PRELIMINARY ANALYSIS AND EVALUATION BY NATIONAL CROP INSURANCE SERVICES
OF THE PROPOSED 2005 STANDARD REINSURANCE AGREEMENT

Introduction

NCIS is using its internal resources and consultants from Deloitte & Touche to analyze the proposed 2005 Standard Reinsurance Agreement ("proposed SRA"). To assure compliance with both the antitrust laws and its internal practices and procedures for maintaining the confidentiality of members' data, it performed this work under the supervision of its legal counsel. The following preliminary comments result from this analysis. These preliminary comments are, and should be treated as, solely the views of NCIS and should not be attributed to any member, group of members, or the membership at large.

NCIS is providing its preliminary comments in the following sequence: (a) first to its MPCI members for their individual consideration; (b) next to the Risk Management Agency ("RMA") in accordance with its request for comments dated December 30, 2003, and its guidelines issued January 16, 2004; and (c) finally to the general public and other interested parties through placement on the NCIS website. These comments are being distributed to MPCI members on January 20, 2004, and will be distributed to RMA and made publicly available through the NCIS website on January 26, 2004.

These preliminary comments will be supplemented by a report from Deloitte & Touche. NCIS anticipates distributing that report to its MPCI members on or before January 27, 2004. After members have had several days to review it, the report will be provided to RMA and placed

on the NCIS website. NCIS anticipates providing to its MPCI members a final set of comments on February 4, 2004, as explained below.

Members are welcome to provide their own individual comments to NCIS regarding both the proposed SRA and the comments of NCIS. Any member who does so will have the confidentiality of its comments protected. Individual member comments will not be shared with other members. To the extent that NCIS uses them in preparing its final comments or in communications with RMA, no attribution will be made to the member(s) submitting them.

The antitrust laws do not permit NCIS to serve as a joint bargaining agent for its members, and members are not permitted to engage in collective bargaining with RMA. By distributing these preliminary comments, including the initial distribution to members, NCIS is not encouraging any uniform or collective action. Instead, as with all services provided by NCIS to its members, utilization of these comments is entirely optional and a matter within the sole, individual discretion of each member. NCIS strongly encourages its members to make their own decisions regarding the use, if any, to which these comments may be put. In the final analysis, each member must decide for itself its own course of action, especially since it would be unlawful for members collectively to refuse, or to threaten to refuse, to execute the final SRA.

To the extent that NCIS' preliminary and final comments utilize data provided to NCIS by its members, such data only is being presented in an aggregate format. Fundamentally, this approach is essential for maintaining the confidentiality of individually provided data and to eliminate any risk of sharing competitively sensitive business information. Similarly, members of

NCIS should not exchange with each other competitively sensitive business information, including positions regarding which SRA terms are acceptable or unacceptable.

NCIS presents its comments in the following two sections. First, it offers general observations regarding the most important issues raised by the proposed SRA. These points do not purport to summarize all issues raised by the proposed SRA. Second, NCIS provides a section-by-section analysis; it does not repeat the points made in the overview.

As a general proposition, NCIS utilized two benchmarks in preparing the following comments. One benchmark was to determine the extent to which a term of the proposed SRA is objectionable for one or more reasons. As a general matter, grounds for objection relate to the absence of statutory authority for a proposed term, the adverse impact on company operations (such as processing of data), and unworkability of certain proposals. The second benchmark derives from the "lost opportunity" aspect of the proposed SRA, more specifically: What terms does the SRA omit that should have been included to make the relationship between the private and public sectors work better?

A third available benchmark relates principally to the terminology used by RMA in the proposed SRA and then suggesting improvements. NCIS determined to defer utilization of this benchmark until a later date. This is an important issue, but can be addressed once the conceptual issues presented by these comments have been considered. Instead, NCIS will suggest alternative terminology in the next phase of submitting comments. Members can anticipate receipt of those comments on or about February 4, 2004. Just as members are receiving these comments in

advance of their distribution to RMA and posting on the NCIS website, the next round of comments will be delivered to MPCI members first, with distribution to RMA and posting on the website following on February 11, 2004.

General Overview

This portion of the NCIS comments identifies the most significant issues with respect to individual portions of the proposed SRA. The proposed SRA contains many problematic features. As NCIS sees it, the seven most serious problems are those discussed in this overview.

Manuals 13 and 14. The current SRA incorporates within the agreement Manuals 13 and 14. These provide key operational parameters for implementing the program, including important reporting and quality control obligations. The proposed SRA eliminates any reference to Manuals 13 and 14. Instead, it simply substitutes as a defined term the word "procedures." This approach causes a number of significant problems. First, elimination of these contractual documents makes it impossible to evaluate the proposed SRA from an operational perspective. Second, the definition of "procedures" is itself so incomplete that it does not provide anything close to an adequate substitute for the elimination of Manuals 13 and 14. This introduces a third problem, namely that "procedures" mean whatever the FCIC says they mean at a future date in accordance with undefined standards.

In the end, the approach proposed by RMA deprives a reinsured company of any meaningful basis to evaluate the proposed SRA, any impact it would have on its operations, and the

degree of risk which it is willing to accept. Further, this approach subjects a reinsured company to wholly unilateral decisions made by RMA at some future date.

References to Manual 13 were removed from the definition of "Agreement" as a defined term in Section I, Section III.I., Sections IV.A. and B., Sections V.B.1.,2. and, 7. and Section V.D.1. References to Approved Manual 14 were removed from the definition of "Agreement" as a defined term in Section I, Section V.G.2.f., and in Section V.I.5.c. These changes result in a material and significant change in the terms of the SRA.

RMA's stated intention, as reflected in the preamble of the proposed SRA and within the regulatory publication "Department of Agriculture Semiannual Regulatory Agenda, Fall 2003" (Federal Register Vol. 68, No. 245, published Monday, December 22, 2003, Page 72658-72663), is to place the terms of Manual 14 within a regulation to be titled "General Administrative Regulations; Quality Assurance And Performance Measurement System For The Federal Crop Insurance Program." References within the SRA to Manual 14 were replaced with "all incorporated provisions of the Act and regulations applicable for the reinsurance year" within the definition of "Agreement," and "in accordance with the regulations and procedures" within other sections where references to Manual 14 previously existed.

Similarly, references to Manual 13 either were omitted entirely or were replaced with 'in accordance with procedures" in the sections where references to Manual 13 previously existed. It is not clear what RMA's reasons were for making this change.

