

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

[Docket No. FCIC–13–0006]

RIN 0563–AC46

#### Part 400—General Administrative Regulation—Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

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

**ACTION:** Proposed rule.

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

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 27, 2015 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–13–0006 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division,

Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205. All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public.

All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

**Privacy Act:** Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov#!/privacyNotice>.

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

#### SUPPLEMENTARY INFORMATION:

##### 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 OMB.

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management

and Budget (OMB) under control number 0563–0064.

#### E-Government Act Compliance

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

#### Unfunded Mandates Reform Act of 1995

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

#### Executive Order 13132

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

#### Executive Order 13175

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

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. No matter the size of the submitter, all submitters are required to

perform the same tasks and those tasks are necessary to ensure that the concept proposal can be made into a viable and marketable submission and any submission can be made into viable and marketable, actuarially sound insurance product. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (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 proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### **Environmental Evaluation**

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

#### **Background**

FCIC makes available standard policies for producers to insure certain agricultural commodities against various agricultural production risks and perils. Under the provisions of section 508(h) of the Act, any person may submit or propose other crop insurance policies, plans of insurance, provisions of policies, or rates of premium to the FCIC Board of Directors (Board) for approval for reinsurance and subsidy. These policies may be submitted without regard to certain

limitations contained in the Act. Section 508(h) of the Act also requires that FCIC issue regulations to establish guidelines for the submission and Board review of policies or other material submitted to the Board under the Act. These regulations were published at 7 CFR part 400, subpart V (Subpart V) and provided the process for making submissions, its contents, the approval process, and the procedures for requests for reimbursement of research and development costs and maintenance. Section 522 of the Act authorizes the advance payment of research and development costs for concept proposals and this proposed rule includes the procedures for requesting such advanced payment.

The Agricultural Act of 2014 amended parts of section 508(h) as well as other sections of the Act. One such change requires FCIC to develop procedures for submitting index-based weather plans of insurance. Another change mandated by the Agricultural Act of 2014 requires submitters of products for specialty crops to follow certain consultation requirements with grower groups in the major producing areas. The Agricultural Act of 2014 also contains amendments that require changes to review criteria and establish approval priorities and considerations of submissions under section 508(h) of the Federal Crop Insurance Act.

In addition to the changes required by the Agricultural Act of 2014, other changes are being proposed to provide clarity or lessen the burden on submitters or FCIC. This rule contains proposed revisions to definitions to clarify the meaning of terms used in Subpart V as well as new definitions for terms that were either not defined or not previously used. This rule also contains proposed changes to clarify FCIC and submitter responsibilities with respect to timing, content, approval, reimbursement for research and development costs and maintenance costs, and potential user fees for such submissions. To lessen the burden on submitters, this rule proposes to reduce the number of printed copies of the submission that must be provided to FCIC. This rule proposes to provide additional guidance for submitting concept proposals, including confidentiality standards and advance payment provisions. This rule also proposes changes to guidelines for non-reinsured supplemental policies to be submitted to FCIC including a proposed provision to decrease the burden on FCIC by increasing the time FCIC has to review such policies from 120 to 150 days.

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

Administrative practice and procedure, Crop insurance.

#### **Proposed Rule**

Accordingly, as set forth in the preamble, FCIC proposes to amend 7 CFR part 400 by replacing subpart V in its entirety as set forth below:

#### **PART 400—GENERAL ADMINISTRATIVE REGULATIONS**

Revise subpart V to read as follows:

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

Sec.

- 400.700 Basis, purpose, and applicability.
- 400.701 Definitions.
- 400.702 Confidentiality and duration of confidentiality.
- 400.703 Timing and format.
- 400.704 Covered by this subpart.
- 400.705 Contents for new and changed submissions, concept proposals, and index-based weather plans of insurance.
- 400.706 Review.
- 400.707 Presentation to the Board for approval or disapproval.
- 400.708 Post approval.
- 400.709 Roles and responsibilities.
- 400.710 Preemption and premium taxation.
- 400.711 Right of review, modification, and the withdrawal of approval.
- 400.712 Research and development reimbursement, maintenance reimbursement, advance payments for concept proposals, and user fees.
- 400.713 Non-reinsured supplemental (NRS) policy.

