the developer of the product, the responsibility for such mistakes, errors, or flaws correctly lies with the applicant. This provides applicants with the incentive to thoroughly review and test their product prior to submitting it to the Board. Since applicants will be reimbursed for costs associated with such research and development, there is no financial impediment to conducting a thorough review and test of the product. Except for redesignation of the provision, no change has been made.

*Comment:* A legal counsel, a university, an insurance service organization, and insurance companies stated FCIC should be liable for mistakes, errors, or flaws in a submitted product and its related materials. The Board now conducts a substantial review process prior to approving 508(h) submissions, including analyses by five outside independent reviewers, OGC, and RMA's staff. It is unrealistic and inconsistent with FCIC's past practice for FCIC to not be liable. FCIC's formal approval of a product signifies that the Board has reviewed it, and that the Board has determined its reviews to be positive. The public and the applicant should be able to rely on this public action by the Board. When the Board approved Crop Revenue Coverage in the late 1990s, the memorandum of understanding between FCIC and the sponsoring company assigned liability for such policy errors to FCIC, and every legal challenge involving the policy since that time has presumed FCIC responsibility. By sharing in the liability for errors or flaws, FCIC retains an incentive for maintaining a high level of quality control over new products. The Act intended to provide a process and mechanism under which organizations can evaluate and design programs that are needed in the marketplace and have them available to producers under the FCIC/RMA umbrella. If FCIC/RMA approves a submission, then FCIC/RMA must be the regulator, manager,

maintainer and administrator of that program. Section 400.709(a)(1)(iii) requires the applicant to respond to procedural issues, questions, problems, etc., in regard to a policy or plan of insurance and they suggested this is a role for FCIC/RMA as regulator of the program, not the applicant that developed the product. Section 400.705(a)(10) requires the submission to include the names of those responsible for addressing the policy and procedural issues and questions that arise in administering the approved program. Once FCIC/RMA grants approval of the product, responsibility for the product and its delivery, including responding to questions about procedural issues, policy language, etc., for the product should belong to FCIC/RMA. The program becomes an FCIC/RMA program the same as MPCI or GRP or any other RMA/FCIC approved or designed insurance program. Any other conclusion is inconsistent with the SRA, which holds SRA holders responsible for complying with FCIC policies, procedures, etc., not those of other parties. This issue again reinforces that once FCIC/RMA grants product approval, it becomes responsible for the product. Section 400.709(a)(2) indicates only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board. The commenter stated FCIC/RMA has the responsibility to make such changes after FCIC has approved the submission. It was also stated that § 400.709(b)(2) should be modified by removing the word "not" as FCIC assumes liability for submissions once they are approved.

*Response:* Section 400.709(b)(2) has been redesignated as § 400.709(b)(3). Applicants are liable for the insurance products they submit under 508(h) of the Act because they own the product. FCIC does not gain ownership or control over the product until such time as the applicant agrees to relinquish the product to RMA. Further, while the product is owned by the applicant, FCIC does not have the authority to modify it. All it can do is disapprove a submission or withdraw reinsurance if errors are discovered and the applicant is not willing to correct the error. Also, it is the applicant that chooses the method to use to correct the identified mistake. Therefore, FCIC cannot assume the liability of a product over which it has so little control. In addition, if FCIC were to assume the liability for mistakes, it would delay the approval process considerably. All submissions would have to be disapproved until FCIC had thoroughly completed its review and tested the product. For its

own products, this process can take years. However, the Act only provides 90 days to review the submission. This is not a sufficient time to conduct a thorough review and test of the product. When CRC was approved, the 90-day review requirement did not exist and RMA could take such time as necessary to review the product. Therefore, FCIC should not be responsible for the errors in a product that Congress has given it insufficient time to thoroughly review and test. It is the applicant that has unlimited time to develop, evaluate and test the product and has the authority to make such changes as are necessary. Therefore, the liability correctly lies with the applicant.

*Comment:* An insurance service organization stated the Web site is a useful tool for making information available, but approved insurance providers should be notified in writing when policies, plans of insurance, or rates of premium are timely withdrawn because they are deemed canceled and applications for insurance are not accepted as of the date that FCIC publishes the notice of withdrawal on its Web site. Section 400.709(a)(5) would require approved insurance providers to check the Web site each time an application is processed in case a cancellation notice was posted after the last check.