The effects of these changes are to eliminate the rigor of contractual precision that existed when these documents were components of the SRA, and to introduce ambiguity as to exactly what performance standards are to be applied under the SRA. The regulations that are contemplated in making the referenced changes to Manual 14 do not yet exist. Therefore, it is impossible to know what quality assurance activities are contemplated under the agreement and to determine if the proposed contract adequately compensates for the required performance. Furthermore, with the introduction of severe compliance and performance penalties in other sections of the proposed SRA, absence of the contemplated "Performance Measurement System" standards makes it impossible to determine if a company's operations can be structured to avoid imposition of the serious penalties and sanctions contemplated by the proposed SRA. In addition, inclusion of such contractual terms within a governmental regulation opens to public comment performance requirements within the contractual terms of this agreement to entities who are not a party to the agreement.

Absence of references to Manual 13 introduces extreme ambiguity as to which "procedures" are applicable in meeting the terms of any of the above referenced sections of the SRA. Given the known conflicts that already exist within RMA's procedures, this change could potentially exacerbate those differences by failing to designate which procedure has contractual control over conflicting procedure. Furthermore, the new approach allows RMA to alter dramatically the financial costs of operating under the agreement without benefit of renegotiation of the agreement by simply making "procedural" changes that are not subject to a company's review prior to their implementation. Lastly, without defining exactly what a "procedure"

document is, it brings into question exactly what type of RMA "publication" qualifies as a "procedure".

Rather than the removal of references to Manual 13, stronger contractual controls over the maintenance of Manual 13 and resulting introduction of changes within the Data Acceptance System are needed. Manual 13 as a procedural document imposes significant and costly operational requirements upon the companies as to what data is to be reported and how it is to be validated and accepted. RMA's Data Acceptance System is a critical program component upon which payment of billions of dollars is substantiated. It is critical that a contractual document specifically spell out how this process will be governed.

Proposed Quota Share Reinsurance. Section II.B.6. establishes, on a nationwide basis, a quota share reinsurance approach by which companies are to cede to FCIC 25% of their cumulative underwriting gain or loss. On an aggregate basis, this provision would have cost all reinsured companies collectively the following amounts over the last five years:

Year	Estimated industry-wide impact of 25% Quota Share gain(loss) cession
1998	($52,600,000)
1999	($68,000,000)
2000	($76,400,000)
2001	($102,600,000)
2002	$14,000,000

Had this provision been in effect for the last five years, aggregate industry revenue would have decreased approximately $285.6 million. (This estimate is based on a survey of participating members of NCIS conducted jointly by it and Deloitte & Touche.) Thus, the proposed quota share reinsurance is extremely expensive and provides very little risk protection to the companies. If it had been in effect over the period from 1998 to 2002, the industry would have received about $14 million in benefits at a cost of $300 million. From a financial perspective, the quota share reinsurance is equivalent to a 25% tax on a company's net underwriting gain or loss. Since a company would also continue to pay federal income taxes of approximately 35% on its pretax income (after the application of quota share reinsurance), the combined effect is that the company would retain only half of its pre-tax income (that is, 65% of 75% of its pre-tax income).

NCIS is concerned that this approach will undermine the financial stability of the private sector and ultimately promote further concentration by possibly eliminating otherwise viable competitors. In a business where reinsured companies must accept all eligible producers and must sell them insurance on terms and conditions specified by the federal government, at premium rates determined by the federal government, the principal manner in which such companies compete for customers is in selling and servicing federal crop insurance. Such a costly premium (ceding 25% aggregate of gains) for protection against 25% of an infrequent loss by any one insurer on a nationwide basis could act as a disincentive for an individual company to continue to be a program participant. Even if the volume of overall crop insurance business is not adversely impacted, this raises a legitimate concern that competition for servicing of America's agricultural producers likely could diminish due to a reduced number of industry participants.

The inclusion of this provision also raises a substantial question about the legality of the proposed SRA. RMA's proposed draft quite explicitly makes the SRA subject to the "Act" and, in turn, defines the Act specifically to include 536 of the Agricultural Research, Extension and Education Reform Act of 1998 ("Research Act"). This provision established underwriting gain and loss formulas with reference to the SRA negotiated in 1997 starting with the 1998 reinsurance year. Under RMA's approach, there is a serious question whether it has the legal authority to offer quota share insurance and to charge the rate proposed in the SRA.

Two-Percent Expenditure Penalty. Section III.A.2.c. mandates, starting with the 2006 reinsurance year, payment to FCIC of an amount equivalent to administrative and operating expenditures which exceed a company's A&O subsidy by two-percent of net book premium. The effect of this penalty in recent years would have caused forfeitures to FCIC in the total amount of approximately $483.9 million, as broken out on an aggregate basis for the entire industry for the last five years (using data compiled by NCIS from a survey of participating member companies):

Year	Estimated industry-wide Penalty
1998	$50,900,000
1999	$67,900,000
2000	$91,100,000
2001	$127,100,000
2002	$146,900,000

This forfeiture of income reminds one of the “luxury tax” imposed in Major League Baseball and the “salary cap” imposed by the National Football League. Surcharges in professional sports are consensual in nature and designed generally to maintain competitive balance. Those concepts do not apply to crop insurance. This surcharge is unilaterally imposed by the FCIC and certainly can be detrimental to innovation and expansion, as well as to proper supervision and servicing of crop insurance policies. For instance, a company may exceed the allowed threshold simply because it has elected to enter new states, thus embarking on the costly process of creating an infrastructure to service business that has not yet been obtained. Similarly, a company may exceed the allowed threshold because it decides its best interests, on a long-term basis, are to incur substantial short-term expenses for matters such as systems upgrades, product development, or similar salutary purposes. In the end, this penal approach simply becomes a funding device to shield FCIC from its own lack of vigilance over the industry, in its supervisory role, because such vast sums of money would be transferred to its Guarantee Fund, which, as noted below, is created out of whole cloth with no statutory foundation. In addition, with FCIC’s incorporation of Section 536 of the Research Act, this provision has dubious legality as well as promising substantial economic injury to the industry as a whole.

Whenever a company’s actual expense ratio exceeds the A&O reimbursement by 2%, as noted above, the company will pay a penalty equal to the excess amount. NCIS understands the formula to be:

If: Expense ratio > A&O reimbursement + 2%

Then: Penalty = Expense ratio – (A&O reimbursement + 2%)

RMA's approach obviously penalizes a company for having an expense ratio greater than the A&O reimbursement. However, a company already has been penalized by the amount of the shortfall in A&O reimbursements. This approach also begs two key questions: (1) Is the underlying problem that the A&O reimbursement is inadequate rather than that company expenses are too high, and (2) is it appropriate for FCIC to apply this penalty to reduce a company's A&O reimbursement without providing cost savings that would justify the reduction in compensation?

