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PART 400—GENERAL ADMINISTRATIVE REGULATIONS

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AUTHORITY: 7 U.S.C. 1506(1), 1506(o).

Subparts A–G [Reserved]

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AUTHORITY: 5 U.S.C. 1320, Pub. L. 96–511 (44 U.S.C., chapter 35).

SOURCE: 56 FR 49390, Sept. 30, 1991, unless otherwise noted.

§§ 400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 67 FR 13251, Mar. 22, 2002, unless otherwise noted.

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RO, FAOB or any other division within the Agency with decision making authority.

Appellant. Any participant who requests an administrative review or mediation, or both, of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term ''appellant'' includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FAOB. Financial and Accounting Operations Branch.

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

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

Insured. An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RO. The Regional Office established by the agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (see § 400.98).

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or both, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review and mediation under this subpart, as applicable.

(e) Notwithstanding any other provision, this subpart does not apply to any decision made by the Agency that is generally applicable to all similarly situated program participants. Such decisions are also not appealable to NAD. If the Agency determines that a decision is not appealable because it is a matter of general applicability, the participant must obtain a review by the Director of NAD in accordance with 7 CFR 11.6(a) of the Agency's determination that the decision is not appealable before the participant may file suit against the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution in addition to an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such

mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at *http://www.act.fcic.usda.gov*.

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

[67 FR 13251, Mar. 22, 2002, as amended at 74 FR 8704, Feb. 26, 2009]

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision. A request for an administrative review will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to timely file the request for administrative review.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.96 Judicial review.

Except as provided in § 400.98, with respect to adverse determinations:

(a) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(b) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(c) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

§ 400.98 Reconsideration process.

(a) This reconsideration process only applies to determinations of good farming practices under § 400.91(a)(2).

(b) A determination or reconsideration decision regarding good farming practices is not an adverse action and cannot be appealed to NAD.

(c) Only reconsideration is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(d) If the insured seeks reconsideration, the insured must file a written

request for reconsideration to the following: USDA RMA Deputy Administrator for Insurance Services, Stop 0801, Room 2004-South ATTN: GFP RECONSIDERATION 1400 Independence Avenue SW Washington, DC 20250–0801, by email to *rma.rmsd@usda.gov*, or to a successor site or email.

(1) A request for reconsideration must be filed within 30 days of receipt of written notice of the determination regarding good farming practices. A request for reconsideration will be considered to have been ''filed'' when personally delivered in writing to FCIC or when the properly addressed request, postage paid, is postmarked.

(2) Notwithstanding paragraph (d)(1) of this section, an untimely request for reconsideration may be accepted and acted upon if the insured can demonstrate a physical inability to timely file the request for reconsideration.

(3) Reconsideration of a good farming practice (GFP) determination will be limited to a closed review of the existing administrative record. The written request must state the basis upon which the insured relies to show that:

(i) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(ii) The previously provided material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless the reconsideration decision is found to be arbitrary or capricious.

[68 FR 37720, June 25, 2003, as amended at 89 FR 53828, June 27, 2024]

Subpart K [Reserved]

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years.

AUTHORITY: 7 U.S.C. 1506(l), 1506(o)

SOURCE: 83 FR 51302, Oct. 11, 2018, unless otherwise noted.

§ 400.161 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement and any other Reinsurance Agreement, the following terms as used in this rule are defined to mean:

Annual statutory financial statement means the annual financial statement of a Company prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the Company is licensed.

Company means the insurance company that currently has or is applying to FCIC for a Reinsurance Agreement.

FCIC means the Federal Crop Insurance Corporation as authorized in section 503 of the Federal Crop Insurance Act (7 U.S.C. 1503).

MPUL means the maximum possible underwriting loss that a Company can sustain on policies it intends to reinsure after adjusting for the effect of any Reinsurance Agreement and any private reinsurance, as evaluated by FCIC.

Plan of Operations means the documentation and information submitted by a Company to apply for or maintain a Reinsurance Agreement as required by FCIC.

Quarterly Statutory Financial Statement means the quarterly financial statement of a Company prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the Company is licensed.

Reinsurance Agreement means the Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement or any other Reinsurance Agreement between the Company and FCIC.

§ 400.162 Qualification ratios.

(a) The eighteen qualification ratios include:

(1) Thirteen National Association of Insurance Commissioner's (NAIC) Insurance Regulatory Information System (IRIS) ratios found in paragraphs (b)(1) through (12) and (17) of this section and referenced in ''Using the NAIC Insurance Regulatory Information System'' distributed by NAIC, 1100 Walnut St., Suite 1500, Kansas City, MO 64106–2197;

(2) Three ratios used by A.M. Best Company found in paragraphs (b)(13), (15), and (16) of this section and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858–0700;

(3) One ratio found in paragraph (b)(14) of this section which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period; and

(4) One ratio found in paragraph (b)(18) of this section, which is reported on the annual statutory financial statement.

(b) The Company shall provide an explanation for any ratio falling outside of the following requirements in paragraphs (b)(1) through (18):

Ratio	Ratio requirement
(1) Gross Premium Written to Policyholders Surplus	<900%
(2) Net Premium Written to Policyholders Surplus	<300%
(3) Change in Net Premiums Writings	−33% to 33%
(4) Surplus Aid to Policyholders Surplus	<15%
(5) Two-Year Overall Operating Ratio	<100%
(6) Change in Policyholders Surplus	−10% to 50%
(7) Investment Yield	3.0% to 6.5%
(8) Liabilities to Liquid Assets	<100%
(9) Gross Agents Balances to Policyholders Surplus	<40%
(10) One Year Reserve Development to Policyholders Surplus	<20%
(11) Two Year Reserve Development to Policyholders Surplus	<20%
(12) Estimated Current Reserve Deficiency to Policyholders Surplus	<25%
(13) Combined Ratio after Policyholder Dividend	<115%
(14) Two Year Change in Surplus	>−10%
(15) Quick Liquidity	>20%
(16) Return on Surplus	>−5%
(17) Net Change in Adjusted Policyholder Surplus	−10% to 25%
(18) Risk Based Capital Ratio	> 200%

§ 400.163 Applicability.

The standards contained herein shall be applicable to a Company applying for and those maintaining a Reinsurance Agreement.

§ 400.164 Eligibility for a Reinsurance Agreement.

FCIC will offer a Reinsurance Agreement to an eligible Company as determined by FCIC. To be eligible and qualify initially or thereafter for a Reinsurance Agreement with FCIC, a Company must:

(a) Be licensed or admitted in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing company, an insurance company that is licensed or admitted, in each state where the Company will write policies under a Reinsurance Agreement;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to twice the MPUL amount for the Company's estimated retained premium submitted in its plan of operation.

(d) The Company shall have the financial and operational resources, including but not limited to, organization, experience, internal controls, technical skills, positive assessment of the ratio results appearing in Section 400.162 as well as meet methodologies, data submission requirements and assessment contained in Appendix II (Plan of Operations) of the Reinsurance Agreement to meet the requirements, including addressing reasonable risks,

associated with a Reinsurance Agreement, as determined by FCIC.

(e) The Company shall provide data and demonstrate a satisfactory performance record to obtain a Reinsurance Agreement and continue to hold a Reinsurance Agreement for the reinsurance year as determined by FCIC.

§§ 400.165–400.168 [Reserved]

§ 400.169 Disputes.

(a) If the Company believes that the FCIC has taken an action that is not in accordance with the provisions of a Reinsurance Agreement except compliance issues, it may request the Deputy Administrator of Insurance Services to make a final administrative determination addressing the disputed action. The Deputy Administrator of Insurance Services will render the final administrative determination of the FCIC with respect to the applicable actions. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt after the disputed action.

(b) With respect to compliance matters, the Compliance Field Office renders an initial finding, permits the Company to respond, and then issues a final finding. If the Company believes that the Compliance Field Office's final finding is not in accordance with the applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may request the Deputy Administrator of Compliance to make a final administrative determination addressing the disputed final finding. The Deputy Administrator of Compliance will render the final administrative determination of the FCIC with respect to the final finding. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt of the final finding.

(c) A Company may also request reconsideration by the Deputy Administrator of Insurance Services of a decision of the FCIC rendered under any FCIC bulletin or directive which bulletin or directive does not interpret, explain, or restrict the terms of the Reinsurance Agreement. The Company, if it disputes the FCIC's determination, must request a reconsideration of that determination in writing, within 45 days of the receipt of the determination. The determination of the Deputy Administrator of Insurance Services will be final and binding on the Company. Such determinations will not be appealable to the Board of Contract Appeals.

(d) Appealable final administrative determinations of the FCIC under paragraph (a) or (b) of this section may be appealed to the Board of Contract Appeals in accordance with 48 CFR part 6102 and with the provisions 7 CFR part 24.

§§ 400.170–400.177 [Reserved]

Subpart M—Agency Sales and Service Contract—Standards for Approval

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 53 FR 24015, June 27, 1988, unless otherwise noted.

§ 400.201 Applicability of standards.

Federal Crop Insurance Corporation will offer an Agency Sales and Service Contract (the Contract) to private entities meeting the requirements set forth in this subpart under which the Corporation will insure producers of agricultural commodities. The Contract will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and the provisions of the regulations of the Corporation found at chapter IV of title 7 of the Code of Federal Regulations. The Standards contained herein are required for an entity to be a contractor under the Contract.

§ 400.202 Definitions.

For the purpose of these Standards:

(a) *Agency Sales and Service Contract or the Contract* means the written agreement between the Federal Crop Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing Federal Crop Insurance policies and includes, but is not limited to, the following:

(1) The Agency Sales and Service Contract;

(2) Any Appendix to the Agency Sales and Service Contract issued by the Corporation;

(3) The annual approved Plan or Operation; and

(4) Any amendment adopted by the parties.

(b) *BELL 208B (or compatible) modem*—means a modem meeting the standards developed by BELL Laboratories for dial-up, half-duplex, 4800 or 9600 bits per second (bps) transmission of data utilizing 3780 (or 2780) protocol.

(c) *Contract, the* see Agency Sales and Service Contract.

(d) *Contractor's electronic system (system)* means the data processing hardware and software, data communications hardware and software, and printers utilized with the system.

(e) *CPA* means a Certified Public Accountant who is licensed as such by the State in which the CPA practices.

(f) *CPA Audit* means a professional examination conducted by a CPA in accordance with generally accepted auditing standards of a Financial Statement on the basis of which the CPA expresses an independent professional opinion respecting the fairness of presentation of the Financial Statement.

(g) *Current Assets* means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operation cycle of the business or within one year if the operation cycle is shorter than one year.

(h) *Current Liabilities* means those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(i) *Financial Statement* means the documents submitted to the Corporation by a private entity which portray the financial information of the entity. The financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and reflect the financial position in the Statement of Financial Condition or Balance Sheet; and the result of operations in the Statement of Profit and Loss or Income Statement.

(j) *Processing representative* means a person or organization designated by the Contractor to be responsible for data entry and electronic transmission of data contained on crop insurance documents.

(k) *Sales* means new applications and renewals of FCIC policies.

(l) *Suspended Data Notice* means a notification of a temporary stop or delay in the processing of data transmitted to the Corporation by the Contractor because the same is incomplete, nonprocessable, obsolete, or erroneous.

(m) *3780 protocol*—means the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data.

§ 400.203 Financial statement and certification.

(a) An entity desiring to become or continue as a contractor shall submit to the Corporation a financial statement which is as of a date not more than eighteen (18) months prior to the date of submission.

(b) The financial statement submitted shall be audited by a CPA (CPA Audit); or if a CPA audited financial statement is not available, the statement submitted to the Corporation must be accompanied by a certification of:

(1) The owner, if the business entity is a sole proprietorship; or

(2) At least one of the general partners, if the business entity is a partnership; or

(3) The Chief Executive Officer and Treasurer, if the business entity is a Corporation, that said statement fairly represents the financial condition of the entity on the date of such certification to the Corporation. If the financial statement as certified by the Chief Executive Officer and Treasurer, partner, or owner is submitted, a CPA audited financial statement must be submitted if subsequently available.

§ 400.204 Notification of deviation from standards.

A Contractor shall advise the Corporation immediately if the Contractor

deviates from the requirements of these standards. The Corporation may require the Contractor to show compliance with these standards during the contract year if the Corporation determines that such submission is necessary. If the Corporation determines that the deviation is temporary, the Corporation may grant a temporary waiver pending compliance within a specified period of time. A waiver of any provision of these standards will not be granted to an applicant for a contract.

§ 400.205 Denial or termination of contract and administrative reassignment of business.

Non-compliance with these standards will result in:

(a) The denial of a Contract; or

(b) Termination of an existing Contract.

In the event of denial or termination of the Contract, all crop insurance policies of the Corporation sold by the Contractor and all business pertaining thereto may be assumed by the Corporation and may be administratively reassigned by the Corporation to another Contractor.

§ 400.206 Financial qualifications for acceptability.

The financial statement of an entity must show total allowable assets in excess of liabilities and the ability of the entity to meet current liabilities by the use of current assets.