*Response:* Section 400.709(a)(5) applies to both producers and approved insurance providers and simply provides the consequences if reinsurance is withdrawn from a policy, plan of insurance, or rates of premium. The reference to the Web site simply provides the date by which cancellation is effective. FCIC agrees that if reinsurance is withdrawn or denied from a policy, plan of insurance or rate of premium, the approved insurance provider should be notified in writing and has revised the provision accordingly.

#### Section 400.712

*Comment:* An insurance company and an agricultural association stated §§ 400.712(b) and (c) of the interim rule do not address procedures for submissions sent to RMA and not yet approved by the Board prior to publication of the interim rule and such circumstances prevent compliance with paragraph (b), which states a request for reimbursement be included with the original application.

*Response:* Revisions were made to § 400.712 when the interim rule was completed to accommodate this situation. However, this information has been removed in the final rule since such information is now obsolete.

*Comment:* An insurance company stated § 400.712(d) is more appropriate to the decision to approve or disapprove an application and if an application is approved, the question of qualification for reimbursement should be moot. The commenter also asked whose marketing plan would be utilized to help render this decision.

A legal counsel stated the proposed rule requires that to be eligible for reimbursement, a product must be marketable based on a reasonable marketing plan. Marketability so defined, is a judgement that the Board can make in advance when the product is approved, and it addresses a statutory requirement. However, the proposed rule defines marketability as a measure of the acceptability of a policy as reflected by the percent of market penetration of the identified target market which is an after-the-fact judgement. It is unclear how or whether the after-the-fact judgement applies as it is not referenced in § 400.712. The commenter opposes use of the after-the-fact test as being unnecessary to legislative requirements, creating excessive uncertainty, and conflicting with the regulatory scheme. Once the Board has approved a reimbursement request at the time it approves the new product (a full marketing plan will be included in the submission), the applicant should be able to rely on the Board's decision.

*Response:* Section 400.712(d) has been redesignated as section 400.712(c). The definition of "marketability" in the proposed rule was deleted and a definition of "marketable" was added in the interim rule. The definition of "marketable" has been revised in the final rule to make it clear that the determination of marketable will be based on the marketing plan and the documentation provided to support it. FCIC has also determined that marketability should also be considered when determining whether the policy or plan of insurance protects the interest of producers because unmarketable products waste valuable resources that could be better used to provide products that producers want to purchase. Therefore, it has also included the requirement in redesignated § 400.706(h).

*Comment:* A legal counsel stated it should be explicitly stated the Board will approve a proposed research and development reimbursement request, conditioned only on subsequent proration as specified in § 400.712(f)(2) of the interim rule, at the same time the applicant's proposed new product is approved.

*Response:* FCIC cannot determine when it approves a submission that it will pay the research and development costs. Some of those costs may not have yet been incurred and certain costs may be reduced or excluded in accordance with § 400.712(h). FCIC has revised the provisions to clarify that a submission is eligible for reimbursement if the Board determines the submission is marketable.

*Comment:* A legal counsel suggested § 400.712(e) be modified by adding "except as provided in paragraph (c) of this section" after the phrase "August 1" because they stated that it could be read to require that such requests be received by FCIC not later than August 1 to be considered for reimbursement in the current fiscal year.

*Response:* The information referencing a submission approved by the Board or submitted to the Board prior to the interim rule being published on September 17, 2001, is now obsolete and has been removed in the final rule.

*Comment:* An insurance company asked if since limited funds exist each fiscal year for reimbursement of research and development costs, and maintenance costs, if the limit is met in any year, whether the applicant can resubmit the "shortfall" for possible reimbursements in a subsequent year.

A legal counsel stated that under the proposed rule in § 400.712(f)(2) if the sum of all applicants requests for reimbursement in a given year exceeds available funding, each amount is adjusted downward by a uniform factor and portions of the reimbursement that remains unpaid as a result of this reduction appear simply to expire. This could be unfair based on arbitrary timing factors if applicants adversely select against annual pools to the disadvantage of others. A fairer approach would be to permit each company to receive its full reimbursement as calculated under the rule and if the sum of all applicants claims exceed available funding in a given fiscal year and a uniform downward adjustment is applied, the unpaid portions should be rolled over and paid in the following fiscal year when funds are available.

*Response:* Applicants will not be allowed to receive additional funds in a subsequent year for the "short fall" between the amount of reimbursement they requested and the amount of reimbursement they receive. The Act only authorizes one payment for research and development costs. Therefore, these costs cannot be broken into two separate payments in separate fiscal years. Further, the payment for maintenance costs comes from a single

year's appropriations that can only be used to reimburse costs expended for that fiscal year. Therefore, costs incurred in one fiscal year cannot be rolled over to be paid in a subsequent fiscal year. Therefore, no change has been made.