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

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

##### **§ 400.700 Basis, purpose, and applicability.**

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

submitting non-reinsured supplemental policies in accordance with the Standard Reinsurance Agreement (SRA) are also contained within.

#### **§ 400.701 Definitions.**

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

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

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

*Administrative and operating (A&O) subsidy.* The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for catastrophic risk protection (CAT) eligible crop insurance contracts is not considered as A&O subsidy.

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

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

*Applicant.* Any person or entity that submits to the Board for approval a submission under section 508(h) of the Act, a concept proposal under section 522 of the Act, or an index-based weather plan of insurance under section 523(i) of the Act.

*Approved insurance provider.* A legal entity that has entered into a reinsurance agreement with FCIC for the applicable reinsurance year.

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

*Board.* The Board of Directors of FCIC.

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

*Complete.* A submission, concept proposal, or index-based weather plan of insurance determined by RMA and the Board to contain all required documentation in accordance with § 400.705 and is of sufficient quality, as determined by the Board and RMA, to conduct a meaningful review.

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

*Concept proposal.* A written proposal for a prospective submission, submitted under section 522 of the Act for advance payment of research and development, and containing enough information that the Board is able to determine that, if approved, will be developed into a viable and marketable policy consistent with Board approved procedures, these regulations, and section 508(h) of the Act.

*Delivery system.* The components or parties that make the policy or plan of insurance available to the public for sale. The delivery system includes, but is not limited to RMA, approved insurance providers, and agents.

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

*Disinterested third party.* A person who:

(1) 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 the submitter;

(2) Who will not benefit financially from the submission, concept proposal, or index-based weather plan of insurance if approved, or from the administration of any approved policy or plan of insurance; or

(3) Must not be employed by or work under contract or be associated in any similar manner to the applicant on a regular basis.

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

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

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

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

*Limited resource producer.* Has the same meaning as the term defined by USDA at: [www.lrftool.sc.egov.usda.gov/LRP\\_Definition.aspx](http://www.lrftool.sc.egov.usda.gov/LRP_Definition.aspx) or a successor Web site.

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

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

submission will be considered maintenance for the similar approved submission if submitted by the same person.

**Maintenance costs.** Specific expenses associated with the maintenance of an approved submission as authorized by § 400.712.

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

**Manager.** The Manager of FCIC.

**Marketing plan.** A plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, and the data upon which such information is based. Such data must include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or participants, an assessment of factors that could negatively or adversely affect the market, responses from a reasonable representative cross-section of producers or significant market segment to be affected by the policy or plan of insurance, and if applicable, results from the consultation with the major producer groups of specialty crops demonstrating their interest in purchasing the product.

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

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

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

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

**Plan of insurance.** A class of policies, such as yield, revenue, or area based

that offers a specific type of coverage to one or more agricultural commodities.

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

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

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

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

**Research.** For the purposes of development, the gathering of information related to: producer needs and interests for risk management; the marketability of the policy or plan of insurance; appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, documentation, and the systems and software necessary to implement a policy or plan of insurance. The gathering of information to determine whether it is feasible to expand a policy or plan of insurance to a new area or to cover a new commodity under the same policy terms and conditions, price, and premium rates is not considered research.

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

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

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

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

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

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

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

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

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

**Standard Reinsurance Agreement (SRA).** The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. For the purposes of this subpart, all references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement.

**Submission.** A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of § 400.705. Submissions as referenced in this subpart do not include concept proposals, index-based weather plans of insurance, or non-reinsured supplemental policies.

**Submitter.** Same meaning as applicant.

**Sufficient quality.** The material presented is complete, understandable and unambiguous, so that a disinterested third party can understand, comprehend and make calculations, draw substantiated conclusions or results to determine whether the submission, concept proposal, or index-based weather plan of insurance is, or can result in, a viable and marketable insurance product with actuarially appropriate rates, reasonable expected market prices, provides meaningful coverage, and that protects the interests of producers and program integrity. The material must be presented in Microsoft Office format and must also contain adequate information that is presented clearly enough for the determination to be made whether RMA has the resources to implement, administer, and deliver the submission effectively and efficiently. Liability (guarantee), premium, and indemnity are clearly defined and consistent in calculation throughout the policy materials and appropriate for the commodity and the risks covered. As applicable, the policy, loss adjustment methods, underwriting procedures, and actuarial rating and pricing

methodologies must be clearly identified and correspond to the risks covered.