§ 400.207 Representative licensing and certification.

(a) A Contractor must maintain twenty-five (25) licensed and certified Contractor Representatives.

(b) A Contractor's Representative who solicits, sells and services FCIC policies or represents the Contractor in solicitation, sales or service of such policies must hold a license as issued by the State or States in which the policies are issued, which license authorizes the sales of insurance in any one or more of the following lines:

(1) Multiple peril crop insurance;

(2) Crop hail insurance;

(3) Casualty insurance;

(4) Property insurance;

(5) Liability insurance; or

(6) Fire insurance and allied lines.

The Contractor must submit evidence, satisfactory to the Corporation, verifying the type of State license held by each Representative and the date of expiration of each license.

(c) A Contractor's Representative must have achieved certification by the Corporation for each crop upon which the Representative sells and services insurance.

§ 400.208 Term of the contract.

(a) The term of the Contract shall commence on July 1 or when signed. The contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed. Any breach of the contract, or failure to comply with these Standards, by the Contractor, may result in termination of the contract by the Corporation upon written notice of termination to the Contractor. That termination will be effective thirty (30) days after mailing of the notice and termination to the Contractor.

(b) A Contractor who elects to continue under the Contract for a subsequent year must, prior to the month of June, submit a completed Plan of Operation which includes the Certifications as required by § 400.203 of this subpart. The Contractor may not perform under the contract until the Plan of Operation is approved by the Corporation.

§ 400.209 Electronic transmission and receiving system.

Any Contractor under the Contract is required to:

(a) Adopt a plan for the purpose of transmitting and receiving electronically, information to and from the Corporation concerning the original executed crop insurance documents;

(b) Maintain an electronic system which must be tested and approved by the Corporation;

(c) Maintain Corporation approval of the electronic system as a condition to the electronic transmission and reception of data by the Contractor;

(d) Utilize the Corporation approved automated data processing and electronic data transmission capabilities to process crop insurance documents as required herein; and

(e) Establish and maintain the electronic equipment and computer software program capability to:

(1) Receive and store actuarial data electronically via telecommunications utilizing 3780 protocol and utilizing a BELL 208B or compatible modem at 4800 bits per second (bps);

(2) Enter and store information from original crop insurance documents into electronic format;

(3) Verify electronically stored information recorded from crop insurance documents with electronically stored actuarial information;

(4) Compute and print the data elements in the Summary of Protection;

(5) Transmit crop insurance data electronically, via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps;

(6) Receive electronic acknowledgements, error messages, and other data via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps, and relate error messages to original crop insurance documents; and

(7) Store backup data and physical documents.

(The Corporation may approve other compatible specifications if accepted by the Corporation and if requested by the Contractor)

§ 400.210 [Reserved]

Subpart N [Reserved]

Subpart O—Non-Standard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 55 FR 32595, Aug. 10, 1990, unless otherwise noted.

§ 400.301 Basis, purpose, and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields or premium rates in conformance with the intent of section 508 of the Act (7 U.S.C. 1508). These regulations are applicable to all policies of insurance insured or reinsured by the Corporation under the Act and on those policies where the insurance coverage or indemnities are based on determinations applicable to the individual insured. These regulations will not be applicable to any policy where the amount of coverage or indemnities are based on the experience of the area.

[62 FR 22876, Apr. 28, 1997]

§ 400.302 Definitions.

Act means Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

Actively engaged in farming means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

Actual yield means total harvested production of a crop divided by the number of acres on which the crop was planted. For insured acres, actual yield is the total production to count as defined in the insurance policy, divided by insured acres.

Assigned yield means units of crop production per acre administratively assigned by the Corporation for the purpose of determining insurance coverage.

Corporation means the Federal Crop Insurance Corporation.

Cumulative earned premium rate is the total premium earned for all years in the base period, divided by the total liability for all years in the base period with the result expressed as a percentage.

Cumulative loss ratio means the ratio of total indemnities to total earned premiums during the base period expressed as a decimal.

Earned premium means premium earned (both the amount subsidized and the amount paid by the producer, but excluding any amount of the subsidy attributed to the operating and administrative expenses of the insurance provider) for a crop under a policy

insured or reinsured by the Corporation.

Earned premium rate—means premium earned divided by liability and expressed as a percentage.

Entity—means a person as defined in this subpart other than an individual.

Indemnified loss means a loss applicable for the policy for any year during the NCS base period for which the total indemnity exceeds the total earned premium. If the person has insurance for the crop in more than one county for any crop year, indemnities and premiums will be accumulated for all counties for each crop year to determine an indemnified loss.

Insurance experience means earned premiums, indemnities paid (but not including replant payments), and other data for the crop (after applicable adjustments), resulting from all of the insured's crop insurance policies insured or reinsured by the Corporation for one or more crop years and will include all information from all counties in which the person was insured.

Loss ratio—means the ratio of indemnity to earned premium expressed as a decimal.

NCS means nonstandard classification system.

NCS base period means the 10 consecutive crop years (as defined in the crop policy) ending 2 crop years prior to the crop year in which the NCS classification becomes effective for all crops, except those specified on the Special Provisions. For these excepted crops, the NCS base period means the 10 consecutive crop years ending 3 crop years prior to the crop year in which the NCS classification becomes effective. For example: An NCS classification effective for the 1996 crop year against a producer of citrus production in Arizona, California, and Texas, or sugarcane would have a NCS base period that includes the 1984 through 1993 crop years. An NCS classification effective for the 1996 crop year against a producer of all other crops would have a NCS base period that includes the 1985 through 1994 crop years.

Person—means an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State or a political subdivision, or agency of a state.

Substantial beneficial interest—means an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests which are owned directly or indirectly through such means as ownership of shares in a corporation which owns the interest will be taken into consideration.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22876, Apr. 28, 1997]

§ 400.303 Initial selection criteria.

(a) Nonstandard classification procedures in this subpart initially apply when all of the following insurance experience criteria (including any applicable adjustment in § 400.303(d)) for the crop have been met:

(1) Three (3) or more indemnified losses during the NCS base period;

(2) Cumulative indemnities in the NCS base period that exceed cumulative premiums during the same period by at least $500;

(3) The result of dividing the number of indemnified losses during the NCS base period by the number of years premium is earned for that period equals .30 or greater; and

(4) Either of the following apply:

(i) The natural logarithm of the cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater; or

(ii) Five (5) or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals or exceeds 1.50.

(b) The minimum standards provided in paragraphs (a) (2), (3), and (4) of this section may be increased in a specific county if that county's overall insurance experience for the crop is substantially different from the insurance experience for which the criteria was determined. The increased standard will apply until the conditions requiring the increase no longer apply. Any change in the standards will be contained in the Special Provisions for the crop.

(c) Selection criteria may be applied on the basis of insurance experience of a person, insured acreage, or the combination of both.

(1) Insurance experience of a person will include:

(i) Insurance experience of the person;

(ii) Insurance experience of other insured entities in which the person had substantial beneficial interest if the person was actively engaged in farming of the insured crop by virtue of the person's interest in those insured entities;

(iii) Insurance experience of a spouse and minor children if the person is an individual and the spouse and minor children are considered the same as the individual under § 400.306.

(2) Insurance experience of insured acreage includes all insurance experience during the base period resulting from the production of the insured crop on the acreage.

(3) Where insurance experience is based on a combination of person and insured acreage, the insurance experience will include the experience of the person as defined in paragraph (b) of this section (1) only on the specific insured acreage during the base period.

(d) Insurance experience for the crop will be adjusted, by county and crop year, to discount the effect of indemnities caused by widespread adverse growing conditions. Adjustments are determined as follows:

(1) Determine the average yield for the county using the annual county crop yields for the previous 20 crop years, unless such data is not available;

(2) Determine the normal variability in the average yield for the county, expressed as the standard deviation;

(3) Subtract the result of § 400.303(d)(2) from § 400.303(d)(1);

(4) Divide the annual crop yield for the county for each crop year in the NCS base period by the result of § 400.303(d)(3), the result of which may not exceed 1.0;

(5) Subtract the result of § 400.303(d)(4) for each crop year from 1.0;

(6) Multiply the result of § 400.303(d)(5) by the liability for the crop year; and

(7) Subtract the result of § 400.303(d)(6) from any indemnity for that crop year.

(e) FCIC may substitute the crop yields of a comparable crop in determining § 400.303(d) (1) and (2), or may adjust the average yield or the measurement of normal variability for the county crop, or any combination thereof, to account for trends or unusual variations in production of the county crop or if the availability of yield and loss data for the county crop is limited. Information about how these determinations are made is available by submitting a request to the FCIC Regional Service Office for the producer's area. Alternate methods of determining the effects of adverse growing conditions on insurance experience may be implemented by FCIC if allowed in the Special Provisions.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22876, Apr. 28, 1997]

§ 400.304 Nonstandard Classification determinations.

(a) Nonstandard Classification determinations can affect a change in assigned yields, premium rates, or both from those otherwise prescribed by the insurance actuarial tables.

(b) Changes of assigned yields based on insurance experience of insured acreage (or of a person on specific insured acreage) will be based on the simple average of available actual yields from the insured acreage during the base period.

(c) Changes of assigned yields based on insurance experience of a person without regard to any specific insured acreage will be determined by an assigned yield factor calculated by multiplying excess loss cost ratio by loss frequency and subtracting that product from 1.00 where:

(1) Excess loss cost ratio is total indemnities divided by total liabilities for all years of insurance experience in the base period and the result of which is then reduced by the cumulative earned premium rate, expressed as a decimal, and

(2) Loss frequency is the number of crop years in which an indemnity was paid divided by the number of crop years in which premiums were earned during the base period.

(d) Changes of premium rates will be made to reflect premium rates that would have resulted in insurance experience during the base period with a loss ratio of 1.00 but:

(1) A higher loss ratio than 1.00 may be used for premium rate determinations provided that the higher loss ratio is applied uniformly in a county; and

(2) If a Nonstandard Classification change has been made to current assigned yields, insurance experience during the base period will be adjusted to reflect the affects of changed assigned yields before changes of premium rates are calculated based on that experience.

(e) Once selection criteria have been met in any year, Nonstandard Classification adjustments will be made from year to year until no further changes are necessary in assigned yields or premium rates under the conditions set forth in §400.304(f). In determining whether further changes are necessary, the eligibility criteria will be recomputed each subsequent year using the premium rates and yields which would have been applicable had this part not been in effect.

(f) Nonstandard Classification changes will not be made that:

(1) Increase assigned yields or decrease premium rates from those otherwise assigned by the actuarial tables, or

(2) Result in less than a 10 percent decrease in assigned yields or less than a 10 percent increase in premium rates from those otherwise assigned by the actuarial tables.

§ 400.305 Assignment of Nonstandard Classifications.

(a) Assignment of a Nonstandard Classification of assigned yields, assigned yield factors, or premium rates shall be made on forms approved by the Corporation and included in the actuarial tables for the county.

(b) Nonstandard classification assignment will be made each year, for the year identified on the assignment forms, and are not subject to change under the provisions of this subpart by the Corporation for that year when included in the actuarial tables for the county, except as a result of a request for reconsideration as provided in section 400.309, or as the result of appeals under 7 CFR part 11.

(c) A nonstandard classification may be assigned to identified insurable acreage; a person; or to a combination of person and identified acreage for a crop or crop practice, type, variety, or crop option or amendment whereby:

(1) Classifications assigned to identified insurable acreage apply to all acres of the insured crop grown on the identified acreage;

(2) Classifications assigned to a person apply to all insurable acres of the insured crop on which the person and any entity in which the person has substantial beneficial interest is actively engaged in farming; and

(3) Classifications assigned to a combination of a person and identified insurable acreage will only apply to those acres of the insured crop grown on the identified acreage on which the named person is actively engaged in producing such crop.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22877, Apr. 28, 1997]

§ 400.306 Spouses and minor children.

(a) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation prior to their marriage will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse;

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and recordkeeping for the minor's farming operation.

(b) An individual shall be considered to be a minor until the age of 18 is

reached. Court proceedings conferring majority on an individual under 18 years of age will not change such individual's status as a minor.

§ 400.307 Discontinuance of participation.

If the person has discontinued participation in the crop insurance program, the person will still be included on the NCS list in the county until the person has discontinued participation as a policyholder or a person with a substantial beneficial interest in a policyholder for at least 10 consecutive crop years. The most recent nonstandard classification assigned will be continued from year to year until participation has been renewed for at least one crop year and at least three years of insurance experience have occurred in the current base period. A nonstandard classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased.

[62 FR 22877, Apr. 28, 1997]

§ 400.308 Notice of Nonstandard Classification.

(a) The Corporation will give written notice to all persons to whom a Nonstandard Classification will be assigned. The notice will give the Nonstandard Classification and the person's rights and responsibilities according to this subpart.

(b) The person, upon receiving notice from the Corporation, will be responsible for giving notice of the Nonstandard Classification to any other person with an insurable interest affected by the classification. The person will give notice to any other affected person:

(1) Prior to the sales closing date if the other affected person has an established insurable interest at the time the classified person is notified by the Corporation; or

(2) Prior to the Classified person's establishing an insurable interest of another person that will be affected by the classification.