*Comment:* An agricultural association stated they do not know of any legislative history which indicates that Congress intended for a complicated rating system to be developed as is in § 400.712(g) of the interim rule for determining the level of reimbursement.

*Response:* Section 400.712(g) of the interim rule has been redesignated as section 400.712(f). Section 522(b)(6) of the Act states, "The Corporation shall determine the amount of the payment under this paragraph for an approved policy based on the complexity of the policy and the size of the area in which the policy or material is expected to be sold." Therefore, Congress expressly directed FCIC to develop a rating structure to determine the complexity of the product and how much it will be reimbursed.

*Comment:* An insurance company stated § 400.712(g)(1) of the interim rule indicates a high degree of subjective judgement as to what degree a policy, plan of insurance, or various components thereof, may be based on, or similar to, existing policies. The commenter stated that given the requirement for adherence to industry standards and practices it is likely that a complex, original plan may score highly but be less likely to be approved, while proposals utilizing well-known concepts might not score well but stand a better chance for approval.

*Response:* The scoring methodology in redesignated § 400.712(f) is not used for approving new insurance products. It is used for computing an equitable amount of reimbursement for research and development costs. The research and development expenses associated with using well known concepts should be less because the development and testing of such concepts has already been done by someone else. The research and development expenses associated with complex, innovative concepts would likely be higher because of their originality. The scoring system assures that applicants with complex, innovative designs have a better likelihood of having their research and development expenses approved. Except for redesignation, no other change has been made.

*Comment:* A university and an insurance company suggested emphasis should be placed on accuracy, not necessarily on novelty. The commenters also stated innovation is essential, but

consistency and accuracy may need more emphasis. Just being new or different does not guarantee accuracy, program success, or fair and equitable programs for policyholders or taxpayers. Section 400.712(g)(2) of the interim rule states new methodologies will be eligible for higher reimbursement than existing price methodologies.

*Response:* Section 400.712(g)(2) has been redesignated as § 400.712(f)(2). The applicant should always place emphasis on accuracy since the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, related material, or the rates of premium that have been approved by the Board. It is also in the best interests of the applicant to present to the Board the most accurate information in order to be considered for approval since such information and methodologies will be reviewed by expert reviewers and any inaccuracies will result in delays in approval of the product. An agreement to pay the research and development expenses associated with complex products provides a greater incentive to applicants to ensure that there are no errors, mistakes or flaws in the product. Except for the redesignation, no other change has been made.

*Comment:* An insurance company stated § 400.712(g)(5)(i) of the interim rule should have descriptions of or definitions for what degree of originality or modification qualifies a submission for each scoring point.

*Response:* Section 400.712(g)(5)(i) has been redesignated as § 400.712(f)(5)(i). It would be impractical to list definitions or degree of originality that would be appropriate for every unique situation that future innovative submissions may present. It is more appropriate to use the broader based language that can be applied to the numerous potential different innovative submissions. No other change has been made.

*Comment:* Legal counsels and an agricultural association questioned the rules and expectations of the reimbursement procedure for submissions pending at the time of publication of the proposed rule. The commenters asked if a pending product is approved by the Board shortly after the regulation is a final rule would the applicant be given the same 60-day grace period to submit its reimbursement application as that provided for products approved prior to the rule's publication or would the applicant be required to amend its pending submission to include reimbursement material prior to final Board action. The commenter asked if it could wait until August 1 of the following year, the deadline for

applications under § 400.712(e), and if the Board acts on the submission after August 1 (the deadline for 2001 fiscal year applications) but prior to October 1, 2002, would it qualify for funding in fiscal 2002. It was suggested FCIC give applicants of products that have been pending before the FCIC Board, prior to the publication of the proposed rule, a choice to either amend their submissions to include a reimbursement request in accordance with § 400.705(k) so that the Board can consider it at the time it votes on the product itself or to submit an application for reimbursement within 60 days of the rule's publication, which would be the same grace period applicable to products approved prior to the proposed rule. The regulation is unclear as to whether an applicant must request a projected or estimated level of maintenance costs in advance, when the product is approved, at the beginning of each fiscal year, or alternately whether an applicant may wait until the end of each fiscal year and account for the actual costs accrued, and then request reimbursement for such actual costs.

*Response:* Revisions were made to § 400.712 when the interim rule was completed to accommodate this situation. Submissions submitted to the Board prior to publication of the interim rule followed the same procedure as submissions approved by the Board prior to publication of the interim rule. This obsolete information has been removed in the final rule.