The proposed expense penalty presents a variety of operational issues, including:

? Will RMA be auditing companies to determine whether expenses are allocated properly among their various lines of business?

? Will this include all expenses on Exhibit 20B, or will certain expenses be excluded?

? Will the penalty be computed by fund for each company, or in aggregate?

? Since CAT policies receive no A&O reimbursement, is it appropriate to penalize the companies for issuing CAT policies?

This penalty clearly is intended to force companies to reduce their expenses. Loss adjustment expenses on average, however, are too small to enable a company to achieve significant savings. Other internal company expenses are also small, particularly in comparison to the Property/Casualty (P&C) industry as a whole. In addition, average MPCI agent commissions, for example, are significantly less than average P&C commissions when stated on a comparable premium basis, in terms of the percentage of the risk component of the premium (15.7% for MPCI vs. 22.3% for P&C in 2002, according to an analysis prepared by Deloitte & Touche).

Presumably, this penalty would be exacted in the reinsurance year following the one in which the "excess" expenditure occurred. That is the only way to make any sort of precise calculation of the payment due. The proposed SRA leaves open the issue of whether the penalty itself becomes an "excess" cost for the year in which it is paid. If so, the company may be subject to a penalty in that year, thereby perpetuating this unfair and unreasonable toll.

Guarantee Fund. The proposed SRA introduces for the first time the concept of establishing a federal Guarantee Fund to relieve FCIC of its financial obligations in the event of insolvency (or a similar event) with respect to a reinsured company. This approach is entirely lacking in statutory or other authority. Unlike the current SRA, which maintains on a company-by-company basis a series of reinsurance accounts for covering future deficiencies, the new approach abandons this concept and imposes surcharges, penalties, and other obligations on all reinsured companies to relieve the obligations of FCIC in the event of a failure of any one reinsured company. In addition to the obvious lack of statutory authority, NCIS also notes that this approach, especially given the substantial amount of funds which would be placed in the Guarantee Fund, could act as a serious disincentive to RMA to fulfill its supervisory obligations with respect to maintaining a financially sound set of business partners. In short, the Guarantee Fund easily could become so large that FCIC and RMA become indifferent to the obligations imposed on them by Congress to maintain program integrity as well as undertaken by them contractually to monitor individual company performance.

The proposed Guarantee Fund has significant revenue potential for FCIC, and will affect adversely the ability of private insurers to fulfill the important role which Congress intended. The revenue sources are shown in the following table.

<table>
<tr><th>Source</th><th>Basis for Contribution</th></tr>
<tr><td>Additional Reinsurance</td><td>Funds (reinsurance premium) collected for additional reinsurance</td></tr>
<tr><td>“Excess Expense” penalty</td><td>Arises when the company’s expenses exceed the A&O reimbursement by more than 2% of premium</td></tr>
<tr><td>Late Sales Reporting penalty</td><td>Company is penalized for corrections or late reporting of sales information</td></tr>
<tr><td rowspan="2">Compliance penalties (Due to Company error that affects indemnity, prevented planting, or replant payment)</td><td>Overpayment of indemnities and subsidies – Company must repay the overpayment to FCIC</td></tr>
<tr><td>Underpayment of premium – Company must pay the difference between the correct premium and the collected premium to FCIC</td></tr>
<tr><td rowspan="2">Compliance penalties (Due to failure of company to provide services or comply with procedures)</td><td>If losses paid have been affected, penalty is up to 10% of premium on all contracts affected</td></tr>
<tr><td>If company has not provided service, penalty is up to 10% of premium on all contracts affected</td></tr>
<tr><td>Termination</td><td>IF FCIC terminates the Company for cause, a penalty of 10% of the company’s entire premium will be levied</td></tr>
</table>

No information has been provided on how the Guarantee Fund is to operate.

? Are the penalties paid by all companies placed into a single countrywide pool?

? Is there a limit on the amount of money to be held in the Guarantee Fund?

? Are the unused funds to be returned to the companies after a certain period?

? What are the specific uses to which these funds will be applied?

? What are the controls on the use of these funds?

? Will the Guarantee Fund have a Board of Directors or other oversight mechanism with industry participation?

Federal Preemption. A serious and a recurring problem for the private sector is the extent to which federal law preempts state law. The proposed SRA is doubly bad in its handling of this issue. First, it fails to take advantage of using a newly negotiated SRA to establish more firmly federal preemption. Second, it weakens the preemption which ambiguously is claimed through the SRA.

The current SRA states that state and local law, to the extent inconsistent with the SRA, is preempted. The new SRA contains a similar statement in Section IV.P.1. The current SRA is subject to the regulations issued by FCIC and codified in the Code of Federal Regulations, and those regulations include the preemption regulations contained in 7 C.F.R. Subpart P. The proposed SRA takes the same approach in Section IV.P.2. A new SRA certainly would present an opportunity to make a more meaningful and constructive statement that all state and local laws, rules, regulations, and procedures that otherwise might be applicable to crop insurance are wholly preempted unless specifically authorized by the SRA. FCIC has sufficient statutory authority to make such a declaration. 7 U.S.C. § 1506(l).

Instead of advancing the fundamentally important principle of federal preemption, by making a declaration such as suggested above, the proposed SRA actually takes a step backward by introducing greater ambiguity. In the first instance, it relies on a regulatory structure that does not take full advantage of its statutory authority. More pointedly, however, it affirmatively introduces a variety of state law considerations that only muddy the demarcation line between federal and state regulation and supervision. Introduction of state law considerations, for example, can be found in Sections II.A.5., II.A.6., II.A.7., II.A.8., IV.F.3., IV.H.5., and IV.Q.

RMA's failure to make an affirmative declaration that all state law is preempted (unless otherwise specified in the SRA) is a serious omission. The adverse legal and financial impacts are illustrated by the micromanagement discussed next.

FCIC Micromanagement. The proposed SRA is replete with provisions permitting micromanagement of internal company matters. There are many provisions that permit actions at the "sole discretion" of FCIC. The absence of absolutely any standards by which such discretion would be exercised is a troubling matter in itself. The importance of the matters where it could be exercised presents another serious and distinct problem and it's own set of legal consequences. One example should explain the gravity of the government's approach.

If accepted, the proposed SRA would permit FCIC to intrude completely in the loss adjustment and claims payment process. It seeks to retain this authority with respect to all claims under policies designated to the Assigned Risk Fund, and it asserts this authority with respect to claims of $500,000 or more regardless of the fund to which the policy has been designated. See Proposed SRA Sections II.A.14. and II.B.1.a.v. FCIC also is free under Section IV.A.2.h. to substitute its own prescribed practices and procedures for internal ones developed by a company. This collection of provisions exemplify many problems in the proposed SRA, and this particular set of provisions has three distinct problems.