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

*USDA.* The United States Department of Agriculture.

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

*Viable and marketable.* A determination by the Board based on a detailed, written marketing plan demonstrating that a sufficient number of producers will purchase the product to justify the resources and expenses required to offer the product for sale and maintain the product for subsequent years.

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

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

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

(c) Any submission, concept proposal, or index-based weather plan of insurance disapproved by the Board will remain confidential commercial or

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

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

#### **§ 400.703 Timing and format.**

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

(b) A submission, concept proposal, or index-based weather plan of insurance must be provided to FCIC in the following format:

(1) Electronic format, sent to the address in paragraph (d)(1) of this section by the due date in paragraph (a) of this section. The electronic copy must be provided as a single document so that when printed the order and content exactly match the hard copy; and

(2) Two hard copies, mailed to the addresses in paragraph (d)(2) of this section and postmarked by the due date in paragraph (a) of this section. The hard copies must exactly match the electronic copy.

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

(d) Any submission, concept proposal, or index-based weather plan of insurance must be provided:

(1) In electronic format to the Deputy Administrator for Product Management (or successor) at [DeputyAdministrator@rma.usda.gov](mailto:DeputyAdministrator@rma.usda.gov) and the Administrator at [Administrator@rma.usda.gov](mailto:Administrator@rma.usda.gov); and

(2) In hard copy format, with one hard copy provided to the Deputy Administrator for Product Management (or any successor position), USDA/Risk Management Agency, Beacon Facility Mail Stop 0812, 9240 Troost Ave., Kansas City, MO 64131-3055, and one identical hard copy must be provided to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop

0801, Room 3053 South Building, Washington, DC 20250-0801.

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

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

(g) Notwithstanding, paragraph (f) of this section, the Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

#### **§ 400.704 Covered by this subpart.**

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

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

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

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

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

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

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

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

#### **§ 400.705 Contents for new and changed submissions, concept proposals, and indexed-based weather plans of insurance.**

(a) A complete submission must contain the following material, as

applicable, in the order given, in a 3-ring binder for hard copies and in a single Microsoft Word document file for electronic copies, with a table of contents, page numbers, and section dividers clearly labeling each section, as applicable. All relevant materials should be provided in the designated section and not appended to the end of the submission.

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

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

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

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

(i) Reinsurance;

(ii) Risk subsidy;

(iii) A&O subsidy;

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

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

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

(5) The crop or insurance year and reinsurance year 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 area for the plan of insurance and if applicable, the reasons why the submission is not being proposed for other areas producing the commodity;

(8) Any known or anticipated future expansion plans;

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

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

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

executed between the applicant and FCIC; and

(10) 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 summary that includes:

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

(2) The projected demand for the submission, including support for and against development from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand;

(3) Potential impacts the submission may have on producers both where the new plan will and will not be available (include both positive and negative impacts);

(4) 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; and

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

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

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

(i) All applicable policy provisions; and

(ii) A list of any additional coverage that may be elected by the insured in conjunction with the submission such as applicable endorsements (include a description of the coverage and how such coverage may be obtained).

(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 a marketing plan, 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) A reasonable estimate of expected liability and premium, for each proposed county and state and total expected liability and premium by crop year based on the marketing plan and an estimate of the market penetration of other similar products;

(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, both positive and negative reactions;

(6) Market research studies that include:

(i) Evidence the proposed submission will be positively received by producers; and

(ii) Market estimates that show demand and level of coverage for which producers are willing to pay;

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

(8) Effects upon the delivery system or participants including:

(i) Estimated computer system impacts and costs;

(ii) Estimated administrative and training costs; and

(iii) What, if any, efficiency will be gained;

(9) Correspondence from producers expressing the need for such policy or plan of insurance; and

(10) A 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;

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

(4) Step-by-step 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 including any intended Special Provisions statements that may change any underlying policy terms or conditions; 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 submission, 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 detailed description of the specific premium rating methodology proposed to be used and the basis for selection of the rating methodology;

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

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

(i) Supporting documentation;

(ii) All mathematical formulas and equations;

(iii) Data and data sources used in determining rates and prices and a detailed assessment of the data and how it supports the proposed rates and prices;

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

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

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

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

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

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

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

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

depicting good and poor actuarial experience.