§ 400.309 Requests for reconsideration.

(a) Any person to be assigned a nonstandard classification under this subpart will be notified of and allowed not less that 30 days from the date notice is received to request reconsideration before the nonstandard classification becomes effective. The request will be considered to have been made when received, in writing, by the Corporation.

(b) Upon receipt of a timely request for reconsideration from the person to whom the classification will be assigned, the Corporation will:

(1) Review all information supplied by, and respond to all questions raised by the individual, or

(2) In the absence of information and questions, review insurance experience and determinations for compliance with this subpart and report review results to the individual requesting reconsideration.

(c) Upon review of a request for reconsideration, the classification to be assigned will be corrected for:

(1) Errors and omissions in insurance experience;

(2) Incorrect calculations under procedures in this subpart, and

(3) Typographical errors.

(d) If the review finds no cause for change, the classification will be assigned and placed on file in the actuarial tables for the county.

(e) Any person not satisfied by a determination of the Corporation upon reconsideration may further appeal under the provisions of 7 CFR part 11.

[55 FR 32595, Aug. 10, 1990, as amended at 62 FR 22877, Apr. 28, 1997]

Subpart P—Preemption of State Laws and Regulations

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 55 FR 23069, June 6, 1990, unless otherwise noted.

§ 400.351 Basis and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), to prescribe the procedures for Federal preemption of State laws and regulations not consistent with the purpose, intent, or authority of the Act. These regulations are applicable to all policies of insurance, insured or reinsured

by the Corporation, contracts, agreements, or actions authorized by the Act and entered into or issued by FCIC.

§ 400.352 State and local laws and regulations preempted.

(a) No State or local governmental body or non-governmental body shall have the authority to promulgate rules or regulations, pass laws, or issue policies or decisions that directly or indirectly affect or govern agreements, contracts, or actions authorized by this part unless such authority is specifically authorized by this part or by the Corporation.

(b) The following is a non-inclusive list of examples of actions that State or local governmental entities or non-governmental entities are specifically prohibited from taking against the Corporation or any party that is acting pursuant to this part. Such entities may not:

(1) Impose or enforce liens, garnishments, or other similar actions against proceeds obtained, or payments issued in accordance with the Federal Crop Insurance Act, these regulations, or contracts or agreements entered into pursuant to these regulations;

(2) Tax premiums associated with policies issued hereunder;

(3) Exercise approval authority over policies issued;

(4) Levy fines, judgments, punitive damages, compensatory damages, or judgments for attorney fees or other costs against companies, employees of companies including agents and loss adjustors, or Federal employees arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations, or procedures issued by the Corporation (Nothing herein precludes such damages being imposed against the company if a determination is obtained from FCIC that the company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled); or

(5) Assess any tax, fee, or amount for the funding or maintenance of any State or local insolvency pool or other similar fund.

The preceding list does not limit the scope or meaning of paragraph (a) of this section.

[55 FR 23069, June 6, 1990, as amended at 69 FR 48730, Aug. 10, 2004]

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 57 FR 46297, Oct. 8, 1992, unless otherwise noted.

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Act to prescribe procedures for the collection, use, and confidentiality of Social Security Numbers (SSN) and Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of crop insurance policies issued by FCIC under the Act and sold and serviced by local FSA offices.

(2) All holders of crop insurance policies sold by insurance providers and all insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

(3) Any agent, general agent, or company, or any past or present officer, employee, contractor or subcontractor of such agent, general agent, or company under contract to FCIC or an insurance provider for loss adjustment or any other purpose related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, elected officials, contractors, and subcontractors of FCIC and FSA.

[57 FR 46297, Oct. 8, 1992, as amended at 62 FR 28608, May 27, 1997]

§ 400.402 Definitions.

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

Applicant. A person who has submitted an application for crop insurance coverage under the Act.

Authorized person. Any current or past officer, employee, elected official, general agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to administer the Act.

Disposition of records. The act of removing and disposing of records containing a participant's SSN or EIN by FCIC, or the insurance provider.

FCIC. The Federal Crop Insurance Corporation of the United States Department of Agriculture or any successor agency.

FSA. The Farm Service Agency of the United States Department of Agriculture, or a successor agency.

Insurance provider. A private insurance company approved by FCIC, or a local FSA office providing crop insurance coverage to producers participating in any program administered under the Act.

Past officers and employees. Any officer or employee of FCIC or the insurance provider who leaves the employ of FCIC or the insurance provider subsequent to the effective date of this rule.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a state, political subdivision, or an agency of a state.

Policyholder. An applicant whose application for insurance under the crop insurance program has been accepted by FCIC or the insurance provider.

Retrieval of records. Retrieval of a person's records by that person's SSN or EIN, or name.

Safeguards. Methods of security to be employed by FCIC or the insurance provider to protect a participant's SSN or EIN from unlawful disclosure and access.

Storage. The secured storing of records kept by FCIC or the insurance provider on computer disks or drives, computer printouts, magnetic tape, index cards, microfiche, microfilm, etc.

Substantial beneficial interest. Any person having an interest of at least 10 percent in the applicant or policyholder.

System of records. Records established and maintained by FCIC or the insurance provider containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to multiple peril crop insurance policies as required by FCIC, from which information is retrieved by a personal identifier including, but not limited to the SSN, EIN, or name.

[62 FR 28608, May 27, 1997]

§ 400.403 Required system of records.

Insurance providers are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data before they accept or receive any applications for insurance. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by FCIC or the insurance provider.

[62 FR 28608, May 27, 1997]

§ 400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to FCIC or the insurance provider to be eligible for insurance. The SSN or EIN will be used by FCIC and the insurance provider in:

(1) Determining the correct parties to the agreement or contract;

(2) Collecting premiums or other amounts due FCIC or the insurance provider;

(3) Determining the amount of indemnities;

(4) Establishing actuarial data on an individual policyholder basis; and

(5) Determining eligibility for crop insurance program participation or other United States Department of Agriculture benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application and other forms where such SSN or EIN is required, FCIC or the reinsured company shall reject the application.

(c) The policyholder or applicant is required to provide to FCIC or the insurance provider, the name and SSN or EIN of any individual or other entity:

(1) holding or acquiring a substantial beneficial interest in such policyholder or applicant; or

(2) having any interest in the policyholder or applicant and receiving separate benefits under another United States Department of Agriculture program as a direct result of such interest.

(d) If a policyholder or applicant is using an EIN for a policy in an individual person's name, the SSN of the policyholder or applicant must also be provided.

[62 FR 28608, May 27, 1997]

§ 400.405 Agent and loss adjuster responsibilities.

(a) The agent or loss adjuster shall provide his or her correct SSN to FCIC or the insurance provider, whichever is applicable, to be eligible to participate in the crop insurance program. The SSN will be used by FCIC and the insurance provider in establishing a database for the purposes of:

(1) Identifying agents and loss adjusters on an individual basis;

(2) Evaluating agents and loss adjusters to determine level of performance;

(3) Determining eligibility for program participation; and

(4) Collection of any amount which may be owed by the agent and loss adjuster to the United States.

(b) If the loss adjuster contracting with FCIC to participate in the crop insurance program does not provide his or her correct SSN on forms or contracts where such SSN is required, the loss adjuster's contract will be cancelled effective on the date of refusal and the loss adjuster will be subject to suspension and debarment in accordance with the suspension and debarment regulations of the United States Department of Agriculture.

(c) If the agent or loss adjuster contracting with an insurance provider, who is also a private insurance company, to participate in the crop insurance program does not provide his or her correct SSN on forms or contracts where such SSN is required, the premium subsidy payable for administrative and operating expenses under the Standard Reinsurance Agreement, or any other reinsurance agreement, will not be paid on those policies lacking the correct SSN.

[62 FR 28609, May 27, 1997]

§ 400.406 Insurance provider responsibilities.

The insurance provider is required to collect and record the SSN or EIN on each application or on any other form required by FCIC.

[62 FR 28609, May 27, 1997]

§ 400.407 Restricted access.

The Manager, other officer, or employee of FCIC or an authorized person may have access to the SSNs and EINs obtained pursuant to this subpart, only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Act.

[62 FR 28609, May 27, 1997]

§ 400.408 Safeguards and storage.

Records must be maintained in secured storage with proper safeguards sufficient to enforce the restricted access provisions of this subpart.

[62 FR 28609, May 27, 1997]

§ 400.409 Unauthorized disclosure.

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C), and section 6109(f), Internal Revenue Code of 1986 (26 U.S.C. 6109(f) and the Privacy Act of 1974 (5 U.S.C. 552a). All records are confidential, and are not to be disclosed to unauthorized personnel.

[57 FR 46297, Oct. 8, 1992. Redesignated at 62 FR 28608, May 27, 1997]

§ 400.410 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person may subject that person, and the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various Federal statutes, including 26 U.S.C. 7613, 5 U.S.C. 552a, and 42 U.S.C. 408.

[57 FR 46297, Oct. 8, 1992. Redesignated at 62 FR 28608, May 27, 1997]

§ 400.411 Obtaining personal records.

Policyholders, agents, and loss adjusters in the crop insurance program will be able to review and correct their records as provided by the Privacy Act. Records may be requested by:

(a) Mailing a signed written request to the headquarters office of FCIC; the FCIC Regional Service Office, or the insurance provider; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

[57 FR 46297, Oct. 8, 1992. Redesignated and amended at 62 FR 28608, 28609, May 27, 1997]

§ 400.412 Record retention.

(a) FCIC or the insurance provider will retain all records of policyholders for a period of not less than 3 years from the date of final action on a policy for the crop year, unless further maintenance of specific records is requested by FCIC. Final actions on insurance policies include conclusion of insurance events, such as the latest of termination of the policy, completion of loss adjustment, or satisfaction of claim.

(b) The statute of limitations for FCIC contract claims may permit litigation to be instituted after the period of record retention. Destruction of records prior to the expiration of the statute of limitations will not provide a defense to any action by FCIC against any private insurance company.

[62 FR 28609, May 27, 1997]

§ 400.413 [Reserved]

Subpart R—Administrative Remedies for Non-Compliance

AUTHORITY: 7 U.S.C. 1506(l), 1506(o), and 7 U.S.C. 1515(h)

SOURCE: 58 FR 53110, Oct. 14, 1993, unless otherwise noted.

§ 400.451 General.

(a) FCIC has implemented a system of administrative remedies in its efforts to ensure program compliance and prevent fraud, waste, and abuse within the Federal crop insurance program. Such remedies include civil fines and disqualifications under the authority of section 515(h) of the Act (7 U.S.C. 1515(h)); government-wide suspension and debarment under the authority of 48 CFR part 9, 48 CFR part 409, and 2 CFR parts 180 and 417; and civil fines and assessments under the authority of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812).

(b) The provisions of this subpart apply to all participants in the Federal crop insurance program, including but not limited to producers, agents, loss adjusters, approved insurance providers and their employees or contractors, as well as any other persons who may provide information to a program participant and meet the elements for imposition of one or more administrative remedies contained in this subpart.

(c) Any remedial action taken pursuant to this subpart is in addition to any other actions specifically provided in applicable crop insurance policies, contracts, reinsurance agreements, or other applicable statutes and regulations.

(d) This rule is applicable to any violation occurring on and after January 20, 2009.

(e) The purpose of the remedial actions authorized in this subpart are for the protection of the public interest from potential harm from persons who have abused the Federal crop insurance program, maintaining program integrity, and fostering public confidence in the program.

[73 FR 76887, Dec. 18, 2008, as amended at 83 FR 25361, June 1, 2018]

§ 400.452 Definitions.

For purposes of this subpart:

Act. Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification,

suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the disqualified, suspended, debarred, ineligible, or voluntarily excluded person.

Agency. The person authorized by an approved insurance provider, or its designee, to sell and service a crop insurance policy under the Federal crop insurance program.

Agent. Has the same meaning as the term in 7 CFR 400.701.

Agricultural commodity. Has the same meaning as the term in section 1 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

Approved insurance provider. Has the same meaning as the term in 7 CFR 400.701.

Benefit. Any advantage, preference, privilege, or favorable consideration a person receives from another person in exchange for certain acts or considerations. A benefit may be monetary or non-monetary.

FCIC. Has the same meaning as the term in 7 CFR 400.701.

Key employee. Any person with primary management or supervisory responsibilities or who has the ability to direct activities or make decisions regarding the crop insurance program.

Knows or has reason to know. When a person, with respect to a claim or statement:

(1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and

(2) No proof of specific intent is required.

Managing general agent. Has the same meaning as the term in 7 CFR 400.701.

Material. A violation that causes or has the potential to cause a monetary loss to the crop insurance program or it adversely affects program integrity, including but not limited to potential harm to the program's reputation or allowing persons to be eligible for benefits they would not otherwise be entitled.