*Comment:* A legal counsel questioned why costs will be examined for reasonableness and may be adjusted at the sole discretion of the Board because this appears to undermine the very objectivity achieved by the detailed criteria specified. If the Board, at its sole discretion, can replace the application of objective standards by its own subjective view of reasonableness, then the process becomes highly judgmental, inevitably inviting questions of favoritism, bias, or unequal treatment. The commenter stated, at a minimum Board judgments must be available for review and the standard of reasonableness must be spelled out with objective benchmarks.

*Response:* The detailed criteria in § 400.712 will be followed. However, there may be situations where costs for similar work among the submissions may be substantially different. The Board must determine what costs are reasonable. Further, since the Board is using appropriated funds, it must take such actions as necessary to ensure the funds are properly spent. Reimbursing exorbitant costs would be a violation of this fiduciary duty. In addition, the

knowledge that only reasonable costs will be reimbursed may place limitations on applicants so they do not incur excessive charges based on the knowledge that such costs will eventually be borne by the Government. Additional criteria has been added to redesignated §§ 400.712(g)(1)(iii) and (iv) for clarification.

*Comment:* An insurance company stated § 400.712(i)(1) of the interim rule should include costs associated with building rents or space allocation paid for personnel directly involved in research and development.

*Response:* There are no special building requirements for the development of insurance policies. Therefore, the applicant can either use the space in which normal business activities are currently accommodated to do the research and development for a new product or pay for additional space out of normal business funds. FCIC cannot allow the costs of business expansion to be borne by the Government. It is a normal business judgment of the applicant whether such costs will be incurred. Section 400.712(g)(2)(xiv) has been added to specifically state, costs associated with building rents or space allocation will not be eligible for reimbursement.

*Comment:* An insurance company stated § 400.712(k) does not specify the consequences if an applicant does not notify FCIC, no later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, whether they will continue to maintain the policy or plan of insurance and charge approved insurance providers a user fee to cover the maintenance expenses or transfer responsibility for maintenance to FCIC.

*Response:* FCIC agrees and has added a new § 400.712(j)(8) to specify that if the applicant fails to provide timely notice to FCIC, the policy or plan of insurance will transfer to FCIC.

*Comment:* An insurance company stated they have concerns regarding the availability of future reimbursement funding for research and development costs, and maintenance costs if a significant increase in the number of approvals should develop.

*Response:* The amount of funds available for reimbursement of research and development costs has increased from \$10,000,000 for each of fiscal years 2001 and 2002 and not more than \$15,000,000 for each of the 2003 and subsequent fiscal years. However, these funding limits cannot be exceeded so if the requested amounts exceed the available funding, the reimbursements will have to be prorated.

*Comment:* An agricultural association stated since anyone can now submit a new product under section 508(h) of the Act there are new challenges faced by these applicants that are not addressed in the proposed rule. New policies involve traditional underwriting risk and market risk. Proper actuarial analysis, sound program rules, and reinsurance can address underwriting risk. The approved insurance provider must invest heavily in sales information, agent training, outreach, education, and management systems to address business risk. It may be argued that existing approved insurance providers should bear the market risk of offering new policies in the pilot stage. However, a new company will need a high potential rate of return in order to attract investment capital. The existing SRA and section 508(k) of the Federal Crop Insurance Act requires that approved insurance providers bear a sufficient share of a potential loss so as to ensure that they operate in a sound and prudent manner. The commenter stated the principle should not apply to the same extent to a 508(h) policy because Congress explicitly exempted 508(h) policies from such "limitations in the Act" in recognition of the innovative nature of these products. The commenter stated if FCIC chooses not to provide 100 percent reinsurance, FCIC should offer a choice of either including pilot insurance policies in the approved insurance provider's regular SRA risk pool because the administrative cost to them of establishing separate reinsurance systems under a separate SRA may outweigh potential gains or creating a new reinsurance fund, which would combine elements of both the current Commercial and Assigned Risk Funds (*i.e.*, "Pilot Insurance Fund"). Approved insurance providers participating in this new "Pilot Insurance Fund" would retain the same percentages of ultimate net loss as are provided under the Assigned Risk Fund, which would assure confidence in the new product, make up for the lack of private reinsurance, but still require approved insurance providers to retain some minimum amount of risk to assure proper program performance. The reinsurance should be provided without regard to the limitations in the SRA on the amount of an approved insurance provider's portfolio that it can place in the Assigned Risk Fund. Participating approved insurance providers should retain the percentages of underwriting gain provided under the Commercial Fund. The current SRA provides that, under the Assigned Risk Fund, the approved insurance provider will retain

15 percent or less of underwriting gain, a reasonable approach for a mature program but not sufficient protection for a novel pilot program. The combination of risk protection and gain potential under a new fund, plus the choice of using current SRA pools for approved insurance providers so desiring, will build a strong foundation for wide participation by private insurance companies.