First, virtually every state has statutory standards involving the settlement of claims, including very specific time limits when claims must be acknowledged, adjusted, and (if allowed)

paid. As a general proposition, those time limits are thirty days or less. A similar provision is found in the Basic Provisions promulgated by FCIC. 7 C.F.R. § 457.8, Model Policy, ¶14(a)("Our Duties"). Having a governmental agency not known for the rapidity and efficiency of its actions intrude in loss adjustment processes creates a very serious risk of creating meritorious claims against the reinsured companies which issued the policies for bad faith or vexatious refusal to pay, thereby exposing them, under state law, to compensatory, punitive, and other extra-contractual damages. This may be an unintended consequence of the proposed terms, but the consequence nevertheless is real and serious.

Second, such an approach is unnecessary because FCIC already specifies the procedures to be utilized by companies in the adjustment of losses. By regulation, only FCIC approved procedures and practices can be utilized. 7 C.F.R. §§ 400.168(d) and 457.8, Model Policy, ¶14 (d) ("Our Duties"). In addition, the FCIC has issued a Loss Adjustment Manual exceeding 400 pages specifying virtually every aspect of the loss adjustment process. It also has issued crop-specific handbooks for use with individually insured crops. Given this wide ranging and all encompassing set of existing procedures, there is no reason for FCIC to retain any further discretion to negate practices and procedures used by companies in implementing the specified practices and procedures or to assume the role of the policy writing company in adjusting losses. That FCIC even seeks such authority should be construed as an admission that it has no confidence in its ability to monitor companies' compliance with existing practices and procedures. Having made that admission, there is no reason to have confidence in the ability of FCIC actually to substitute itself in the role of loss adjuster.

Third, given the lack of standards enunciated in the proposed SRA, the open-ended provisions of Section III.A.2.h. are wholly unworkable. This provision raises other issues. By what authority can FCIC assert this right? If accepted, to what extent could FCIC implement it? For example, could this apply to a determination by FCIC that a company pays too high of a commission to its agents or too high of a wage to its employees? Could it require a company to upgrade its computer system or make employees stay in cheaper hotels when traveling? Does FCIC's claim to an equal share of any savings infringe on a company's right to do business as a private enterprise in any way? Does this create an arena for potential dispute between FCIC and a company as to who may have been responsible for any efficiency, FCIC or the company? Paying FCIC half of any savings and reducing future A&O subsidy raise questions beyond intrusion in management, including: How is the amount of any savings to be determined; are amounts paid to FCIC to be recorded as an expense; and what will be the future impact of the A&O subsidy reduction on the excess expense penalty set forth in Section III.A.2.c.?

Throughout the proposed SRA, RMA uses the terms "at FCIC's sole discretion" and "as determined by FCIC" many times. What is striking about the proposed SRA, compared to the 1998 SRA, is the use of "absolute" terms within the proposed SRA, where RMA reserves unto itself (or in some cases a state regulator) the right to make operational determinations of the company, and in many cases will impose a monetary sanction when doing so. The following is an illustrative list of terms, which are mostly new provisions within the proposed SRA, where RMA is proposing a limitation, sanction, or right without providing specifics on what measure would be used to enforce these provisions:

Section II.A.9. – Adequate financial operational resources

Section II.A.10. – Satisfactory performance record

Section II.A.14. – Payment of claims in excess of $500,000

Section II.B.9. – Additional reinsurance

Section III.A.2.c. – Limit expenditures for administrative and operating activities

Section III.A.2.h. – Require any change or the adoption of any internal practice

Section IV.F.3. – Compliance with State Insurance Laws

Section IV.G. – Access to Records and Operations

Section IV.H.6. – Deny reinsurance, A&O subsidy, or risk subsidy

Section IV.O. – Oversight

Section IV.Q. – Supervision, Rehabilitation, and Liquidation

Section IV.Y. – Examinations

Most of these provisions go well beyond what is customary of a reinsurer (even for a governmental regulator). The language within many of these provisions is so one-sided that a company could easily find itself facing severe financial consequences without a means of determining whether it is or may be operating outside of the terms of the SRA. This is especially troublesome because determination of the corrective actions, imposition of a sanction, and severity of any sanctions is a matter left to the discretion of the RMA. One critical issue with respect to RMA's open-ended approach is that it has not provided any understanding of what satisfactory performance constitutes. The current SRA at least avoids this issue by providing a definition, however imperfect, of "satisfactory performance record."

Conflict of Interest Provisions. New conflict of interest provisions are set forth in Section IV.F.4. of the proposed SRA. Many of these provisions go beyond anything used by FCIC or used by other government agencies, such as federal banking agencies, in defining affiliated and related parties. There is no reason for FCIC's draconian approach. No program is perfect, and administration by human beings always creates a risk. The form of regulation proposed by RMA on this set of issues, however, unnecessarily takes regulation to the "nth" degree without having established any record that it is justified.

One problem with the new approach is an overly broad definition of affiliate. The term "affiliate" is defined in Section I. This is a new definition. Instead of following the example of federal banking regulators, who define the term "affiliate" to mean "any company that controls, is controlled by, or is under common control with another company," see 12 U.S.C. § 1841(k), RMA has such an expansive definition that it would include persons who have no managerial or supervisory authority sufficient to direct the activities of a business. That overly broad approach renders the proposed conflict of interest regulations virtually impossible to implement, from a company's perspective, as well as impossible to police, from a regulatory perspective.

The proposed conflict of interest provisions also reach "any relative" of specified persons (sales agents, agency employees, or sales supervisors). This is a major departure from the current SRA, which in Section V.G.2.b. sensibly limits its restrictions to family members "residing in the same household." The current RMA approach encompasses those persons who conceivably may be influenced by a familial relationship. The new approach, without any limitation regarding the degree of the familial relationship or other meaningful factor, is unworkable. It simply makes no

sense to include, for example, cousins by marriage (without regard for the degree of the relationship) when there is no independent factual basis for drawing an adverse inference on conflict of interest issues.

Another problem with the newly proposed approach is its reference to "employees" of various entities. This certainly is a situation where a "one size fits all approach" is overly restrictive when not qualified with other meaningful concepts. For instance, if an employee has no beneficial interest in any aspect of the relationship in question, there is no reason to have such a blanket prohibition. Similarly, if the employee functions at a level which includes no executive, managerial, or other control function, there is no reason for a similarly broad prohibition.