Participant. Any person who obtains any benefit that is derived in whole or in part from funds paid by FCIC to the approved insurance provider or premium paid by the producer. Participants include but are not limited to producers, agents, loss adjusters, agencies, managing general agencies, approved insurance providers, and any person associated with the approved insurance provider through employment, contract, or agreement.

Person. An individual, partnership, association, corporation, estate, trust or other legal entity, any affiliate or principal thereof, and whenever applicable, a State or political subdivision or agency of a State. ''Person'' does not include the United States Government or any of its agencies.

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

Preponderance of the evidence. Proof by information that, when compared with the opposing evidence, leads to the conclusion that the fact at issue is probably more true than not.

Principal. A person who is an officer, director, owner, partner, key employee, or other person within an entity with primary management or supervisory responsibilities over the entity's federal crop insurance activities; or a person who has a critical influence on or substantive control over the federal crop insurance activities of the entity.

Producer. A person engaged in producing an agricultural commodity for a share of the insured crop, or the proceeds thereof.

Provides. Means to make available, supply or furnish with. The term includes any transmission of the information from one person to another person. For example, a producer writes information on forms and gives it to the agent and the agent transmits that information to the insurance provider. In both instances, the information is ''provided'' for the purpose of this rule.

Reinsurance agreement. Has the same meaning as the term in 7 CFR 400.161, except that such agreement is only between FCIC and the approved insurance provider.

Requirement of FCIC. Includes, but is not limited to, formal communications, such as a regulation, procedure, policy provision, reinsurance agreement, memorandum, bulletin, handbook, manual, finding, directive, or letter, signed or issued by a person authorized by FCIC to provide such communication on behalf of FCIC, that requires a particular participant or group of participants to take a specific action or to cease and desist from a taking a specific action (e-mails will not be considered formal communications although they may be used to transmit a formal communication). Formal communications that contain a remedy in such communication in the event of a violation of its terms and conditions will not be considered a requirement of FCIC unless such violation arises to the level where remedial action is appropriate. (For example, multiple violations of the same provision in separate policies or procedures or multiple violations of different provisions in the same policy or procedure.)

Violation. Each act or omission by a person that satisfies all required elements for the imposition of a disqualification or a civil fine contained in § 400.454.

Willful and intentional. To provide false or inaccurate information with the knowledge that the information is false or inaccurate at the time the information is provided; the failure to correct the false or inaccurate information when its nature becomes known to the person who made it; or to commit an act or omission with the knowledge that the act or omission is not in compliance with a ''requirement of FCIC'' at the time the act or omission occurred. No showing of malicious intent is necessary.

[73 FR 76887, Dec. 18, 2008]

§ 400.453 Exhaustion of administrative remedies.

All administrative remedies contained herein or incorporated herein by reference must be exhausted before Judicial Review in the United States Courts may be sought, unless review is specifically required by statute.

§ 400.454 Disqualification and civil fines.

(a) Before any disqualification or civil fine is imposed, FCIC will provide the affected participants and other persons with notice and an opportunity for a hearing on the record in accordance with 7 CFR part 1, subpart H.

(1) Proceedings will be initiated when the Manager of FCIC files a complaint with the Hearing Clerk, United States Department of Agriculture.

(2) Disqualifications become effective:

(i) On the date specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or if no date is specified in the order, the date that the order was issued.

(ii) With respect to a settlement agreement with FCIC, the date contained in the settlement agreement or, if no date is specified, the date that such agreement is executed by FCIC.

(3) Disqualification and civil fines may only be imposed if a preponderance of the evidence shows that the participant or other person has met the standards contained in § 400.454(b). FCIC has the burden of proving that the standards in § 400.454(b) have been met.

(4) Disqualification and civil fines may be imposed regardless of whether FCIC or the approved insurance provider has suffered any monetary losses. However, if there is no monetary loss, disqualification will only be imposed if the violation is material in accordance with § 400.454(c).

(b) Disqualification and civil fines may be imposed on any participant or person who willfully and intentionally:

(1) Provides any false or inaccurate information to FCIC or to any approved insurance provider with respect to a policy or plan of insurance authorized under the Act either through action or omission to act when there is knowledge that false or inaccurate information is or will be provided; or

(2) Fails to comply with a requirement of FCIC.

(c) When imposing any disqualification or civil fine:

(1) The gravity of the violation must be considered when determining:

(i) Whether to disqualify a participant or other person;

(ii) The amount of time that a participant or other person should be disqualified;

(iii) Whether to impose a civil fine; and

(iv) The amount of a civil fine that should be imposed.

(2) The gravity of the violation includes consideration of whether the violation was material and if it was material:

(i) The number or frequency of incidents or duration of the violation;

(ii) Whether there is a pattern or prior history of violation;

(iii) Whether and to what extent the person planned, initiated, or carried out the violation;

(iv) Whether the person has accepted responsibility for the violation and recognizes the seriousness of the misconduct that led to the cause for disqualification or civil fine;

(v) Whether the person has paid all civil and administrative liabilities for the violation;

(vi) Whether the person has cooperated fully with FCIC (In determining the extent of cooperation, FCIC may consider when the cooperation began and whether the person disclosed all pertinent information known to that person at the time);

(vii) Whether the violation was pervasive within the organization;

(viii) The kind of positions held by the persons involved in the violation;

(ix) Whether the organization took prompt, appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence;

(x) Whether the principals of the organization tolerated the offense;

(xi) Whether the person brought the violation to the attention of FCIC in a timely manner;

(xii) Whether the organization had effective standards of conduct and internal control systems in place at the time the violation occurred;

(xiii) Whether the organization has taken appropriate disciplinary action against the persons responsible for the violation;

(xiv) Whether the organization had adequate time to eliminate the violation that led to the cause for disqualification or civil fine;

(xv) Other factors that are appropriate to the circumstances of a particular case.

(3) The maximum term of disqualification and civil fines will be imposed against:

(i) Participants and other persons, except insurance providers who:

(A) Commit multiple violations in the same crop year or over several crop years; or

(B) Commit a single violation but such violation results in an overpayment of more than $100,000;

(ii) Approved insurance providers who:

(A) Commit a single violation resulting in an overpayment in excess of $100,000; and

(B) Commit multiple acts of violations resulting in an overpayment in excess of $500,000; and

(iii) Any participant or person who commits such other action or omission of so serious a nature that imposition of the maximum is appropriate.

(d) With respect to the imputing of conduct:

(1) The conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, in violation of § 400.454(b) may be imputed to that organization when such conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the violation is evidence of knowledge, approval or acquiescence.

(2) The conduct of any organization in violation of § 400.454(b) may be imputed to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, knows, or had reason to know of such conduct.

(3) The conduct of one organization in violation of § 400.454(b) may be imputed to another organization when such conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization

to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(4) If such conduct is imputed, the person to whom the conduct is imputed to may be subject to the same disqualification and civil fines as the person from whom the conduct is imputed. The factors contained in § 400.454(c)(2) will be taken into consideration with respect to the person to whom the conduct is being imputed.

(e) With respect to disqualifications:

(1) If a person is disqualified and that person is a:

(i) Producer, the producer will be precluded from receiving any monetary or non-monetary benefit provided under all of the following authorities, or their successors:

(A) The Act;

(B) The Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7333 *et seq.*) or any successor statute;

(C) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) or any successor statute;

(D) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*) or any successor statute;

(E) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*) or any successor statute;

(F) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) or any successor statute;

(G) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*) or any successor statute; and

(H) Any federal law that provides assistance to the producer of an agricultural commodity affected by a crop loss or decline in the prices of agricultural commodities.

(ii) Participant or other person, other than a producer, such participant or person will be precluded from participating in any way in the Federal crop insurance program and receiving any monetary or non-monetary benefit under the Act.

(2) With respect to the term of disqualification:

(i) The minimum term will be not less than one year from the effective date determined in § 400.454(a)(2);

(ii) The maximum term will be not more than five years from the effective date determined in § 400.454(a)(2); and

(iii) Disqualification is to be imposed only in one-year increments, up to the maximum five years.

(3) Once a disqualification becomes final, the name, address, and other identifying information of the participant or other person shall be entered into the Ineligible Tracking System (ITS) maintained by FCIC in accordance with 7 CFR part 400, subpart U, and this information along with a list of the programs that the person is disqualified from shall be promptly reported to the General Services Administration for listing in the System for Award Management (SAM) in accordance with 2 CFR part 417.

(i) It is a participant's responsibility to periodically review the ITS and EPLS to determine those participants and other persons who have been disqualified.

(ii) No participant may conduct business with a disqualified participant or other person if such business directly relates to the Federal crop insurance program, or if, through the business relationship, the disqualified participant or other person will derive any monetary or non-monetary benefit from a program administered under the Act.

(iii) If a participant or other person does business with a disqualified participant or other person, such participant may be subject to disqualification under this section.

(iv) Continuing to make payments to a disqualified person to fulfill pre-existing contractual or statutory obligations after the business relationship is terminated will not be considered as doing business with a disqualified person unless such payment is used as a means to circumvent the disqualification process.

(f) With respect to civil fines:

(1) A civil fine may be imposed for each violation.

(2) The amount of such civil fine shall not exceed the maximum amount specified in 7 CFR 3.91 (b)(7).

(3) Civil fines are debts owed to FCIC.

(i) A civil fine that is either imposed under with this subpart, or agreed to through an executed settlement agreement with FCIC, must be paid by the specified due date. If the due date is not specified in the order issued by the Administrative Law Judge or Judicial Officer, as applicable, or the settlement agreement, it shall be 30 days after the date the order was issued or the settlement agreement signed by FCIC.

(ii) Any civil fine imposed under this section is in addition to any debt that may be owed to FCIC or to any approved insurance provider, such an overpaid indemnity, underpaid premium, or other amounts owed.

(iii) FCIC, in its sole discretion, may reduce or otherwise settle any civil fine imposed under this section whenever it considers it appropriate or in the best interest of the USDA.

(4) The ineligibility procedures established in 7 CFR part 400, subpart U are not applicable to ineligibility determinations made under this section for nonpayment of civil fines.

(5) If a civil fine has been imposed and the person has not made timely payment for the total amount due, the person is ineligible to participate in the Federal crop insurance program until the amount due is paid in full.

(g) With respect to any person that has been disqualified or is otherwise ineligible due to non-payment of civil fines in accordance with § 400.454(f):

(1) With respect to producers:

(i) All existing insurance policies will automatically terminate as of the next termination date that occurs during the period of disqualification and while the civil fine remains unpaid;

(ii) No new policies can be purchased, and no current policies can be renewed, between the date that the producer is disqualified and the date that the disqualification ends; and

(iii) New application for insurance cannot be made for any agricultural commodity until the next sales closing date after the period of disqualification has ended and the civil fine is paid in full.

(2) With respect to all other persons:

(i) Such person may not be involved in any function related to the Federal crop insurance program during the disqualification or ineligibility period (including the sale, service, adjustment, data transmission or storage, reinsurance, etc. of any crop insurance policy) or receive any monetary or non-monetary benefit from a program administered under the Act.

(ii) If the person is an agent or insurance agency, the producers may cancel their policies sold and serviced by the disqualified agent and rewrite the policy with another agent. If the producer does not cancel and rewrite the policy with another agent, the approved insurance provider must assign the policies to a different agent or agency to service during the period of disqualification or ineligibility. Policies that have been assigned to another agent or agency by the insurance provider will revert back to the disqualified agent or agency after the period of disqualification has ended provided all civil fines are paid in full and the producer does not cancel and rewrite the policy with a different agent or agency;

(iii) If the person is an approved insurance provider, the approved insurance provider shall not sell, or authorize to be sold, any new policies or may not renew, or authorize the renewal of, existing policies, as determined by FCIC, during the period of disqualification or ineligibility. Nothing in this provision affects the approved insurance provider's responsibilities with respect to the service of existing policies.

(h) Imposition of disqualification or a civil fine under this section is in addition to any other administrative or legal remedies available under this section or other applicable law including, but not limited to, debarment and suspension.

[73 FR 76888, Dec. 18, 2008, as amended at 84 FR 52997, Oct. 4, 2019; 86 FR 67835, Nov. 30, 2021]

§ 400.455 Governmentwide debarment and suspension (procurement).

(a) For all transactions undertaken pursuant to the Federal Acquisition Regulations, FCIC will proceed under 48 CFR part 9, subpart 9.4 or 48 CFR part 409 when taking action to suspend or debar persons involved in such transactions, except that the authority

to suspend or debar under these provisions will be reserved to the Manager of FCIC, or the Manager's designee.

(b) Any person suspended or debarred under the provisions of 48 CFR part 9, subpart 9.4 or 48 CFR part 409 will not be eligible to contract with FCIC or the Risk Management Agency and will not be eligible to participate in or receive any benefit from any program under the Act during the period of ineligibility. This includes, but is not limited to, being employed by or contracting with any approved insurance provider that sells, services, or adjusts policies offered under the authority of the Act. FCIC may waive this provision if it is satisfied that the person who employs the suspended or debarred person has taken sufficient action to ensure that the suspended or debarred person will not be involved, in any way, with FCIC or receive any benefit from any program under the Act.