*Response:* FCIC recognizes there may be additional risks associated with submissions approved under section 508(h) of the Act. To address these risks, unlike other plans of insurance which must be offered by all approved insurance providers in all states they write business, approved insurance providers have the choice whether to offer a policy or plan of insurance reinsured under section 508(h). Therefore, approved insurance providers can evaluate the product and determine whether they want to assume the risk. Because it is optional, approved insurance providers who sell and service the new submission will have a reinsurance agreement, which may simply be an amendment to the current SRA. It would not be consistent with sound insurance principles or FCIC's fiduciary duty to the taxpayer to allow approved insurance providers to assume none or minimal risk and receive an even greater share of the gains. Part of the process of offering these new products is an evaluation of whether they are actuarially sound and do not introduce program vulnerabilities. The approved insurance provider's assessment of the risk is an integral part of this process and that assessment could be skewed if the approved insurance provider did not bear any meaningful risk. Further, it should be the market that determines whether new policies or plans of insurance are sold and approved insurance providers are part of that market. Therefore, no change has been made.

#### Section 400.713

*Comment:* A legal counsel stated FCIC does not have authority to make § 400.713 effective without complying fully with the notice and comment provisions of the Administrative Procedures Act (APA). The preamble mistakenly refers to section 2108 of the 2001 Supplemental Appropriations Act when the reference should be to section 2103(a). The commenter stated the APA recognizes only one basis, good cause, for making a substantive regulation effective upon publication. The commenter stated this regulation does not have a "good cause" certification

and that such certification would be inappropriate anyway, since the current SRA deals with a portion of the subject matter of § 400.713 in section V.F. of the SRA, and there are no problems with respect to compliance with or abuse of that provision in the SRA. The commenter stated that § 400.713 exceeds the contractual grounds in the SRA by adding two new grounds for denial of subsidy and reinsurance which are “any rights of the insured with respect to the underlying reinsured policy or plan of insurance” or if that policy causes “disruption in the marketplace for products reinsured by FCIC.” The commenter also stated it was misleading to describe this section as guidelines since compliance with it is mandatory and failure to comply will result in financial penalties. The commenter stated that section 2103(a) explicitly concerns expediting effectiveness of regulations implementing § 522(b) of the Act, 7 U.S.C. 1522(b), which only deals with reimbursement of research and development costs and maintenance costs with respect to 508(h) products. Section 400.713 purports to cover all non-reinsured named peril coverage, except for hail coverage, for all commodities which an approved insurance provider may insure. This assertion of regulatory authority includes products even if they have been approved by the relevant state insurance departments. The definition of “non-reinsured supplemental policy” (NRS) may apply even if there is no federally approved reinsurance product available for the commodity in one or more of the counties where the non-reinsured policy is offered. If FCIC has approved any product for reinsurance for any commodity, a NRS product covering the same commodity is subject to its jurisdiction. It fails to take into account the fact that availability of reinsured products is determined on a county-by-county basis for any commodity with respect to which FCIC has approved reinsurance. This means that there may be counties in which an approved insurance provider wishes to offer a NRS product for a commodity grown in that county although FCIC has not approved a reinsurance product for sale in that same county for the commodity in question. This ambiguity in the definition establishes that § 400.713 is unduly broad because it seeks to extend review and approval jurisdiction of the FCIC to non-reinsured policies even when they are issued in counties where no underlying reinsured coverage for the same commodity is available. The commenter

states there is no statutory or contractual authority permitting issuance of § 400.713 of the Interim Rule. It does not identify any laws, rules, regulations, or contracts that are inconsistent and the preamble does not provide any rationale for preempting state regulations of non-reinsured policies. This section would allow FCIC to review and approve all insurance products providing any form of coverage for any commodity even though FCIC is not providing subsidy or reinsurance for that coverage. There is no relationship between §§ 400.702–400.712 and § 400.713. The commenter also stated a contractual provision cannot be utilized as authority for a federal regulation.