The foregoing paragraphs illustrate general weaknesses with the proposed conflict of interest provisions. They illustrate the unworkability of the provisions, from a company's perspective, and the difficulty of taking a sensible approach to compliance issues, from a regulatory perspective.

The new conflict of interest provisions have problems beyond the operational and implementational ones created by the weaknesses inherent in an overly broad approach. This subsection of the SRA also has the following deficiencies:

(1) Prohibition of a loss adjuster from working a claim of the same insured for more than two consecutive years;

(2) Unreasonably defining financial and legal interest to include "lending money, custom farming, leasing land, selling other services besides insurance, etc.;" and

(3) Asking companies and their affiliates to comply with unspecified and undefined other conflict of interest regulations.

See subsections 4.c.,4.d., and 4.h. of Section IV.F.

The new conflict of interest of provisions eliminate the ability of a claims supervisor, loss adjuster, etc. to be involved with sales outside any county or adjoining county where loss adjustment activities are performed. What is the reason for prohibiting a claims supervisor from being involved in sales, etc. *outside* his area (i.e. – another state)? This paragraph was expanded to include "*solicitation or brokering,*" what are meanings of these terms? Would this provision prohibit, for example, a claims supervisor from assisting an agent at a trade show, etc.?

These provisions will place an undue burden and increased expense on any company which does not employ an over abundance of localized adjusting staff. The addition of subsection 4.c. seems to imply that FCIC believes that a loss adjuster cannot follow approved loss adjustment procedures whenever working a claim for the same policyholder two years in a row. Would it not be more appropriate for RMA's Risk Compliance Division, in conjunction with its Data Mining endeavors, to serve as the channel for identification of inappropriate behavior rather than assuming all occurrences are suspect? In what cases will exceptions be "*authorized by FCIC*?" In accordance with the new definition for "*Loss Adjuster*," will this requirement extend to individuals who audit or supervise claims as well?

Finally what are the "*procedures*" for the persons specified in Section IV.F.4.g. to know whether or not everybody they have a legal, financial, or familial relationship with is a policyholder?

Please keep in mind that this portion of the NCIS comments does not purport to summarize all of the section-by-section comments set forth in the next section. Instead, the focus simply is on the most serious issues raised by the proposed SRA.

Section-by-Section Analysis

Preamble (first four paragraphs of proposed SRA)

The preamble is proposed to be changed in two material respects. Omitted federal preemption language now is located in new Section IV.P.1.

The first material change is to establish a hierarchy for interpretation of conflicting provisions. By itself, placing the Act in a paramount role is appropriate, but giving primacy to future regulatory changes is not (as noted next). NCIS also questions FCIC's authority to agree to a contract term inconsistent with the Act, although the fourth sentence (first paragraph of the preamble) suggests this is possible.

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The other material change – making the SRA subject to future regulatory changes which are not to "be considered a renegotiation of" the SRA – is flawed. First, it is inappropriate to change bilateral contractual obligations based on input from nonparties without requiring assent by both contracting parties. Second, RMA's approach provides it a unilateral right to change contract terms, perhaps only months after an intense series of discussions to establish a new SRA. Third, this provision ignores the proposition that nonfinancial terms can have material economic consequences such that they negate any benefit to a reinsured company of the explicit financial terms.

Section I. Definitions

There are significant changes in the definitions. A consistent change by RMA, as the introductory paragraph to this portion of the proposed SRA indicates, is the use of specific references to regulatory and statutory provisions. In general, this is a constructive change. Thus, unless there is a specific issue raised by definitions of this sort, NCIS treats them as fundamentally unchanged from the prior comparable definition. In commenting on specific provisions, NCIS identifies, by category, the significant definitional changes.

Of the eleven newly defined terms, five are significant, and a sixth should be revised (with NCIS suggested language to be proposed later). The five problematic definitions are: "affiliate," "loss adjuster," "procedures," "relative," and "Underwriting Capacity Manager (UCM)." The first four have been discussed in the "General Overview" (above). The UCM definition is significant

due to operational consequences, which are discussed below. NCIS believes that the new definition of "policy issuing company" should be revised.

Nineteen previously defined terms have been omitted. Four should be restored in their current (and apparently noncontroversial) form, at a minimum due to their use elsewhere in the proposed SRA in order to avoid potential ambiguity – "catastrophic risk protection (CAT)", "crop insurance contract," "Plan of Operations," and "Social Security number." These terms have significance, for example, in other defined terms (e.g., in defining policyholders and producer premium) and in Sections III.A., IV.A., and IV.F.

The "General Overview" (above) has discussed the significance of deleting definitions for "Approved Manual 14," "Manual 13," "Reinsurance Account," and "satisfactory performance record." The other deleted definitions are less significant.

NCIS now turns to definitions which have been revised in one or more significant respects.

Eight revised definitions create potential ambiguity:

Additional coverage

Contract change date

Eligible crop insurance contract

Eligible producer

Insurable interest

Records

Reinsurance year

Sales closing date

For example, the definition of "additional coverage" raises the issue of whether § 508(h) products are included. Changed definitions of "contract change date" and "sales closing date" also create ambiguity and, because they are used in other definitions (e.g., "reinsurance year"), render other definitions potentially ambiguous.

The revised definition of "Agreement" creates problems because of the omission of references to Manuals 13 and 14 and the Plan of Operations and to the unilateral post-execution contract change power asserted by RMA. These points are discussed in the General Overview and under "preamble" (above). The legal consequences of the new second sentence also should be considered.

The revised definition of "records" should be replaced by the current definition. The proposed change equates a "record" with "information" – a dubious proposition and one which certainly introduces ambiguity. "Information" literally can be anything, including unreliable oral hearsay statements. How does a company capture "information" of this type? Why does RMA want such an unreasonably broad and ambiguous definition? It simply makes no sense to depart from the current definition, and doing so introduces serious operational issues.

The new definition of "A&O subsidy" erroneously includes CAT loss adjustment expense. The two may be functionally equivalent, but are legally distinct and should not be lumped together in the same definition.

The new definition of "transaction cut off date" mandates operational changes and may have significance for individual companies.

The new "ultimate net loss" definition bears continuing, careful analysis. The proposed change is material, and it may or may not be adverse depending on how other terms are resolved. The new definition should be considered in light of new subsection IV.R.5. ("Mediation, Arbitration, Litigation and Assistance").

<u>Section II. Reinsurance</u>

Section II. of the proposed SRA makes five important modifications to the current SRA, two of which adversely affect reinsured companies to a severe extent and are discussed in the General Overview – the 25% quota share feature and the Guarantee Fund. The other three may or may not be significant, depending on an individual company's book of business and on the year – elimination of the Developmental Fund, reduction from seven to two the number of fund designation options (on a state-by-state basis, resulting from elimination of separate CAT, revenue, and "other " funds), and making the Assigned Risk ("AR") limitation 75% for each state. Before addressing specific provision in Section II., NCIS turns to these three changes.