[73 FR 76890, Dec. 18, 2008]

§ 400.456 Governmentwide debarment and suspension (nonprocurement).

(a) FCIC will proceed under 2 CFR parts 180 and 417 when taking action to suspend or debar persons involved in non-procurement transactions.

(b) Any person suspended or debarred under the provisions of 2 CFR parts 180 and 417, will not be eligible to contract with FCIC or the Risk Management Agency and will not be eligible to participate in or receive any benefit from any program under the Act during the period of ineligibility. This includes, but is not limited to, being employed by or contracting with any approved insurance provider, or its contractors, that sell, service, or adjust policies either insured or reinsured by FCIC. FCIC may waive this provision if it is satisfied that the approved insurance provider or contractors have taken sufficient action to ensure that the suspended or debarred person will not be involved in any way with the Federal crop insurance program or receive any benefit from any program under the Act.

(c) The Manager, FCIC, shall be the debarring and suspending official for all debarment or suspension proceedings undertaken by FCIC under the provisions of 2 CFR parts 180 and 417.

[73 FR 76890, Dec. 18, 2008, as amended at 83 FR 25361, June 1, 2018]

§ 400.457 Program Fraud Civil Remedies Act.

(a) This section is in accordance with the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–U.S.C. 3831) which provides for civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents.

(b) Proceedings under this section will be in accordance with subpart L of 7 CFR part 1, ''Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986.''

(c) The Director, Appeals and Litigation Staff, FCIC, or the Director's designee, is authorized to serve as Agency Fraud Claims Officer for the purpose of implementing the requirements of this section.

(d) Civil penalties and assessments imposed pursuant to this section are in addition to any other remedies that may be prescribed by law or imposed under this subpart.

[58 FR 53110, Oct. 14, 1993, as amended at 73 FR 76891, Dec. 18, 2008]

§ 400.458 Scheme or device.

(a) In addition to the penalties specified in this part, if a person has knowingly adopted a material scheme or device to obtain catastrophic risk protection, other plans of insurance coverage, or noninsured assistance benefits to which the person is not entitled, has evaded the provisions of the Federal Crop Insurance Act, or has acted with the purpose of evading the provisions of the Federal Crop Insurance Act, the person shall be ineligible to receive any and all benefits applicable to any crop year for which the scheme or device was adopted.

(b) A scheme or device may include, but is not limited to, creating or using another entity, or concealing or providing false information with respect

to your interest in the policyholder, to evade:

(1) Suspension, debarment, or disqualification from participation in the program; or

(2) Ineligibility for a delinquent debt owed to FCIC or the insurance company.

[60 FR 37324, July 20, 1995, as amended at 73 FR 76891, Dec. 18, 2008]

§§ 400.459–400.500 [Reserved]

Subpart S [Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42975, Aug. 20, 1996, unless otherwise noted.

§ 400.650 Purpose.

The Reform Act requires FCIC to implement a crop insurance program that offers several levels of insurance coverage for producers. These levels of protection include catastrophic risk protection, and additional coverage insurance. This subpart provides notice of the availability of these crop insurance options and establishes provisions and requirements for implementation of the insurance provisions of the Reform Act.

[61 FR 42975, Aug. 20, 1996, as amended at 68 FR 37721, June 25, 2003]

§ 400.651 Definitions.

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

Additional coverage. A level of coverage greater than catastrophic risk protection.

Administrative fee. An amount the producer must pay for catastrophic, and additional coverage each crop year on a per crop and county basis as specified in the Basic Provisions or the Catastrophic Risk Protection Endorsement.

Approved insurance provider. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance coverage to producers participating in the Federal crop insurance program.

Approved yield. The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

Catastrophic risk protection. The minimum level of coverage offered by FCIC which is required before a person may qualify for certain other USDA program benefits unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop. For the 1995 through 1998 crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC. For the 1999 and subsequent crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Crop of economic significance. A crop that has either contributed in the previous crop year, or is expected to contribute in the current crop year, ten percent (10%) or more of the total expected value of the producer's share of all crops grown in the county. However, a crop will not be considered a crop of economic significance if the expected liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required for the crop.

Expected market price. (price election) The price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Insurable interest. The value of the producer's interest in the crop that is at risk from an insurable cause of loss during the insurance period. The maximum indemnity payable to the producer may not exceed the indemnity due on the producer's insurable interest at the time of loss.

Intended crop. A crop stated on the application as submitted on or before the sales closing date for the crop which the producer intended to plant in the crop year for which application is made.

Linkage requirement. The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with § 400.655, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a state or a political subdivision or agency of a state.

Reform Act. The Federal Crop Insurance Reform Act of 1994, Public Law 103–354.

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

Substitute crop. An alternative crop whose sales closing date has passed and that is planted on acreage that is prevented from being planted to an intended crop or where an intended crop is planted and fails.

Zero acreage report. An acreage report filed by the producer that certifies that the producer does not have a share in the crop for that crop year.

[61 FR 42975, Aug. 20, 1996, as amended at 63 FR 40634, July 30, 1998; 64 FR 40742, July 28, 1999; 68 FR 37721, June 25, 2003]

§ 400.652 Insurance availability.

(a) If sufficient actuarial data are available, FCIC will offer catastrophic risk protection, and additional coverage plans of insurance to indemnify persons for FCIC insured or reinsured crop loss due to loss of yield or prevented planting, if the crop loss or prevented planting is due to an insured cause of loss specified in the applicable crop insurance policy.

(b) Catastrophic risk protection coverage may be offered through approved insurance providers and through local offices of the Farm Service Agency specified by the Secretary. Additional coverage will only be offered through approved insurance providers unless there is not a sufficient number of approved insurance providers that offer such insurance within a service area.

(c) A person must obtain at least catastrophic risk protection for the crop on all insurable acreage in the county in which the person has a share on or before the sales closing date designated by FCIC for the crop in the county in order to satisfy the linkage requirements unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(d) For additional coverage, in areas where insurance is not available for a particular agricultural commodity that is insurable elsewhere, FCIC may enter into a written agreement with a person to insure the commodity, provided that the person has actuarially sound data relating to the production of the commodity that is acceptable to FCIC and that such written agreement is specifically allowed by the crop insurance regulations applicable to the crop.

(e) Failure to comply with all provisions of the policy constitutes a breach

of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If a producer breaches the insurance contract, the execution of a waiver of eligibility for emergency crop loss assistance will not be effective for the crop year in which the breech occurred.

[61 FR 42975, Aug. 20, 1996, as amended at 68 FR 37721, June 25, 2003]

§ 400.653 Determining crops of economic significance.

To be eligible for certain other program benefits under § 400.655 the following conditions will apply with respect to crops of economic significance if the producer does not execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(a) If a producer planted a crop of economic significance in the preceding crop year, and does not intend to plant the same crop in the present crop year, the producer does not have to obtain insurance coverage or execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop in the present crop year to comply with the linkage requirements. However, if the producer later decides to plant that crop, the producer will be unable to obtain insurance after the sales closing date and must execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for benefits as specified in § 400.655. Failure to execute such a waiver will require the producer to refund any benefits already received under a program specified in § 400.655.

(b) The producer is initially responsible to determine the crops of economic significance in the county. The insurance provider may assist the producer in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop times the producer's share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer (in the county); and

(3) Divide the value of the specific crop by the result of paragraph (b)(2).

(c) The producer may use the type of price, such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that the producer uses the same type of price for all crops in the county.

(d) The producer may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

[61 FR 42975, Aug. 20, 1996, as amended at 64 FR 40742, July 28, 1999]

§ 400.654 Application and acreage report.

(a) To participate in catastrophic risk protection, or additional coverage plans of insurance, a producer must submit an application for insurance on or before the applicable sales closing date.

(b) In order to remain eligible for certain farm programs, as specified in § 400.655, a producer must obtain at least catastrophic risk protection on all crops of economic significance, if catastrophic risk protection is available in the county, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(c) Notwithstanding the requirements of § 400.654(a) that applications for insurance be submitted on or before the applicable sales closing date, FCIC may permit a producer to insure crops other than those specified on the application under the following conditions:

(1) The producer must be unable to plant the intended crop or it is not practical to replant a failed crop before the final planting date. FCIC will take into consideration marketing windows when determining whether it was not practical to replant.

(2) Conditions must exist to warrant allowing a producer to insure crops other than the intended crop.

(3) The producer must submit an application for the substitute crop on or before the acreage reporting date for the substitute crop and pay any applicable administrative fee. A producer

may not substitute a crop that the producer planted in the preceding crop year unless that crop was listed on a timely filed application for the current crop year.

(4) If the producer plants a substitute crop that is a crop of economic significance, the producer must obtain CAT coverage, if available, to comply with the linkage requirements specified in § 400.655. The producer may not substitute a crop under this provision if the producer has signed or intends to sign a waiver for emergency crop loss assistance for the crop year.

(5) The substitute crop must be planted on or before the final planting date or within the late planting period, if applicable, for the substitute crop.

(6) Under no circumstances may a producer submit an application for additional coverage after the sales closing date for the substitute crop.

(d) For all coverages, including catastrophic risk protection, and additional coverages, the producer must file a signed acreage report on or before the acreage reporting date. Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or other legally sufficient document authorizing such person to sign.

(e) Under catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf an operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

[61 FR 42975, Aug. 20, 1996, as amended at 64 FR 40742, July 28, 1999; 68 FR 37721, June 25, 2003]

§ 400.655 Eligibility for other program benefits.

The producer must obtain at least catastrophic coverage for each crop of economic significance in the county in which the producer has an insurable share, if insurance is available in the county for the crop, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop, to be eligible for:

(a) Benefits under the Agricultural Market Transition Act;

(b) Loans or any other USDA provided farm credit, including: guaranteed and direct farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(c) Benefits under the Conservation Reserve Program derived from any new or amended application or contract executed after October 13, 1994.

[61 FR 42975, Aug. 20, 1996. Redesignated at 63 FR 40634, July 30, 1998]

§§ 400.656–400.657 [Reserved]

Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

SOURCE: 79 FR 2079, Jan. 13, 2014, unless otherwise noted.

§ 400.675 Purpose.

This subpart prescribes conditions under which a person may be determined to be ineligible to participate in any program administered under the authority of the Federal Crop Insurance Act. This subpart also establishes the criteria for regaining eligibility.

§ 400.676 [Reserved]

§ 400.677 Definitions.

As used in this subpart:

Act means the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Applicant means a person who has submitted an application for crop insurance coverage under the Act.

Authorized person means any current or past officer, employee, elected official, managing general agent, agent, or contractor of an insurance provider, FCIC, or any other government agency whose duties require access to the ITS to administer the Act.

Controlled substance has the same meaning provided in 7 CFR 3021.610.

Conviction means a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of no contest.

Date of delinquency means: The termination date specified in the applicable policy for administrative fees and premiums owed for insurance issued under the authority of the Act, and any interest and penalties on those amounts, if applicable; and the due date specified in the notice to the person of the amount due for any other amounts due the insurance provider or FCIC for insurance issued under the authority of the Act. Other amounts due include, but are not limited to, indemnities, prevented planting payments, or replant payments found not to have been earned or that were overpaid, premium billed with a due date after the termination date for the crop year in which premium is earned, and any interest, administrative fees, and penalties on such amounts, if applicable. Payments postmarked or received before the date of delinquency by the insurance provider or its agent for debts owed to the insurance provider, or by FCIC for debts owed to FCIC, are not delinquent.

Debt means an amount of money that has been determined to be owed by any person to FCIC or an insurance provider, excluding money owed to an insurance provider's agent, under any program administered under the Act. The debt may have arisen from nonpayment of interest, penalties, premium, or administrative fee; overpayment of indemnity, prevented planting or replant payment; cost of collection; or other causes. A debt does not include debts discharged in bankruptcy.

Debtor means a person who owes a debt and that debt is delinquent.

Delinquent debt means a debt that is not satisfied on or before the date of delinquency. To avoid delinquency or ineligibility due to a delinquent debt, a debtor may enter into a written payment agreement acceptable to the insurance provider or FCIC to pay any such debt as long as all payments are made by the due dates specified in such written payment agreement. A delinquent debt does not include debts discharged in bankruptcy or any debt to an insurance provider's agent.

Employer Identification Number (EIN) means a Tax Identification Number issued by the Internal Revenue Service used to identify a business entity, and may also be referred to as a Federal Tax Identification Number.

Excluded Parties List System (EPLS) means a list maintained by the General Services Administration that provides a source of current information about persons who are excluded or disqualified from covered transactions, including the date the person was determined ineligible and the date the period of ineligibility ends.

Federal Crop Insurance Corporation (FCIC) means a wholly owned government corporation within the USDA.

Ineligible person means a person who is denied participation in any program administered under the authority of the Act.

Ineligible Tracking System (ITS) means an electronic system to identify persons who are ineligible to participate in any program pursuant to this subpart.

Insurance Provider means a legal entity which has entered into a Standard Reinsurance Agreement, Livestock Price Reinsurance Agreement, or other reinsurance agreement, as applicable, with FCIC for the applicable reinsurance year.