*Response:* FCIC agrees section 2108 of the 2001 Supplemental Appropriations Act as presented in the Summary of the interim rule was not correct. However, the correct section designation was in the Background section of the interim rule published on September 17, 2001. Further, FCIC acknowledges that section 2103 only applied to the implementation of section 522(b) of the Act and that § 400.713 exceeded the scope of that section. Therefore, the provisions of § 400.713 are not effective until the effective date of this final rule. However, with respect to the denial of reinsurance if the NRS shifts or increases the risk to the underlying FCIC reinsured policy, that requirement is contained in section V.F of the 2004 and previous SRAs and section IV.E of the 2005 SRA. Therefore, notwithstanding the effective date of § 400.713, FCIC can deny reinsurance under the SRA if the conditions in the SRA have been met.

The definition of a “NRS” specifically states that it includes products that offer coverage, except for hail, for commodities in addition to the coverage available under a policy or plan of insurance reinsured by FCIC. This means that if there is no FCIC reinsured policy for the commodity, the product is not considered a NRS. This would also apply if there is no FCIC reinsured policy for the commodity in the county. As the name implies, FCIC is seeking to examine those products that are supplemental to FCIC reinsured policies. Therefore, the provision is not overbroad. FCIC agrees that products with new coverage must be submitted even if FCIC reinsured policies do not offer the coverage. This is to ensure that the new coverage does not shift risk to the underlying FCIC reinsured policy. However, if there is not an underlying FCIC reinsured policy, § 400.713 is not applicable. FCIC has revised the definition of NRS for clarification.

*Comment:* An insurance company suggested § 400.713 have a 60-day time frame requiring FCIC to respond to the approved insurance provider regarding the Non-Reinsured Supplemental policy submission.

*Response:* FCIC agrees that a time frame should be incorporated into the regulation. FCIC is requesting that the NRS policy be submitted at least 120 days prior to the first sales closing date. FCIC will respond to the submitter not less than 60 days before the earliest sales closing date or provide notice why it is unable to respond within the time frame allotted.

*Comment:* A legal counsel asked if related materials submitted for a NRS policy will be reviewed under the same standards as those employed to review proposed 508(h) products or policies developed by FCIC product development contractors. The commenter stated FCIC provides no subsidy or reinsurance for a NRS policy, like it does for 508(h) products and other policies approved for reinsurance so different standards should apply.

*Response:* FCIC agrees different standards should apply, and do apply. The purpose for FCIC’s review of a NRS policy is to determine if the NRS policy materially increases or shifts risk to the underlying policy or plan of insurance reinsured by FCIC, reduces or limits the rights of the insured with respect to the underlying reinsured policy or plan of insurance, or causes disruption in the marketplace for products reinsured by FCIC. FCIC will not be reviewing whether the NRS policy is actuarially sound or protects the interest of producers. Section 400.713 has been revised to define the basis of FCIC approval of an NRS policy and for clarification.

*Comment:* A legal counsel stated § 400.713 establishes no meaningful criteria or standards for the reviews or determinations to be made. It would penalize the issuer of a non-reinsured policy if it affects “any rights of the insured with respect to the underlying reinsured policy or plan of insurance.” It does not deal with the issues such as whether the effect on rights is adverse or beneficial or whether or not the effect is material or immaterial. The regulation purports to define the “marketplace disruption” test for denying subsidy and reinsurance, however they are not adequate. For instance, the commenter asked how FCIC will evaluate and then implement (1) a standard based on a test of “adversely affecting sales” of reinsured products; or (2) evaluate and then implement a test on “undermining producers” confidence” in Federal crop insurance, relying on decreased

“willingness or ability to use Federally reinsured risk management products” or based on harm to “public perception of the Federal crop insurance program?”

*Response:* NRS policies generally attach to or are written with an underlying FCIC reinsured policy. However, NRS policies are not reinsured by FCIC. NRS policies are not standardized so each could have a unique impact on the underlying FCIC reinsured policy. It is imperative provisions of the NRS be compatible and consistent with the underlying policy in terms of coverage references, policy dates, and generally accepted policy rules of administration to avoid coverage ambiguities. The policyholder's perception of the underlying FCIC reinsured policy and the NRS are indivisible parts of the entire risk management package. The package must perform as expected to maintain consumer confidence in Federal risk management programs. With respect to whether the policy affects the rights of producers, FCIC will focus on whether the NRS policy prevents the producer from receiving coverage or changes such coverage so the producer does not receive the full benefit under the underlying FCIC reinsured policy. FCIC will also examine whether the NRS policy will result in over-insurance. With respect to marketplace disruption, FCIC will generally consider producer perceptions, comments, and market conduct. For example, if producers then state they will not purchase FCIC reinsured policies because of their performance in conjunction with the NRS policy or the volume of sales of the FCIC reinsured policy decreases suddenly after the release of a NRS policy.