Elimination of Developmental Funds. The effect of eliminating the three Developmental Funds depends on how a company reassigns this business to the remaining funds. NCIS evaluated the impact of this revision in combination with the changes to the provisions regarding nonproportional reinsurance (discussed below).

The effect of merging the three Commercial Funds into a single fund can be evaluated for various scenarios. The analysis disregards any effect of the reassignment of Developmental Fund business into the Commercial Fund. The analysis found that the merger of the three Commercial Funds into a single fund increased the potential gains as well as the losses. This is not expected to have a significant aggregate detrimental effect on the industry.

Assigned Risk Cession Limits. The proposed SRA revises the amount of business a company can place into the AR Fund. The following table compares the current and proposed maximum allowed AR designations by state. Under the current SRA, any excess amount placed in the AR Fund is transferred into the Developmental Fund. With the elimination of the Developmental Fund, any excess amount not placed in a state AR Fund will be transferred into the Commercial Fund instead.

Percent of Statewide Premium that a Company can Place in the Assigned Risk Fund		
Maximum Cession Percentage	Current SRA	Proposed SRA
10%	HI, NH	---
15%	IA, VT	---
20%	CA, CO, IL, IN, KS, MD, MN, MO, NE, NC	---
25%	KY, OH, PA	---
30%	DE, OR, SD, VA, WA	---

35%	CT, TN, WI, WY	---
40%	FL, NY	---
45%	ID, MA, ND	---
50%	AL, AR, LA, MI, MS, NJ, OK	---
55%	AZ, NM, SC	---
60%-70%	---	---
75%	AK, GA, ME, MT, NV, RI, TX, UT, WV	All states

Since the Developmental funds are being eliminated, each company will need to reassign this business to the AR or Commercial Funds. The increase in the cession limit for AR is sufficient to accommodate the transfer of a significant portion of a company's Developmental Fund business into the AR Fund, if necessary. For the industry in total, a reassignment of all of the Developmental Fund business into the AR Fund can be accomplished without exceeding the maximum cession percentage except in Alaska. The only other states in which the AR share would reach 70% or more are Massachusetts, Montana, and Texas. The following table lists the percentage of the total book of business in the AR and the three Developmental Funds by state for 2002.

Fund Assignments – Total Industry							
	Actual Fund Assignments in 2002 – as % of total book					Cession Limit	
		Developmental			A/R +		
State	A/R	CAT	Other	Revenue	Developmental	Current	Proposed
Alaska	62%	15%	0%	0%	77%	75%	75%
Alabama	43%	1%	21%	4%	68%	50%	75%
Arkansas	38%	0%	5%	4%	48%	50%	75%
Arizona	45%	1%	3%	1%	49%	55%	75%
California	11%	1%	10%	0%	22%	20%	75%
Colorado	17%	0%	7%	12%	36%	20%	75%
Connecticut	27%	0%	29%	4%	59%	35%	75%
Delaware	8%	0%	0%	1%	9%	30%	75%
Florida	21%	2%	15%	1%	39%	40%	75%
Georgia	45%	0%	17%	3%	66%	75%	75%
Hawaii	3%	0%	6%	0%	9%	10%	75%
Iowa	4%	0%	1%	6%	12%	15%	75%
Idaho	23%	0%	6%	3%	32%	45%	75%
Illinois	3%	0%	1%	6%	11%	20%	75%
Indiana	7%	0%	2%	12%	21%	20%	75%
Kansas	17%	0%	4%	13%	35%	20%	75%

Kentucky	15%	0%	11%	6%	33%	25%	75%
Louisiana	41%	0%	11%	4%	56%	50%	75%
Massachusetts	41%	1%	30%	2%	75%	45%	75%
Maryland	15%	2%	3%	2%	23%	20%	75%
Maine	33%	0%	10%	0%	43%	75%	75%
Michigan	23%	1%	5%	7%	35%	50%	75%
Minnesota	11%	0%	5%	3%	19%	20%	75%
Missouri	10%	0%	2%	9%	21%	20%	75%
Mississippi	39%	1%	15%	2%	58%	50%	75%
Montana	49%	0%	9%	12%	70%	75%	75%
North Carolina	19%	0%	26%	4%	49%	20%	75%
North Dakota	39%	0%	14%	12%	65%	45%	75%
Nebraska	10%	0%	3%	7%	20%	50%	75%
New Hampshire	9%	0%	5%	2%	16%	10%	75%
New Jersey	26%	4%	1%	5%	36%	50%	75%
New Mexico	39%	0%	12%	6%	57%	55%	75%
Nevada	0%	0%	51%	0%	51%	75%	75%
New York	23%	0%	9%	1%	34%	40%	75%
Ohio	11%	0%	2%	8%	21%	25%	75%
Oklahoma	41%	1%	6%	16%	64%	50%	75%
Oregon	26%	2%	4%	11%	43%	30%	75%
Pennsylvania	24%	1%	7%	11%	43%	25%	75%
Rhode Island	16%	0%	0%	0%	16%	75%	75%
South Carolina	27%	1%	17%	2%	46%	55%	75%
South Dakota	23%	0%	10%	12%	44%	30%	75%
Tennessee	24%	1%	9%	6%	40%	35%	75%
Texas	55%	0%	11%	7%	73%	75%	75%
Utah	44%	0%	5%	3%	52%	75%	75%
Virginia	22%	0%	11%	3%	37%	30%	75%
Vermont	9%	0%	12%	5%	26%	15%	75%
Washington	23%	0%	6%	3%	32%	30%	75%
Wisconsin	13%	0%	8%	11%	33%	35%	75%
West Virginia	32%	1%	12%	1%	46%	75%	75%
Wyoming	26%	0%	21%	9%	56%	35%	75%
States in which the A/R + Developmental equals or exceeds 70% have been highlighted							

Proportional Reinsurance. The proposed SRA provides pro-rata reinsurance coverage of premiums and indemnities. Except for AR, the company can select the percentage of each fund's premium and indemnities to be retained. See Sections II.B.1.a.iii., IIB.1.b.ii., and II.B.1.c. The selected percentage can be increased in 5% increments from the minimum retentions specified in the following table.