(h) The seventh section must contain forms, instructions for completing forms, and statements for all forms applicable to the submission in a format compatible with the Document and Supplemental Standards Handbook (FCIC 24040) found at <http://www.rma.usda.gov/handbooks/24000/index.html>.

(i) The eighth section must contain the following:

(1) A statement certifying that the submitter and any approved insurance provider or its affiliates will not solicit or market the submission until at least 60 days after all policy materials are released to the public by RMA, unless otherwise specified by the Board;

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

(3) If applicable, agent and loss adjuster training plans.

(j) The ninth section must contain a statement from the submitter that, if the submission is approved, the submitter will work with RMA and its computer programmers as needed to assure an effective and efficient implementation process. The applicant must consult with RMA to determine whether or not the submission can be effectively and efficiently implemented and administered through the current information technology standards and systems.

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

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

(3) These requirements are available from the USDA/Risk Management Agency, Beacon Facility Mail Stop 0812, 9240 Troost Ave., Kansas City, MO 64131-3055, or on RMA's Web site at



<http://www.rma.usda.gov/data/#m13>, or a successor Web site.

(k) The tenth section submitted on separate pages and in accordance with §§ 400.712 must specify:

(1) On one page, the amount received for an advance payment, an estimate of the total amount of reimbursement for research and development costs (new products only) or an estimate for maintenance costs for the year that the submission will be effective (for products that are within the maintenance period); and

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

- (i) Any anticipated expansion;
- (ii) Anticipated changes or updates to policy materials;
- (iii) The generation of premium rates;
- (iv) The determination of prices; and
- (v) Any other costs that the applicant anticipates will be requested for reimbursement of maintenance costs or expenses;

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

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

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

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

- (1) In a significantly improved form;
- (2) To a crop or region not traditionally served by the Federal crop insurance program; or
- (3) In a form that addresses a recognized flaw or problem in the program;

(n) The contents required for index-based weather plans of insurance are found in the Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance. In accordance with the Board approved procedures, the approved insurance provider that

submits the index-based weather plan of insurance must provide evidence they have:

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

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

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

#### **§ 400.706 Review.**

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

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

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

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

- (i) Will likely result in a viable and marketable policy;
- (ii) Will provide crop insurance coverage in a significantly improved form; and
- (iii) Adequately protect the interests of producers.

(4) Except for submissions developed from a concept proposal funded for advanced payment by the Board, reject and return any submission, concept proposal, or indexed based weather plan of insurance that:

- (i) Does not contain all the required information or is not of sufficient quality to conduct a meaningful review;
- (ii) Is unlikely result in a viable and marketable policy;
- (iii) Will not provide crop insurance coverage in a significantly improved form; and
- (iv) Will not adequately protect the interests of producers.

(5) Except as provided in paragraph (a)(4) of this section or if the submission was developed from an approved concept proposal, forward the submission, concept proposal, or index-based weather plan of insurance, and

the results of RMA’s initial review, to the Board for its determination of completeness.

(b) Upon the Board’s receipt of a submission, the Board will:

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

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

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

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

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

(B) Is actuarially appropriate;

(C) Follows appropriate insurance principles;

(D) Meets the requirements of the Act;

(E) Does not contain excessive risks;

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

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

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

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

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

(K) Contains a marketing plan that reasonably demonstrates the product would be viable and marketable;

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

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

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

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

(ii) Except for submissions developed from concept proposals, if the



submission is resubmitted at a later date, it will be considered a new submission solely for the purpose of determining the amount of time that the Board must take action;

(4) For complete submissions:

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

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

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

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

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

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

(5) Unless all the requirements for approval for submissions in this subsection are met or reasons for notice of disapproval exist as specified in subsection (k), provide a notice of intent to disapprove, including the reasons for the intent to disapprove.