Livestock Price Reinsurance Agreement means a cooperative financial assistance agreement between FCIC and an insurance provider to deliver eligible livestock price insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible livestock price insurance policies sold.

Meaningful opportunity to contest means the opportunity for the insured to resolve disagreements with a decision by the insurance provider through requesting a review of the decision by the insurance provider, mediation, arbitration, or judicial review, as applicable.

Person means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or political

subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Qualified alien has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).

Reinstatement means that the policy will retain the same plan of insurance, coverage levels, price percentages, endorsements and options the person had prior to termination, provided the person continues to meet all eligibility requirements, comply with the terms of the policy, and there is no evidence of misrepresentation or fraud.

Social Security Number (SSN) means an individual's Social Security Number as issued under the authority of the Social Security Act.

Standard Reinsurance Agreement (SRA) means a cooperative financial assistance agreement between FCIC and an insurance provider to deliver eligible crop insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible crop insurance policies sold.

Substantial beneficial interest has the same meaning as contained in the applicable policy.

USDA means the United States Department of Agriculture.

United States non-citizen national has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. § 1408).

Written payment agreement means a written document between a debtor and the insurance provider, or FCIC, that is signed and dated by all applicable parties to satisfy financial obligations of the debtor with scheduled installment payments under conditions that modify the terms of the original debt in accordance with § 400.681.

[79 FR 2079, Jan. 13, 2014, as amended at 81 FR 42472, June 30, 2016]

§ 400.678 Applicability.

This subpart applies to any program administered under the authority of the Act, including but not limited to:

(a) The catastrophic risk protection plan of insurance;

(b) The additional coverage plans of insurance as authorized under section 508(c) of the Act;

(c) Private insurance products authorized under section 508(h) or 523(d) of the Act and reinsured by FCIC; and

(d) Persons entering contracts or cooperative agreements under sections 506(l), 522(c), 522(d), or 524(a) of the Act.

§ 400.679 Criteria for ineligibility.

Except as otherwise provided, a person is ineligible to participate in any program administered under the authority of the Act if the person meets one or more of the following criteria:

(a) Has a delinquent debt:

(1) The existence and delinquency of the debt must be verifiable.

(2) The person has to be provided a meaningful opportunity to contest the debt.

(3) If the person contests the debt, such action does not delay or preclude:

(i) Effect of the determination of ineligibility;

(ii) Determination or notification of ineligibility in accordance with § 400.682;

(iii) Termination of the applicable crop insurance policies; or

(iv) Ineligible persons being reported in accordance with § 400.682 or the ineligible persons being recorded in the ITS.

(4) If the person is determined not to owe the debt, eligibility is reinstated retroactive to the date of the determination of ineligibility, any applicable policies will be reinstated, and any applicable indemnity, prevented planting or replant payment earned may be paid provided the person has continued to comply with the terms of the policy;

(b) Is an individual and has been convicted of a controlled substance violation according to § 400.680;

(c) Has been disqualified under section 515(h) of the Act.;

(d) Is an individual and is not a United States citizen, United States non-citizen national, or a qualified alien. Such individuals may not be recorded in the ITS; however, such individuals are ineligible under the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1611;

(e) Has been suspended or debarred for committing a crime specified in 2

CFR part 180 or 2 CFR part 417, or 7 U.S.C. 2209j (Ineligibility determinations will not be stayed pending review. However, reversal of the determination of ineligibility will reinstate eligibility retroactive to the date of the determination of ineligibility, and any applicable policies will be reinstated);

(f) Has been debarred for knowingly doing business with a person debarred or suspended under 2 CFR part 180 or 2 CFR part 417 or 7 U.S.C. 2209j; or

(g) Has requested the Administrator, Risk Management Agency, for consideration to reinstate their eligibility in accordance with the applicable policy provisions and such request has been denied.

[79 FR 2079, Jan. 13, 2014, as amended at 79 FR 37161, July 1, 2014; 81 FR 42472, June 30, 2016]

§ 400.680 Controlled substance.

(a) This section implements section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) and Chapter 13 of Title 21 requiring the denial of Federal Benefits, including crop insurance, to individuals convicted of controlled substance violations in accordance with paragraphs (b) and (c) of this section.

(b) Notwithstanding any other provision of law, an individual will be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the individual is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year.

(c) Notwithstanding any other provision of law, an individual may, as determined by the court, be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the person is convicted under Federal or State law of possession of or trafficking in a controlled substance.

§ 400.681 Written payment agreement.

(a) Written payment agreements shall:

(1) Require scheduled installment payments that will allow for full repayment of the debt within the time frame allotted in paragraph (a)(2) of this section;

(2) Not exceed two years in duration; and

(3) Not be modified, replaced, or consolidated after it has been executed in accordance with paragraph (b) of this section.

(b) To avoid being determined to be ineligible through the execution of a written payment agreement:

(1) For a debt arising from any unpaid premium, administrative fees, or catastrophic risk protection fees:

(i) Only one written payment agreement is permitted per termination date. A written payment agreement may cover multiple crops provided they all have the same termination date; and

(ii) The written payment agreement must be signed by both parties, the debtor and the insurance provider or FCIC, as applicable, on or before the termination date specified in the applicable policy to prevent an ineligible determination for a delinquent debt.

(2) For all other debts, the written payment agreement must be signed by both parties, the debtor and the insurance provider or FCIC, as applicable, on or before the due date specified in the notice to the person of the amount due to prevent an ineligible determination for a delinquent debt.

§ 400.682 Determination and notification.

(a) The insurance provider must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt. Once a debtor has filed bankruptcy and the insurance provider is formally informed of such through the court or the debtor, no request for payment of the debt can be made, unless approved in writing by the Office of General Counsel. The debtor may be notified of the amount of debt and ineligibility for crop insurance.

(1) The insurance provider shall evaluate the person's response, if any, and determine if the debt is owed and delinquent.

(2) Upon request by FCIC, the insurance provider shall submit all documentation related to the debt to FCIC.

(b) If an insurance provider or any other person has evidence that a person meets criteria set forth in § 400.679(a), (b), (c), (e) or (f), they must immediately notify FCIC.

(c) After the insurance provider determines a person has met one or more of the criteria in § 400.679 and notifies FCIC, FCIC will issue and mail a Notice of Ineligibility to the person's last known address and to the insurance provider. Notices sent to such address will be conclusively presumed to have been received by that person.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the right to appeal the determination to be placed on the ITS in accordance with paragraph (e) of this section.

(e) Within 30 days of receiving the Notice of Ineligibility, the ineligible person may appeal FCIC's determination to be placed on ITS to the National Appeals Division in accordance with 7 CFR part 11. The existence and amount of the debt is determined by the insurance provider, not FCIC; therefore, those determinations are not appealable to the National Appeals Division.

(f) If the person appeals FCIC's determination to be placed on ITS to the National Appeals Division, the insurance provider will be notified and provided with an opportunity to participate in the proceeding, if permitted by 7 CFR part 11.

(g) No later than 60 days after the termination date, a missed payment date of a previously executed written payment agreement, or in the case of an overpaid indemnity or any amount that became due after the termination date, the due date specified in a notice to the person of an amount due, as applicable, such ineligible person may request consideration for reinstatement from the Administrator, Risk Management Agency, in accordance with section 2 of the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8).

[79 FR 2079, Jan. 13, 2014, as amended at 79 FR 37161, July 1, 2014; 81 FR 42472, June 30, 2016]

§ 400.683 Period of ineligibility.

(a) The beginning of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, beginning on the date stated in the applicable policy;

(2) For ineligibility as a result of a conviction under Federal or State law of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, the beginning of the crop year in which the individual is convicted; or

(ii) Possession of or trafficking in a controlled substance, the beginning of the crop year in which the individual is convicted, unless determined otherwise by the court.

(3) For ineligibility as a result of a disqualification, debarment, or suspension under 515(h) of the Act, 2 CFR part 180, 2 CFR part 417, the date the person was disqualified, debarred, or suspended by debarring official, Administrative Law Judge, or such other person authorized to take such action; and

(4) For debarment under 7 U.S.C. 2209j, the beginning of the crop year in which the person is convicted.

(b) The duration of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, until the debt has been paid in full discharged in bankruptcy, or the person has executed a written payment agreement.

(2) For ineligibility as a result of a conviction under Federal or State law of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, four crop years succeeding the crop year in which the person was convicted; and

(ii) Possession of a controlled substance or trafficking in a controlled substance, in addition to the time of ineligibility imposed in paragraph (b)(2)(i) of this section, until the period of time imposed by a court has expired.

(3) For ineligibility as a result of a disqualification, debarment, or suspension under section 515(h) of the Act, or 2 CFR part 180 and 2 CFR part 417 until the period of time of disqualification, debarment, or suspension, as applicable, has expired.

(4) For ineligibility as a result of not being a United States citizen, United States non-citizen national, or a qualified alien, until the date such individual becomes a United States citizen, United States non-citizen national, or a qualified alien.

(5) For ineligibility as a result of a conviction falling under 7 U.S.C. 2209j, permanent unless otherwise determined by the Secretary of Agriculture for a period of not less than 10 years.

§ 400.684 Effect of ineligibility.

(a) The effect of ineligibility depends on the basis for the determination.

(1) Persons who are ineligible as a result of a delinquent debt are ineligible for crop insurance authorized under the Act for a certain time period in accordance with § 400.683. Filing for bankruptcy does not make the person eligible for crop insurance or preclude the ineligible person from being placed on the ITS in accordance with § 400.684(b)(1).

(2) Persons who are ineligible as a result of a suspension or debarment are precluded from:

(i) Participating in all programs authorized under the Act, including but not limited to:

(A) Obtaining crop insurance;

(B) Acting as an agent, loss adjuster, insurance provider, or affiliate, as defined in the Standard Reinsurance Agreement or Livestock Price Reinsurance Agreement, or successor agreements;

(C) Entering into any contracts with FCIC under sections 506(l) and section 522(c) of the Act; and

(D) Entering into any cooperative agreements or partnerships under sections 506(l), 522(d) and 524(a) of the Act; and

(ii) Participating in any other covered transaction as specified in 2 CFR part 180 and 2 CFR part 417.

(3) Persons who are ineligible because of disqualification under section 515(h) of the Act are precluded from participating in all programs authorized under the Act indicated in paragraph (a)(2)(i) of this section, and those listed in section 515(h)(3)(B) and (C) of the Act.

(4) Individuals who are ineligible because of a conviction of a violation of the controlled substance provisions or are not a United States citizen, United States non-citizen national, or a qualified alien are precluded from participating in any program authorized under the Act indicated in paragraph (a)(2)(i) of this section.

(5) Persons who are ineligible as a result of a conviction falling under 7 U.S.C. 2209j, are precluded from participating in any program offered by USDA.

(b) Once a person has been determined to be ineligible:

(1) The ineligible person will be placed on the ITS and may be reported to other government agencies, unless the ineligible person is an individual and the sole reason for ineligibility is because the individual is not a United States citizen, United States non-citizen national, or qualified alien.

(2) If the ineligible person is an individual:

(i) All crop insurance policies in which the ineligible person is the sole insured will terminate if the person is ineligible for any reason other than a controlled substance violation, or be void if the person is ineligible due to conviction of a controlled substance violation according to § 400.680, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(ii) The ineligible person must be reported on all policies in which the ineligible person has a substantial beneficial interest in the applicant or insured, and the insured share under such policy will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the ineligible person remains ineligible in accordance with § 400.683.

(3) If the ineligible person is a general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and is ineligible as a result of:

(i) A delinquent debt:

(A) All partners or members of the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will be ineligible;

(B) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and all partners and members of the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683;

(C) All crop insurance policies in which the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture is the sole insured will terminate;

(D) All crop insurance policies in which the ineligible partner or member is the sole insured will terminate; and

(E) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture and all ineligible partners or members must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture or the ineligible partners' or members' substantial beneficial interest in the applicant or insured for as long as they remain ineligible in accordance with § 400.683; or

(ii) Meeting the criteria specified in § 400.679(c), (e) or (f):

(A) All crop insurance policies in which the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture is the sole insured will terminate, and the ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(B) The ineligible general partnership, limited partnership, limited liability partnership, limited liability company, or joint venture must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible general partnership's, limited partnership's, limited liability partnership's, limited liability company's, or joint venture's substantial beneficial interest in the applicant or insured for as long as it remains ineligible in accordance with § 400.683.

(4) If the ineligible person is an association, estate, trust, corporation, or other similar entity, and is ineligible as a result of:

(i) A delinquent debt:

(A) Any partners, members, shareholders, administrators, executors, trustees, or grantors may be individually ineligible if the delinquent debt occurred as a result of their actions or inactions, as determined by the insurance provider or FCIC;

(B) All policies in which the ineligible association, estate, trust, corporation, or other similar entity is the sole insured will terminate, and it will remain ineligible for crop insurance for the applicable period specified in § 400.683.