*Comment:* A reinsurance company stated § 400.702 addresses the confidentiality of submissions submitted under section 508(h) of the Act. The commenter suggested § 400.713 should also address the confidentiality of nonreinsured supplemental policies.

*Response:* Submissions under section 508(h) of the Act are confidential because there is a specific requirement in section 508(h)(4)(A) of the Act. This confidentiality provision does not extend to NRS policies. However, the release of information provided with the NRS policy would be subject to the Freedom of Information Act, which offers protection against the release of certain information. Therefore, no change has been made.

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

1. Removed the definition of “revenue insurance” because it is not needed to clarify the provisions and the defined term is not used in the provisions;

2. Amended § 400.705 to designate it as paragraph (a) and redesignate paragraphs (a) through (m) as paragraphs (b) through (n), and amend redesignated (a) to specify that the submission must have a table of contents and page numbers, and that when the electronic format of the submission is printed it will be an exact duplicate of the information that would have been found in the 3-ring binder, with the exception of section dividers. This will ensure that the information is the same and in the same order.

3. Amended redesignated § 400.705(b)(6) to specify if a sales closing date is not applicable, the applicant must give the earliest date the applicant expects to release the product to the public to cover those situations where the policy or plan of insurance does not have a sales closing date but allows for continuous sales.

4. Amended redesignated § 400.705(h) to specify the evaluation and certification from an accredited associate or fellow of the Casualty Actuarial Society or other similarly qualified professional must be a disinterested third party to avoid any potential conflicts of interest. A definition of “disinterested party” has also been added.

5. Amended redesignated § 400.705(j)(1) to specify the applicant will submit 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 RMA. This provision is necessary to protect the program by allowing other approved insurance providers the time needed to release materials to their agents and adequately train agents and loss adjusters so that producers are properly informed of the attributes and benefits of the new policy or plan of insurance and losses are adjusted correctly.

6. Amended redesignated § 400.705(k) to specify that submissions must not only be in compliance with Appendix III, it must contain any system(s) and software necessary to implement the submission and such systems or software must be compatible with RMA's systems.

7. Amended §§ 400.706(a) and (b) to better clarify the roles of RMA and the Board and to better structure the provisions to better reflect the current practices of the Board.

8. Amended redesignated § 400.706(h) to specify the Board may disapprove a submission if it determines coverage would be similar to another policy or plan of insurance and the producer would not further benefit from the submission. It does not protect the interests of producers if the new policy or plan of insurance offers the same or similar coverage to existing policies or plans of insurance. It leads to confusion in the marketplace and increases litigative risk.

9. Amended § 400.706(j) to specify the Board will send the applicant a letter stating the submission has been disapproved if the applicant does not respond within the 30 day time period after the Board provides written notice of intent to disapprove a submission, and to specify the Board will send the applicant a letter stating the submission has been 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.

10. Amended § 400.709 by adding a new paragraph (b)(2) to allow the Board to limit the availability of coverage for a submission based on the risks as authorized in sections 508(b)(8) and (c)(9) of the Act.

11. Amended redesignated § 400.712(g)(1)(i) to allow for compensation amounts to be compared to other substantiated wage information, as deemed appropriate by the Board, in addition to the Occupational Employment Statistics Survey, when computing reimbursement for research and development costs, and maintenance costs.

12. Amended redesignated § 400.712 by adding a paragraph (i) to allow the product to be withdrawn at the discretion of the Board if the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not comply with the requirements in this rule and no further maintenance reimbursement will be paid.

13. Added a new § 400.712(n) to specify that 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.

#### List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

#### Final Rule

■ Accordingly, as set forth in the preamble, the interim rule amending 7

CFR part 400, Subpart V, published in the **Federal Register** on September 17, 2001, at 66 FR 47949–47959 is adopted as final with the following changes:

**PART 400—GENERAL ADMINISTRATIVE REGULATIONS**

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

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

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

■ 2–3. Revise § 400.700(a), to read as follows:

**§ 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.

\* \* \* \* \*

■ 4. Amend § 400.701 by adding definitions for “complete submission” and “disinterested third party”, revising the definitions of “actuarial documents”, “actuarially appropriate”, “applicant”, “development”, “endorsement”, “maintenance”, “marketable”, “marketing plan”, “multiple peril crop insurance (MPCI)”, “non-reinsured supplemental policy (NRS)”, “non-significant changes”, “plan of insurance”, “policy”, “related materials”, “research”, “research and development costs,” and “Special Provisions”, placing the revised definition of “policy” in alphabetical order, and removing the definition of “revenue insurance” to read as follows:

**§ 400.701 Definitions.**

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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 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 MPCI or Group Risk Plan of Insurance, that offers a specific type of coverage to one or more agricultural commodities.