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

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

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

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

(4) Determine whether the concept proposal, if developed into a policy or

plan of insurance would, in good faith, would meet the requirement of being likely to result in a viable and marketable policy consistent with section 508(h);

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

(i) In a significantly improved form;

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

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

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

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

(8) Provide a date by which the submission must be provided in consultation with the applicant; and

(9) Unless all the requirements for approval of concept proposals in this subsection are met or reasons for disapproval exist as specified in subsection (l), provide a notice of disapproval, including the reasons for disapproval.

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

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

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

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

(4) Give the highest priority for approval of index-based weather plans

of insurance that provide a new kind of coverage for specialty crops and livestock commodities that previously had no available crop insurance, or has demonstrated a low level of participation under existing coverage; and

(5) Unless all the requirements for approval of index-based weather plans of insurance in this subsection are met or reasons for notice of disapproval exist as specified in paragraph (m) of this section, provide a notice of intent to disapprove including the reasons for the intent to disapprove.

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

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

(g) In considering whether to approve a submission and when such submission will be offered for sale, the Board will:

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

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

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

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

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

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

(3) The time period during which the Board will make a decision to approve or disapprove the submission, concept proposal or indexed-based weather plan of insurance shall be extended

commensurately with any time delay requested by the applicant.

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

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

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

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

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

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

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

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

(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 another reinsured policy;

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

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

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

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

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

(i) In a significantly improved form;

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

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

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

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

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

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

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

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

(n) Unless otherwise provided for in this section:

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

(2) Any approval or disapproval of a submission, concept proposal, or index-based weather plan of insurance must be made by the Board in writing not

later than 120 days after the Board has determined it to be complete.

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

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

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

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

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

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

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

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

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

Board must approve the submission or index-based weather plan of insurance for it to be available for any subsequent reinsurance year.

**§ 400.707 Presentation to the Board for approval or disapproval.**

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

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

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

**§ 400.708 Post approval.**

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

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

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

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

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

(ii) A reinsurance agreement if terms and conditions differ from the available existing reinsurance agreements; and

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

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

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

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

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

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

**§ 400.709 Roles and responsibilities.**

(a) With respect to the applicant:

(1) The applicant is responsible for:

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

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

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

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

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

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

(ii) Significant changes will be considered a new 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 in accordance with § 400.712(l) (The applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC);

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

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

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

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

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

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

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

(b) With respect to FCIC:

(1) FCIC is responsible for:

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

(ii) With respect to submissions:

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

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

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

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

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

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

(c) If approval by the Board is withdrawn or reinsurance is denied for any submission, the approved insurance provider must cancel the policy or plan of insurance in accordance with its terms.

#### **§ 400.710 Preemption and premium taxation.**

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

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

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

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

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

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

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

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

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

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

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

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

(1) 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;

(2) Reimbursement of research and development costs or maintenance costs will be considered as payment in full by

FCIC for the submission, and no additional amounts will be owed to the applicant if the submission is transferred to FCIC in accordance with paragraph (l) of this section; and

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

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

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

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

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

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

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

(1) If a concept proposal is approved by the Board for advance payment, the applicant is responsible for independently developing a submission that is complete and of sufficient quality as specified in this subpart by the deadline set by the Board.

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

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

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

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

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

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

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

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

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

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

(e) The amount of reimbursement for research and development costs requested by the applicant may be reduced based on:

(1) The complexity of the policy, plan of insurance, or rates of premium, so requests for reimbursements for submissions:

(i) Adding commodities to existing plans of insurance (*i.e.*, Yield Protection and Revenue Protection under the Common Crop insurance Policy Basic Provisions, Area Risk Protection, Actual Revenue History, Whole Farm, Rainfall Index, Vegetative Index, etc.) may be reduced by as much as 20 percent;

(ii) Using existing rating methodologies or commodity prices or a price methodology may be reduced by as much as 10 percent;

(iii) Using existing policy provisions, procedures, etc., may be reduced by as much as 10 percent; and

(2) The scope as measured by the agricultural commodities proposed to be covered or geographic area the proposed submission will cover, as determined by FCIC so requests for reimbursements for submissions:

(i) That cover a single commodity may be reduced by 10 percent; and

(ii) That cover a small geographic area compared to the total growing area for the commodity may be reduced by 10 percent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) State filing fees and expenses;

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

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Lobbying costs;

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

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

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

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

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

(xv) Local, State, or Federal taxes.