(C) The ineligible association, estate, trust, corporation, or other similar entity must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible entity's substantial beneficial interest in the applicant or insured for as long as the person remains ineligible in accordance with § 400.683;

(D) All policies in which a partner, member, shareholder, administrator, executor, trustee, or grantor determined ineligible according to § 400.684(b)(4)(i)(A) is the sole insured will terminate, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(E) The ineligible partner, member, shareholder, administrator, executor, trustee, or grantor must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as

long as the person remains ineligible in accordance with § 400.683; or

(ii) Meeting the criteria specified in § 400.679(c), (e) or (f):

(A) All crop insurance policies in which the ineligible association, estate, trust, corporation, or other similar entity is the sole insured will terminate, and the ineligible association, estate, trust, corporation, or other similar entity will remain ineligible for crop insurance for the applicable period specified in § 400.683; and

(B) The ineligible association, estate, trust, corporation, or other similar entity must be reported on any other policy in which it has a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible association, estate, trust, corporation, or other similar entity's substantial beneficial interest in the applicant or insured for as long as it remains ineligible in accordance with § 400.683.

(5) If an applicant or insured is a corporation, partnership, joint venture, trust, corporation, limited liability company, limited liability partnership, limited partnership, or other similar entity that was created to conceal the interest of an ineligible person or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or insured, the policy will be void.

(6) All crop insurance policies in which the ineligible person is insured as landlord/tenant will terminate on the next termination date. The other person(s) on such policy may submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop, if they are otherwise eligible for such coverage.

(c) The spouse and minor child of an individual insured is considered to be the same as the individual for purposes of this subpart and subject to the same ineligibility, except when:

(1) The individual is ineligible due to a conviction of a controlled substance violation in accordance with § 400.680;

(2) The individual is ineligible as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA;

(3) The individual is ineligible because they are not a United States citizen, United States non-citizen national, or a qualified alien;

(4) The individual is ineligible as a result of a disqualification, debarment, or suspension;

(5) The spouse can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws; or

(6) The minor child has a separate legal interest in such person or is engaged in a separate farming operation from the individual.

(d) Notwithstanding § 400.684(f), when a policy is voided in accordance with this subpart:

(1) No indemnities or payments will be paid for the voided policy;

(2) Any indemnities or payments already made for the voided policy will be declared overpayments and must be repaid in full; and

(3) No premiums will be due and any premium paid will be refunded except when the policy is void due to a conviction of a controlled substance violation according to § 400.680, in which case the insured will still be required to pay 20 percent of the premium the insured would otherwise be required to pay to offset costs in the servicing of the policy.

(e) When the insured share of a policy is reduced in accordance with this subpart:

(1) Any indemnities or payments commensurate with the share reduced already made will be declared overpayments and must be repaid in full; and

(2) Any premiums paid by the insured commensurate with the share reduced will be refunded.

(f) Any insurance written by an insurance provider to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance by FCIC. All premium subsidies, expenses, or other payments made by FCIC for insurance written for any person who is ineligible under the provisions of this subpart must be immediately refunded to FCIC. However, with regard to policies that would be void due to a conviction of a controlled substance violation according to

§ 400.680, if the insurance provider follows the procedures of FCIC and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or insurance provider had knowledge of the facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

§ 400.685 Criteria for regaining eligibility.

After the period of ineligibility as specified in § 400.683 has ended, the ineligible person is eligible to participate in programs authorized under the Act, provided the person meets all eligibility requirements.

(a) After a person regains eligibility for crop insurance when their policy was terminated or voided, the person must submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop. If the date of regaining eligibility occurs after the applicable sales closing date for the crop, the person may not participate until the following year unless that crop policy allows for applications to be accepted after the sales closing date.

(b) If a person who was determined ineligible according to this subpart is subsequently determined to be an eligible person for crop insurance through reinstatement, mediation, arbitration, appeal, or judicial review, such person's policies will be reinstated effective at the beginning of the crop year for which the producer was determined ineligible, and such person will be entitled to all applicable benefits under such policies, provided the person meets all eligibility requirements and complies with the terms of the policy.

[79 FR 2079, Jan. 13, 2014, as amended at 79 FR 37161, July 1, 2014]

§ 400.686 Administration and maintenance.

(a) Ineligible producer data will be maintained in a system of records established and maintained by the Risk Management Agency in accordance with the Privacy Act (5 U.S.C. 552a).

(1) The ITS contains identifying information of the ineligible person, including but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period of ineligibility.

(2) Information in the ITS may be used by an authorized person. The information may be furnished to other users as may be appropriate or required by law or regulation, including but not limited to, FCIC contracted agencies, other government agencies, credit reporting agencies, and collection agencies, and in response to judicial orders in the course of litigation. The individual information may be made available in the form of various reports and notices.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement or regaining of eligibility will be maintained by FCIC, or its contractors, insurance providers, Federal agencies, and State agencies. This documentation will be maintained and retained consistent with the electronic information contained within the ITS.

(b) Information may be entered into the ITS by FCIC employees or contractors, or insurance providers.

(c) All persons applying for crop insurance policies or with an existing policy, issued or reinsured by FCIC, will be subject to validation of their eligibility status against the ITS. Applications, transfers, or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

(d) Insurance providers, partners, cooperators, and contractors must check to ensure that the persons with whom they are doing business are eligible to participate in the programs authorized under the Act. Insurance providers, partners, cooperators, and contractors must check the ITS but the ITS may not include all persons ineligible to receive government benefits, such as persons debarred, disqualified or suspended from receiving government benefits by an agency other than FCIC. Insurance providers, partners, cooperators, and contractors must check other sources that contain ineligible persons, including but not limited to EPLS, or successor list, provide data on persons

ineligible to participate in programs authorized under the Act.

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

SOURCE: 81 FR 53673, Aug. 12, 2016, unless otherwise noted.

§ 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 508(h) 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.

508(h) 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 § 400.705.508(h) submissions as referenced in this subpart do not include concept proposals, index-based weather plans of insurance, or non-reinsured supplemental policies.

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 an 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. A term used to describe premium rates when such rates are 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. Upon request of the submitter the Board may at its sole discretion provide up to an additional 25 percent advance payment of the estimated research and development costs after the applicant begins research and development activities if:

(1) The concept proposal will provide coverage for a region or crop that is underserved, including specialty crops; and

(2) The submitter is making satisfactory progress towards developing a viable and marketable 508(h) submission.

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 508(h) 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, who must include the AIP that has committed to be involved in the development and submission process and to market, sell and service the policy or plan of insurance.

Approved insurance provider (AIP). A legal entity, including the Company, which 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 508(h) 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.

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

Concept proposal. A written proposal for a prospective 508(h) submission, submitted under section 522(b) of the Act for advance payment of research and development costs, and containing all the information required in this regulation and the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs, which can be found on the RMA Web site at *www.rma.usda.gov*, such 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.

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 508(h) submission.

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 meet the criteria for underwriters or actuaries that are selected by the Board to review a concept proposal, 508(h) 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* 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 508(h) 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 508(h) submission will be considered maintenance for the similar approved 508(h) submission if submitted by the same person.

Maintenance costs. Specific expenses associated with the maintenance of an approved 508(h) submission as authorized by § 400.712.

Maintenance period. A period of time that begins on the date the Board approves the 508(h) submission and ends on the date that is not more than four reinsurance years after such approval.

Manager. The Manager of FCIC.

Marketable. A determination by the Board, based on a detailed, written marketability assessment provided in accordance with § 400.705(e), that demonstrates 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.

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 508(h) 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 eligible crop insurance contracts. 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.

Submitter. Same meaning as applicant.

Sufficient quality. A determination made by RMA and the Board that the material presented is clearly written in plain language in accordance with the Plain Writing Act of 2010 (5 U.S.C. 301), unambiguous, and is supported by detailed analysis and data so that expert reviewers, RMA and the Board can understand, comprehend and make calculations, draw substantiated conclusions or results to determine whether the 508(h) submission, concept proposal, or index-based weather plan of insurance meets the standards required for approval.

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 only covers the expected maintenance costs to be incurred by the submitter.

Viable. A determination by the Board that the concept proposal, index-based weather plan of insurance, or 508(h) submission is or can be developed into a policy or plan of insurance that can be implemented by the delivery system with actuarially appropriate rates in accordance with Board procedures.

§ 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 508(h) 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 508(h) 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 508(h) submission or an index-based weather plan of insurance, information provided with the 508(h) 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 508(h) submission or an index-based weather plan of insurance has been approved, the names of the expert reviewers may be redacted to prevent any undue pressure on the expert reviewers.

(c) Any 508(h) 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) (no information related to such 508(h) submission, concept proposal, or index-based weather plan of insurance will be released by FCIC unless authorized in writing by the applicant).

(d) All 508(h) 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 508(h) 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 508(h) submission, concept proposal, or index-based weather plan of insurance must be provided as an electronic file to FCIC in Microsoft Office compatible format, sent to either the address in paragraph (d)(1) or (d)(2) of this section by the due date in paragraph (a) of this section. The electronic file must contain a document with a detailed index that, in sequential order, references the location of the required information that may either be contained within the document or in a separate file. The detailed index must clearly identify each required section and include the page number if the information is contained in the document or file name if the information is contained in a separate file; and

(c) Any 508(h) 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 508(h) submission on January 10, it will be considered to have been received on April 1.

(d) Any 508(h) submission, concept proposal, or index-based weather plan of insurance must be provided to one of the following addresses, but not both:

(1) By email to the Deputy Administrator for Product Management (or successor) at *DeputyAdministrator@rma.usda.gov;* or

(2) By mail on a removable storage device such as a compact disk or Universal Serial Bus (USB) drive, sent to the Deputy Administrator for Product Management (or any successor position), USDA/Risk Management Agency, 2312 East Bannister Road, Kansas City, MO 64131–3011.

(e) In addition to the requirements in paragraph (a) of this section, a 508(h) 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 is ready to be made available for sale and the earliest sales closing date, unless this requirement is expressly 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 508(h) submission approved by the Board after consideration of the analysis provided by the applicant AIP of the impact of the proposed implementation date on the delivery system.

§ 400.704 Covered by this subpart.

(a) An applicant may submit to the Board, in accordance with § 400.705, a 508(h) 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 508(h) 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 508(h) 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 Costs, which can be found on the RMA Web site at *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*.

(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 508(h) submissions, concept proposals, and index-based weather plans of insurance.

(a) A complete 508(h) submission must contain the following material, as applicable, submitted in accordance with § 400.703(b). A complete 508(h) submission must be a viable and marketable insurance product that protects the interests of producers, is actuarially appropriate and ensures program integrity. The material must contain adequate information as required in this section, that is presented clearly to ensure the Board and RMA can determine whether RMA and the delivery system have the resources to implement, administer, and deliver the 508(h) submission effectively and efficiently. Calculations, procedures and methodologies must be consistent throughout the submission and appropriate for the commodity and the risks covered.

(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 508(h) submission (see § 400.704) and a notation of whether or not the 508(h) 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 508(h) 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 508(h) submission;

(5) The crop or insurance year and reinsurance year in which the 508(h) submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date, if applicable, or the sales window or the earliest date the applicant expects to release the product to the public;

(7) The proposed states and counties where the plan of insurance is proposed to be offered;

(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;

(10) A statement of whether the 508(h) 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 508(h) submission will not be filed for review; and

(11) A statement of whether the submitter wants the 508(h) submission to remain confidential.

(c) The second section must contain the benefits of the plan, including, as applicable, a summary that includes:

(1) How the 508(h) submission offers coverage or other benefits not currently available from existing public or private programs;

(2) How the 508(h) 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

(3) A detailed description of the coverage provided by the 508(h) submission and its applicability to all producers, including those who are considered small, beginning and limited resource or other specific aspects designated by FCIC for review.

(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 508(h) 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 508(h) submission such as applicable endorsements (include a description of the coverage and how such coverage may be obtained).