Minimum Retention Percentage by Fund		
Fund	Current SRA	Proposed SRA
Assigned Risk	20%	30%
Developmental	>=35%	Not applicable
Commercial	>=50%	>=50%
Countrywide	>=35% (*)	>=45%
* If Assigned Risk exceeds 50% of the company's book, or the company assigns no business to the Commercial fund, then the minimum countrywide percentage is 22.5%.		
If a company does not meet the minimum retention percentage, any adjustments will be accomplished by increasing the company's Assigned Risk retention.		

The increase in the AR Fund minimum retention, however, from 20% to 30% should have only a limited financial impact since the nonproportional reinsurance coverage eliminates most of the remaining risk.

Nonproportional Reinsurance. Nonproportional reinsurance applies to each state and fund after pro-rata coverage has been applied. See Sections II.B.2. and II.B.3.

Company's Share of Underwriting Gain and Loss This applies separately to each State and Fund Combination									
Loss Ratio Layer	Current SRA							Proposed SRA	
	Assigned Risk	Developmental			Commercial			Assigned Risk	Comm-ercial
		Other	CAT	Rev-enue	Other	CAT	Rev-enue		
Company's Share of Underwriting Gains									
0-50%	2%	6%	4%	6%	11%	8%	11%	2%	11%
50-65%	9%	50%	30%	50%	70%	50%	70%	9%	70%
65-100%	15%	60%	45%	60%	94%	75%	94%	15%	94%
Company's Share of Underwriting Losses									
100-160%	5%	25%	25%	30%	50%	50%	57%	5%	50%
160-220%	4%	20%	20%	22.5%	40%	40%	43%	4%	40%
220-500%	2%	11%	11%	11%	17%	17%	17%	2%	17%
> 500%	0%	0%	0%	0%	0%	0%	0%	0%	0%

For AR, a company's share of Underwriting Gain and Loss under the proposed SRA is unchanged. For what currently is the "other" Commercial Fund, the Underwriting Gain and Loss

percentages under the proposed SRA are unchanged. For the CAT Commercial Fund, the company retains an increased share of the underwriting gains under the proposed SRA, while a company's retention of underwriting losses is unchanged, resulting in an improvement.

For the "Revenue" Commercial Fund, a company's share of underwriting gains is unchanged. The company retains a smaller share of any underwriting losses, also an improvement. For the Developmental Funds, a company's retention of underwriting gains and losses will depend on its assignment of this business to the remaining two funds. NCIS has performed modeling of the proposed changes using the annual aggregate reinsurance data by state available on RMA's website. Its preliminary views are that, depending on how the Developmental Fund business is designated to other funds, the aggregate differences on an aggregate, industrywide basis may not be significant. However, the impact on any given company may be significant based on its book of business in the states where it operates.

Any evaluation of the financial impact of these revisions is based on the assumption that there are no major changes to current rate adequacy by state or plan. Any significant change to rate adequacy or rate equity could have a major impact on company fund assignment, retention, and financial results. In addition, the financial impacts are evaluated on the assumption of no major changes to the coverage provided (e.g., APH, Prevented Planting) that may affect the risk or return of various components of the MPCI program.

In addition to severely adverse provisions of Section II, with respect to quota share reinsurance, the Guarantee Fund, and control over claims processing, new Section II raises other significant issues.

Section II.A.1. introduces the Underwriting Capacity Manager's role. If it is limited to rejecting contracts that exceed a company's approved Plan of Operations, that is one thing. "UCM" raises an entirely different issue, however, if another role is intended. That must be clarified. If another role is intended, that likely would introduce a series of operational and procedural questions.

Section II.A.7. allows FCIC *"or the State"* not only to require training, licensing or certification requirements, but also potentially to determine the adequacy of such. This opens the door for FCIC required certification, *and* applies not only to agents and adjusters but all company and affiliate personnel. RMA has provided no parameters by which FCIC will determine whether or not any training, licensing, or certification is "*proper*."

Section II.A.7.b. prohibits an agent or loss adjuster, if not properly certified, from acting on behalf of a reinsured company. This prohibition does not appear to recognize that agents and loss adjusters may represent more than one Company. If requirements are satisfactory or delinquent with one company, what is the mechanism which RMA proposes should be used to communicate the person's status to all affected companies?

Section II.A.9. grants to FCIC sole discretion as to whether a company has financial and technical resources to carry out the agreement, yet there are no parameters stated whereby a company could know what the satisfactory requirements might be. The way the provision is worded gives the impression that FCIC could impose a sanction or a remedy upon a company simply because its determination was inconclusive rather than requiring FCIC to establish a company's adequacy or inadequacy as a matter of fact. In other words, why should a company be subject to corrective action or penalty if FCIC cannot determine whether or not the company is out of compliance?

Section II.A.10. contains a complex set of provisions requiring "a satisfactory performance record" and other obligations related to performance of certain terms of the SRA. This set of provisions is vague and ambiguous. A satisfactory performance record is required, yet the definition for "*satisfactory performance record*," which is contained in the current SRA, has been removed. Zero tolerance, in the opinion of FCIC, seems to be required. This subsection states that FCIC will provide guidance, but there is no indication of what that guidance may entail. Subsection 10.d. is especially unclear as to exactly what is expected from a company. This type of analysis could be very extensive.

Section II.B.9. permits FCIC to offer additional reinsurance to a company under certain circumstances: (1) when it has exceeded its maximum reinsurable net book premium (premium is 5% of the excess premium); and (2) when commercial reinsurance is not available at a reasonable rate (FCIC will determine the rate to be charged). The terms of 9.b. present serious conceptual issues. What criteria will FCIC use to determine either a "*reasonable rate*" or a "*rate that is*

appropriate?" Since this provision only can be triggered by the unavailability of commercial reinsurance at a "reasonable" rate, it is difficult to understand how RMA then can set a rate which is reasonable and, at the same time, act within its statutory authority.

Section III: Subsidies, Fees, and Payments

There are no changes in the amount paid for A&O subsidy (as currently defined) or in CAT loss adjustment expense payments (as established in the 2000 amendments to the Act). The primary issue in Section III is the excess expense penalty discussed in the General Overview. The following paragraphs identify other significant issues raised by proposed Section III.

Section III.A.2.b. requires a company to "report to FCIC the amount the Company spends on administrative and operating activities regarding the sales and service of eligible crop insurance contracts." What are the "*procedures*" companies are supposed to follow? When is the report due?

Section III.C.5., if accepted by a company, could deny it the benefit of the federal six-year statute of limitations for asserting breach of contract claims. See 28 U.S.C. § 2401(a). That RMA has proposed a similar restriction on FCIC in Section III.C.4. does not mean that a company must accept such a restriction of its statutory rights.

Section IV.