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

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

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

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

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

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

(iv) Any other activity that qualifies as maintenance.

(h) Projected costs for research and development for concept proposals shall be based on a reasonable estimate of the costs allowed in paragraph (f) of this section.

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

(j) Reimbursement of costs associated with addressing issues raised by the

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

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

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

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

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

(ii) Transfer responsibility for maintenance to FCIC.

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

(3) If the applicant elects to:

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

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

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

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

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

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

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

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

(8) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that approved insurance providers will not sell the policy.

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

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

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

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

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

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

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

reimbursement of research and development costs, maintenance costs, or user fees.

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

(o) Applicants requesting reimbursement for research and development costs, maintenance costs, or user fees, may present their request in person to the Board prior to consideration for approval.

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

**§ 400.713 Non-reinsured supplemental (NRS) policy.**

(a) Unless otherwise specified by FCIC, any NRS policy that covers the same agricultural commodity as any policy reinsured by FCIC under the Act must be provided to RMA to ensure it does not shift any loss under the FCIC reinsured policy. Failure to provide such NRS policy or endorsement to RMA prior to its issuance shall result in the denial of reinsurance, A&O subsidy and risk subsidy on the underlying FCIC reinsured policy for which such NRS policy was sold.

(b) Three hard copies, and an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted at least 150 days prior to the first sales closing date applicable to the NRS policy. At a minimum, examples that demonstrate how liability and indemnities are determined under differing scenarios must be included.

(1) Hard copies of the NRS must be sent to the Deputy Administrator for Product Management (or successor), USDA/Risk Management Agency, Beacon Facility Mail Stop 0812, 9240 Troost Ave., Kansas City, MO 64131–3055.

(2) Electronic copies of the NRS must be sent to the Deputy Administrator for Product Management (or successor) at [DeputyAdministrator@rma.usda.gov](mailto:DeputyAdministrator@rma.usda.gov).

(c) RMA will review the NRS policy. If any of the conditions found in paragraphs (c)(1) through (5) of this section are found to occur, FCIC will

deny reinsurance, A&O subsidy and risk subsidy on the underlying FCIC reinsured policy for which such NRS policy was sold.

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

(i) An NRS policy will be considered to materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC if it creates an incentive for moral hazard such as a financial incentive to increase the number or size of losses or, allows for aggregate indemnities in excess of the expected value of the insured commodity.

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

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

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

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

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

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

(e) NRS policies reviewed by RMA will not need to be submitted for a five year period unless a change is made to the NRS or the underlying policy or the loss ratio for the NRS policy exceeds 2.0. Once any changes are made to either policy or the five year period has

concluded, the NRS must be resubmitted for review.

Signed in Washington, DC, on February 13, 2015.

**Brandon Willis,**  
*Manager, Federal Crop Insurance Corporation.*

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## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 1, 15, 17, 19, 32, 37, 38, 140, and 150**

**RIN 3038–AD99; 3038–AD82**

### Position Limits for Derivatives and Aggregation of Positions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking; provision of Table 11a; and reopening of comment periods.

**SUMMARY:** On December 12, 2013, the Commodity Futures Trading Commission (“Commission”) published in the **Federal Register** a notice of proposed rulemaking (the “Position Limits Proposal”) to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. On November 15, 2013, the Commission published in the **Federal Register** a notice of proposed rulemaking (the “Aggregation Proposal”) to amend existing regulations setting out the Commission’s policy for aggregation under its position limits regime. The Commission’s Energy and Environmental Markets Advisory Committee has scheduled a public meeting to be held on February 26, 2015, which will consider, among other matters, exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission’s Energy and Environmental Markets Advisory Committee, the Commission will post an agenda and associated materials, if any, on the Commission’s Web site; additionally, access to a video webcast of the meeting will be added to the Web site. In addition, and in connection with the meeting, the Commission is providing counts of the unique persons over percentages of the 28 proposed position limit levels (currently provided in Table 11 of the Position Limits Proposal based on counts from the period of January 1, 2011, to December 31, 2012 period) in a new table, Table