

**§ 400.707**

the modified submission will not be in effect during the delay.

(5) The Board will disapprove a modified submission if:

(i) All causes for disapproval stated by the Board in its notification of its intent to disapprove the submission are not satisfactorily addressed;

(ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or

(iii) If modification is so substantial that the Board determines that additional independent review is required and a time delay can not be agreed to allow for such review.

(k) When the applicant is notified of the Board's intent to disapprove and the submission is not revised or withdrawn, the Board will provide written notification to the applicant that the submission has been disapproved no less than 30 days after the date that the notice of intent to disapprove was provided to the applicant.

(l) If the Board fails to take action on a new submission within the prescribed 90 day period in paragraph (c)(3) of this section, or within the time period in accordance with paragraph (h)(3) of this section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for any subsequent reinsurance year.

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

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

(b) The applicant will be given the opportunity and is encouraged to present the submission to the Board in person. The applicant must confirm, in writing, whether the applicant will present the submission to the Board.

(c) If the applicant elects, at any time, not to present the submission to the Board, the Board will make its decision based on the submission and the reviews provided in accordance with § 400.706(c).

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**§ 400.708 Approved submission.**

(a) After a submission is approved by the Board, and prior to it being made available for sale to producers, the following items, as applicable, must be completed:

(1) If the Board requires, an agreement between the applicant and FCIC that specifies the responsibilities of each with respect to the implementation, delivery and oversight of the submission, including the disposition of property rights for the policy; and

(2) A reinsurance agreement if terms and conditions differ from the Standard Reinsurance Agreement.

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

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

**§ 400.709 Roles and responsibilities.**

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, and supporting materials, including actuarial materials, are submitted to FCIC in the form approved by the Board;

(ii) Except as provided in § 400.712(k)(2), annually updating and providing maintenance changes no later than 180 days prior to the earliest sales closing date for the commodity in all counties or states in which the policy or plan of insurance is sold and;

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

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

the Board (Any changes, both non-significant and significant, must be submitted to FCIC no later than 180 days prior to the earliest sales closing date for the commodity in all counties or states in which the policy or plan of insurance is sold. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new submission.);

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC in accordance with § 400.712(k)(2), the applicant remains liable for any mistakes, errors, or flaws that occurred prior to the transfer of the policy or plan of insurance;

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered not less than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

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

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

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been timely withdrawn are deemed canceled and applications for insurance are not accepted as of the date that FCIC publishes the notice of withdrawal on its website at [www.act.fcic.usda.gov](http://www.act.fcic.usda.gov). Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in their

area by the sales closing date for such policy or plan of insurance.

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

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related materials, 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.);

(ii) Ensuring that all approved insurance providers receive reinsurance under the same terms and conditions as the applicant (approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement) if required;

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

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

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

(3) If at any time prior to the cancellation or termination date, FCIC discovers that there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium that results in over or under insurance, FCIC will deny reinsurance to such policy or plan of insurance:

(4) If reinsurance is denied under paragraph (b)(3) of this section, the approved insurance provider will have the option of:

(i) Selling and servicing the policy or plan of insurance at its own risk and without any subsidy; or

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(ii) Canceling the policy or plan of insurance in accordance with its terms; and

(5) If the applicant transfers the policy or plan of insurance to FCIC in accordance with § 400.712 (k)(2), FCIC will assume the liability for any mistakes, errors, or flaws that occur after the policy or plan insurance as been transferred and FCIC is in control of maintenance.

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

A policy or plan of insurance that is approved by the Board for FCIC reinsurance is preempted from state and local taxation.

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

At any time after approval, the Board may review any policy, plan of insurance, related materials, and rates of premium approved under this subpart and request additional information to determine whether the policy, plan of insurance, related materials, and rates of premium comply with statutory or regulatory changes or court orders, are still actuarially appropriate, and protect program integrity and the interests of producers. The Board will notify the applicant of any problem or issue that may arise and allow the applicant an opportunity to make any needed change. The Board may deny reinsurance for the applicable policy, plan of insurance or rate of premium if:

(a) The applicant fails to perform their responsibilities under § 400.709; or

(b) If the applicant does not satisfactorily provide materials or resolve any issue so that necessary changes can be made prior to the earliest contract change date.

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

(a) Submissions approved by the Board for reinsurance under section 508(h) of the Act may be eligible for a one time payment of research and development costs and maintenance costs for up to four reinsurance years, as determined by the Board after the date

such costs have been approved by the Board. Reimbursements made under this section will be considered as payment in full for research, development, and maintenance, as applicable, for any policy or plan of insurance and any property rights to the policy or plan of insurance.

(b) For submissions submitted to the Board for reinsurance after publication of this subpart, an estimate of a request for reimbursement of research and development costs and maintenance costs, as applicable, must be included with the original submission to the Board in accordance with this section. These estimates will only be used by FCIC for the purpose of tracking potential expenditures and will not provided a basis for making any reimbursements under this section. Documentation of actual costs allowed under this section will be used to determine any reimbursement.

(c) For a submission approved by the Board, or submitted to the Board, prior to publication of this subpart, a request for reimbursement for research and development costs and estimated maintenance costs must be received within 60 days following publication of this subpart or approval of the submission by the Board. This request should be sent to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, and also provide one identical copy of each submission to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, D.C. 20250-0801.

(d) To be eligible for any reimbursement under this section, FCIC must determine that a submission is marketable.

(e) To be considered for reimbursement in any fiscal year, complete and final requests for research and development costs and maintenance costs, as applicable, must be received by FCIC not later than August 1. For 2001 fiscal year only, FCIC may consider reimbursement for research and development costs on approved submissions for any request received by September 1,