The General Provisions proposed in Section IV raise a plethora of legal and operational issues. These preliminary comments deal with the most serious ones. As a general matter, provisions of the sort included in Section IV are found in Section V of the current SRA. Problems

with new Section IV include adding new provisions, revising others, and at least one significant deletion from current Section V.

A&O Penalty for Late Sales Reporting (IV.B.6). The proposed SRA has substantially increased the penalties for Late Sales Reporting. The penalties have more than doubled, as the following table demonstrates:

Late Sales Reporting Penalty				
Period	Current SRA (per Amendment 3 to 1998 SRA)		Proposed SRA	
	Days after Sales Closing Date	A&O Reduction	Days after Sales Closing Date	A&O Reduction
1st	30	1.0%	30-60	2.0%
2nd	30-60	2.0%	60-90	5.0%
3rd	>=60	3.0%	>=90	10.0%

The penalties may be waived if the delay is caused in whole or in part by FCIC. Any penalties are paid into the Guarantee Fund.

Compliance and Termination Penalties (IV.H.7, H.8, J.4). The proposed SRA maintains a series of compliance penalties:

Compliance Penalties	
Type	Description
Compliance penalties due to Company failure that affects indemnity, prevented planting, or replant payment (Section IV.H.7)	Overpayment of indemnities and subsidies – Company must repay the overpayment to FCIC
	Underpayment of premium – Company must pay the difference between the correct premiu m and the collected premium to FCIC
Compliance penalties due to failure of company to provide services or comply with procedures) (Section IV.H.8)	If losses paid have been affected, penalty is up to 10% of premium on all contracts affected
	If company has not provided service, penalty is up to 10% of premium on all contracts affected

Termination Penalty (Section IV.J.4)	IF FCIC terminates the Company for cause, a penalty of 10% of the company's entire premium will be levied

All penalties are paid into the Guarantee Fund. Since the payments to FCIC in Section IV.H.7. are portrayed as repayments, it is not clear whether these amounts are intended to be paid into the Guarantee Fund. However, Section II.B.7.b. explicitly states that these payments are placed in the Guarantee Fund. Since the proposed SRA has not defined "failure" and has not specified the basis for assessing the compliance penalties, the SRA is not clear on how these penalties are to be applied. A penalty of up to 10% of premium for failure to provide loss adjustment services or to comply with FCIC loss adjustment procedures is excessive in light of the small reimbursement that companies receive for this service. Any FCIC penalties should bear some proportionate relationship to any injury sustained.

NCIS now turns to other portions of Section IV.

Section IV.B.1. broadly obligates a company to collect data. Specifically, what would "*any data that FCIC determines is necessary to the operation of the federal crop insurance program*" include? This data could be anything, and therefore could be extremely costly to gather and capture. What are the procedures under which "*any other data*" must be submitted as stated in this paragraph?

Section IV.B.9. requires reporting of <u>any</u> dispute with policyholders. What are the "*established procedures*" under which a company must report all disputes with policyholders? Was there a reason that the types of disputes were not limited?

Section IV.B.10. requires immediate reporting of "any material change in its, or its affiliates, financial or operational condition that may affect the Company's ability to perform its obligations under this Agreement." What will constitute a "*material change*" in the financial or operational condition?

Section IV.C.2. requires payment of an interest rate to FCIC significantly in excess of prevailing commercial terms. The same rate, however, is used in current Section V.C.2. and codified by Section 536 of the Research Act.

Section IV.E., concerning supplemental insurance, can be deleted (or, at least, substantially revised) in light of FCIC's adoption in 2001 of 7 C.F.R. § 400.713 concerning the same subject.

Section IV.F.1.a. requires verification of yield and other information reported by policyholders. What are the "*procedures*" by which a company must verify all yields and other information used to establish guarantees and indemnity payments? Given the extensive procedures (e.g., the Crop Insurance Handbook, the Loss Adjustment Manual, and crop specific handbooks) already in place, what <u>additional</u> verification procedures are contemplated? The General

Overview (above) has noted other issues under Section IV.F. (the conflict of interest and state law issues).

Section IV.G. expands and revises the "Access to Records and Operations" provisions now found in Section V.H. First, it dispenses with the current obligation of FCIC to make a written request. Second, this section relies on an unworkable and improper of definition of "records" (as discussed under Section I.) Third, it inexplicably fails to make the forthright assertion that the statute of limitations is six years (which current V.H. does in recognition of 28 U.S.C. § 2401 (a)) and states, instead, in IV.G.7. that it "may exceed 3 years." In fact it does exceed three years.

Section IV.H.7.a.ii. deals with underpayments and overpayments to/from producers. For situations where FCIC is able to determine the correct amount of indemnity, etc., a company is required to pay the policyholder or FCIC any amount, etc. What is meant by "*any amount*?" Why did RMA not specify a dollar amount that would represent a reasonable tolerance?

Section IV.H.7.b. imposes a penalty when RMA has been unable to "determine the correct amount of indemnity, prevented planting payment or replant payment, or premium that should have been paid, deny reinsurance and A&O and risk subsidies." Why is a penalty being implemented if RMA is unable to prove there is any harm?

Section IV.I.3. concerns suspension of a company for improperly servicing policyholders. The current SRA provides to FCIC the same right, but also provides a company a cure period; it

specifies the "*timeframe*" as being 45 days for the company to correct errors or omissions. Why is a specific timeframe no longer stated? Why has the government negated a company's right to cure?

Section IV.K. concerns disputes and appeals, but departs from the terms of current Section V.L. The principal problem with the proposed change is the unwarranted attempt to place before the Board of Contract Appeals ("BCA") disputes over "changes to regulations, procedures or eligible crop insurance contracts" in IV.K.1. This proposed change has two problems. First, it is inconsistent with the BCA's jurisdiction under 7 C.F.R. § 24.4(b), limiting its jurisdiction to matters within the scope of 7 C.F.R. § 400.169(d). Second, it contradicts the holding of the Court of Appeals for the Eighth Circuit on December 5, 2003, in NCIS vs. FCIC, No. 02-3952.

Section IV.L ("Renewal and Mandatory Amendments") should be considered carefully. New subsection IV.L.2. may be an attempt by RMA to negate a company's rights under the Supreme Court's "Winstar" doctrine.

New Section IV. can be faulted for eliminating current Section V.Y. ("Resolution of Disagreements"). This section addressed situations when a company disagreed with an act or omission of FCIC. Why was this section deleted, and what recourse does a company now have in these situations? While some RMA Administrators may decide not to meet with companies in an effort to resolve disputes, what is the reason for eliminating a potentially constructive vehicle for alternative dispute resolution? Why is RMA forcing its business partners to commence the litigative process instead of meeting in order to avoid or limit disputes?