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

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

\* \* \* \* \*

■ 5. Amend § 400.702 by adding a new paragraph (d) to read as follows:

**§ 400.702 Confidentiality of submission and duration of confidentiality.**

\* \* \* \* \*

(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."

■ 6. Revise § 400.703 to read as follows:

**§ 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.

■ 7. Revise § 400.705 to read as follows:

**§ 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 three 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 policy 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 division 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 plan 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 Web site 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’s 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.”

8. Revise § 400.706 to read as follows:

**§ 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 interest 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 [Amended]

■ 9. Amend § 400.707(c) by removing the words “§ 400.706(c)” and adding in its place the words “§ 400.706(b)”.

■ 10. Revise § 400.708(a)(1) to read as follows:

#### § 400.708 Approved Submission.

(a) \* \* \*

(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.

\* \* \* \* \*

#### § 400.708 [Amended]

■ 11. Amend § 400.708(a)(2) by removing the phrase “Standard Reinsurance Agreement” and adding the phrase “available existing reinsurance agreements” in its place;

■ 12. Revise § 400.709 to read as follows:

**§ 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 of 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](http://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 was transferred.

■ 13. Revise § 400.711 to read as follows:

**§ 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.

■ 14. Amend § 400.712 as follows:

■ a. Revise paragraphs (a), (b), (c), (d), (e), (h), (i), (l), and (m);

■ b. Remove paragraph (f) and redesignate paragraph (g) as (f);

- c. Remove paragraph (j) and redesignate paragraph (k) as (j);
- d. Add new paragraphs (g), (k), and (n);
- e. Amend redesignated paragraph (f) introductory text by removing the phrase "and maintenance costs, as applicable", and by removing the phrase "paragraph (f)" and adding the phrase "paragraph (e)" in its place;
- f. Amend redesignated paragraphs (f)(5)(i)(A)(3), (B)(3), (C)(3), (D)(3), and (E)(3) by removing the phrase "(g)(3)" and adding the phrase "(f)(3)" in its place;
- g. Amend redesignated paragraph (f)(5)(i)(B) by removing the word "Crop" and adding the word "Commodity" in its place;
- h. Amend redesignated paragraph (f)(5)(ii)(B) by revising the phrase "regional, state or county" to read "county, state or regional";
- i. Amend redesignated paragraph (f)(6) introductory text by removing the phrase "In accordance with paragraph (e) of this section, those";
- j. Amend redesignated paragraphs (f)(6)(i), (ii), and (iii) by removing the phrase "paragraphs (h), (i), or (j)" and adding "paragraph (g)" in its place;
- k. Amend the first sentence of redesignated paragraph (j)(1)(i) by removing the phrase "a user fee, as approved by the Board, to approved insurance providers for all policies earning premium to cover maintenance expenses" and adding in its place the phrase "approved insurance providers a user fee to cover maintenance expenses for all policies earning premium", and in the last sentence by revising the words "which ever" to read "whichever"; and
- l. Revise redesignated paragraph (j)(2);
- m. Add paragraph (j)(8).

The revised and added text reads as follows:

**§ 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) or (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.

\* \* \* \* \*

(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) \* \* \*

(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.

\* \* \* \* \*

(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 the 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.

■ 15. Revise § 400.713 to read as follows:

**§ 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.

Signed in Washington, DC on July 26, 2005.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 05-15102 Filed 8-1-05; 8:45 am]

**BILLING CODE 3410-08-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV05-916-1 FIR]

#### Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule revising the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and pack requirements for fresh shipments of these fruits, beginning with 2005 season shipments. This rule also authorizes continued shipments of "CA Utility" quality nectarines and peaches, and revises weight-count standards for fruit in volume-filled containers. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

**EFFECTIVE DATE:** September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and

917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, grade, size, maturity, pack and container requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on December 7, 2004, and unanimously recommended that these handling requirements be revised for the 2005 season, which began about the first week of April. The changes will: (1) revise varietal maturity, quality, and size requirements to better reflect current industry practices; (2) authorize continued shipments of "CA Utility" quality fruit during the 2005 season; and (3) adjust weight-count standards for fruit packed in volume-filled containers.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to