(2) If the 508(h) submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(e) The fourth section must contain the following:

(1) Potential impacts the 508(h) submission may have on producers both where the new plan will and will not be available (include both positive and negative impacts) and if applicable, the reasons why the 508(h) submission is not being proposed for other areas producing the commodity;

(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 the expected number of potential buyers, liability and premium for each proposed county and state, total expected liability and premium by crop year based on the detailed assessment of producer interest, including a description of the number of producers involved in the development of the product, their level of participation, their type of participation, how many producers have provided data to assist the submitter in the development of the product, and a comparison with other similar products, including differences between the 508(h) submission and the similar products that may make participation different;

(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) Market research studies; ''market research'' is the systematic gathering and interpretation of information about individuals or organizations using statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making, and that must include:

(i) Focus group results (both positive and negative reactions) where a discussion is facilitated amongst a group of stakeholders in order to gain insight into their perceptions, opinions, beliefs, and attitudes towards a product, which must include the number of focus group sessions held, where they were held, when they were held, the number of attendees at each session, the attendees affiliation (producer, agent or other), and specific feedback from the attendees regarding levels of

coverage the product should include to cover anticipated risks or perils encountered, the range of costs the producer is willing to pay, what coverages the producers are specifically looking for and an assessment of whether that coverage can be provided at the price the producers are willing to pay, what shortfall or gap in risk protection the product may address, tolerance of risk, perceptions of other similar products, policy features producers may desire, and quality issues;

(ii) Other evidence the proposed 508(h) submission will be positively received by producers, agents, lending institutions, and other interested parties, including correspondence from producers, agents, grower organizations, or other stakeholders expressing the need for a certain risk management strategy, desired coverage for perils faced, and willingness to provide critical information for developing a product;

(iii) An assessment of factors that could negatively or adversely affect the market and responses from a reasonable representative cross-section of producers or significant market segment to be affected by the policy or plan of insurance; and

(iv) For 508(h) 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 508(h) submission on the general marketing and production of the crop from both a regional and national perspective including evidence that the 508(h) submission will not create adverse market distortions; and

(6) A marketability assessment from the applicant AIP who is part of the applicant and from at least one other AIP. If a marketability assessment is not provided by a separate AIP who is not part of the applicant, the applicant must provide information regarding the names of the persons and AIPs contacted and the basis for their refusal to provide the marketability assessment. The marketability assessment will include:

(i) An assessment of whether producers will buy the proposed 508(h) submission;

(ii) An assessment of whether AIPs and their agents will want to sell and service the proposed 508(h) submission;

(iii) An assessment of the risks associated with the proposed 508(h) submission and its likely effect under the SRA;

(iv) Estimated computer system impacts and costs;

(v) Estimated administrative and training requirement and costs;

(vi) An analysis of the complexity of the product; and

(vii) What, if any, efficiency will be gained or potential effects on the workload of AIPs or others participating in the program.

(f) The fifth section must contain the information related to the underwriting and loss adjustment of the 508(h) submission, prepared in accordance with the RMA–14050 Risk Management Agency External Standards Handbook located at *http://www.rma.usda.gov/handbooks/14000/index.html*, including as applicable:

(1) An underwriting guide that includes:

(i) A table of contents and introduction;

(ii) A section containing abbreviations, acronyms, and definitions;

(iii) Relevant dates, including as applicable, sales closing, cancellation, termination, earliest planting, final planting, acreage reporting, premium billing, and end of insurance;

(iv) A section containing insurance contract information (insurability requirements; producer elections, Crop Provisions not applicable to Catastrophic Risk Protection, specific unit division guidelines, etc.);

(v) Detailed rules for determining insurance eligibility, including all producer reporting requirements;

(vi) All form standards needed for inspections and producer certifications, plus detailed instructions for their use and completion;

(vii) 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;

(viii) A section containing any special coverage information (*i.e.*, replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and

(ix) A section containing all applicable reference material (*i.e.*, minimum sample requirements, row width factors, etc.).

(2) 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

(3) 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 detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded;

(v) A section that thoroughly explains appraisal methods, if applicable;

(vi) Illustrative samples of all the applicable forms needed for insuring and adjusting losses in regards to the 508(h) submission in a format compatible with the Document and Supplemental Standards Handbook (FCIC 24040) located at *http://www.rma.usda.gov/handbooks/24000/index.html*, plus detailed instructions for their use and completion;

(vii) Instructions, step-by-step examples of calculations used to determine indemnity payments for all probable situations where a partial or total loss may occur, and loss adjustment procedures that are necessary to establish the amounts of coverage and loss;

(viii) A section containing any special coverage information (*i.e.*, replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and

(ix) 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 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 needed for the rate methodology;

(ii) All mathematical formulas and equations;

(iii) Data and data sources used in determining rates and prices and a detailed assessment of the data (including availability, access, long term reliability, and the percentage of the total commercial production that the available data represents) 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 508(h) 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 508(h) 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 the following:

(1) A statement certifying that the submitter and any approved insurance provider or its affiliates will not solicit or market the 508(h) submission until 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) Agent and loss adjuster training plans, except for 508(h) submissions proposing only changes to rates of premium to an existing policy.

(i) The eighth section must contain a statement from the submitter that, if the 508(h) submission is approved, the submitter will work with RMA and its computer programmers as needed to assure an effective and efficient implementation process. This section must also contain a description of any expected implementation or administration issues. The applicant must consult with RMA prior to providing the 508(h) submission to determine whether or not the 508(h) submission can be effectively and efficiently implemented and administered through the current information technology systems and that all reporting requirements, terminology, and dates conform to USDA standards and initiatives.

(1) If FCIC approves the 508(h) submission and determines that its information technology systems have the capacity to implement and administer the 508(h) 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, 2312 East Bannister Road, Kansas City, MO 64131–3011, or on RMA's Web site at *http://www.rma.usda.gov/data/m13*, or a successor Web site.

(j) The ninth section submitted on separate pages and in accordance with § 400.712 and any applicable Board procedures must specify:

(1) The following amounts, which may be limited to the amount originally estimated in the submission, unless the applicant can justify the additional costs:

(i) For new products, the amount received for an advance payment, and a detailed estimate of the total amount of reimbursement for research and development costs; or

(ii) For products that are within the maintenance period, an estimate for maintenance costs for the year that the 508(h) submission will be effective; and

(2) 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;

(k) The tenth 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 508(h) submission of false or fraudulent statements or claims may result in civil and administrative sanctions.''

(l) 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 Costs. 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;

(m) 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 in 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 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.

[81 FR 53673, Aug. 12, 2016, as amended at 90 FR 30558, July 10, 2025]

§ 400.706 Review.

(a) Prior to providing a 508(h) submission, concept proposal, or index-based weather plan of insurance to the Board, RMA will:

(1) Review the 508(h) 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 508(h) 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) RMA may reject and return any 508(h) submission, concept proposal, or index based weather plan of insurance that:

(i) Is not complete;

(ii) Is unlikely to 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, forward the 508(h) 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 and quality.

(b) Upon the Board's receipt of a 508(h) submission, the Board will:

(1) Determine if the 508(h) submission is complete (the date the Board votes to contract with expert reviewers is

the date the 508(h) submission is deemed to be complete for the start of the 120 day time-period for approval);

(2) Unless the 508(h) 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 508(h) submission to at least five expert reviewers to review the 508(h) 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 508(h) submission:

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

(B) Is actuarially appropriate;

(C) Follows recognized insurance principles;

(D) Meets the requirements of the Act;

(E) Does not contain excessive risks (risks may be considered excessive if they encourage adverse selection, moral hazard, or if premium rates cannot be adequately or appropriately determined);

(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 or improved 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) The marketability assessment reasonably demonstrates the product would be viable and marketable (if the applicant cannot obtain a marketability assessment by another AIP, the Board shall presume that the submission is unmarketable);

(L) If applicable, contains a consultation report that provides evidence the 508(h) submission will not create adverse market distortions; and

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

(3) Return to the applicant any 508(h) submission the Board determines is not complete, along with an explanation of the reason for the determination and:

(i) With respect to 508(h) submissions developed from approved concept proposals, the provisions in § 400.712(c)(1) shall apply; and

(ii) Except for 508(h) submissions developed from concept proposals, if the 508(h) submission is resubmitted at a later date, it will be considered a new 508(h) submission solely for the purpose of determining the amount of time that the Board must take action; and

(4) For complete 508(h) submissions:

(i) Request review by RMA to provide its assessment of whether the 508(h) 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; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine if the 508(h) submission conforms to the requirements of the Act and all applicable Federal statutes and regulations.

(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 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 Costs;

(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) (if the applicant cannot obtain a marketability assessment by another AIP, the Board shall presume that the submission is unmarketable);

(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 Costs; and

(8) Provide a date by which the 508(h) submission must be provided in consultation with the applicant.

(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 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); and

(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 have demonstrated a low level of participation under existing coverage.

(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 policies or plans of insurance and when such policies or plans of insurance 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 508(h) 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 508(h) 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 508(h) submission, concept proposal or index-based weather plan of insurance must be made. However, delays may make implementation of the 508(h) 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 508(h) submission, concept proposal or index-based weather plan of insurance shall be extended commensurately with any time delay requested by the applicant.

(i) The applicant may withdraw a 508(h) submission, concept proposal, index-based weather plan of insurance, or a portion of a 508(h) submission or concept proposal, at any time by presenting a request to the Board. A withdrawn 508(h) submission, concept proposal or index-based weather plan of insurance that is resubmitted will be deemed a new 508(h) 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 508(h) submission or index-based weather plan of insurance, with or without revision or give notice of intent to disapprove within 90 days after the date the 508(h) submission or index-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.

(k) The Board may provide a notice of intent to disapprove a 508(h) submission if it determines:

(1) The interests of producers and taxpayers are not protected, including but not limited to:

(i) The 508(h) submission does not provide adequate coverage or treats producers disparately;

(ii) The applicant has not presented sufficient documentation that the 508(h) submission will provide a new kind of coverage that is likely to be viable and marketable (if the applicant cannot obtain a marketability assessment by another AIP, the Board shall presume that the submission is unmarketable);

(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 508(h) submission;

(iv) The 508(h) submission may create adverse market distortions or adversely impact other crops or agricultural commodities if marketed;

(v) The 508(h) submission will have a significant adverse impact on the private delivery system;

(vi) The 508(h) submission cannot be implemented, administered, and delivered effectively and efficiently using RMA's information technology and delivery systems;

(vii) The 508(h) submission contains flaws that may encourage adverse selection or moral hazard; or

(viii) The 508(h) submission contains vulnerabilities that allow indemnities to exceed the value of the crop;

(2) The premium rates are not actuarially appropriate;

(3) The 508(h) submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the 508(h) submission are excessive or it increases or shifts risk to another reinsured policy;

(5) The 508(h) submission does not meet the requirements of the Act; or

(6) The 90-day deadline under subsection (j) will expire before the Board has time to make an informed decision to approve or disapprove the 508(h) 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 shall provide a notice of intent to disapprove an index-based weather plan of insurance if it determines there is not:

(1) Adequate experience in 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 508(h) submission or index-based weather plan of insurance, the Board will provide the applicant with a written explanation outlining the basis for the intent to disapprove; and

(2) Any approval or disapproval of a 508(h) 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 508(h) 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 508(h) 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 508(h) submission or index-based weather plan of insurance is disapproved.

(p) If the applicant elects to modify the 508(h) submission or index-based weather plan of insurance:

(1) The applicant must advise the Board of a date by which the modified 508(h) 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 paused until the modified 508(h) submission or index-based weather plan of insurance is received by the Board.

(3) The Board will disapprove a modified 508(h) 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 508(h) 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 508(h) submission or index-based weather plan of insurance, unless the applicant grants the Board an extension of time to adequately consider the modified 508(h) 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 508(h) submission or index-based weather plan of insurance will paused during the extension); or

(iii) Applicant does not present a modification of the 508(h) 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 508(h) submission or index-based weather plan of insurance within the time periods specified in paragraph (j) or (n) of this section,

such 508(h) submission or index-based weather plan of insurance will be deemed approved by the Board for the initial reinsurance year designated for the 508(h) submission or index-based weather plan of insurance. The Board must approve the 508(h) 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 508(h) 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 508(h) 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 508(h) 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 508(h) submission; and

(B) The required timeframes for submitting any information and documentation needed to administer the approved 508(h) submission;

(ii) A reinsurance agreement if the approved submission does not meet, or is not expected to perform in a financial manner consistent with the terms and conditions of the Standard Reinsurance Agreement or any other existing reinsurance agreement offered by FCIC in effect for the crop year, and that considers the interests of all participating AIPs; and

(iii) A training package to facilitate implementation of the approved 508(h) 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 508(h) 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 508(h) 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 508(h) submission will automatically transfer to FCIC if the applicant elects not to maintain the 508(h) 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 questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions for approved 508(h) 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 508(h) submissions, both non-significant and significant, must be submitted to FCIC in the form of a 508(h) 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 508(h) 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, or until, 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*.

(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 in accordance with § 400.706 and providing its recommendations to the Board;

(ii) With respect to 508(h) 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 508(h) 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 withdraw reinsurance for such policy or plan of insurance to all AIPs for the subsequent crop year (If reinsurance is denied, a written notice will be provided on RMA's Web site at *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 508(h) submission, RMA will provide such notice on its Web site and 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 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 508(h) submissions approved by the Board for reinsurance under section 508(h) of the Act:

(1) The 508(h) 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 508(h) submission, and no additional amounts will be owed to the applicant if the 508(h) 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 508(h) submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the 508(h) 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.

(1) After a 508(h) 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 508(h) 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 the requirements in the definition of advance payment are met and the additional advance payment is requested in accordance with Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Costs.

(1) If a concept proposal is approved by the Board for advance payment, the applicant is responsible for independently developing a 508(h) submission that is complete as specified in this subpart by the deadline set by the Board.

(i) If an applicant fails to fulfill the obligation to provide a 508(h) submission that is complete 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 508(h) submission that is complete 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 508(h) submission that is complete was not provided by the deadline set by the Board, the applicant will be given a new deadline by which to provide a 508(h) submission that is complete; and

(iv) If the applicant fails to provide a 508(h) submission that is complete 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 508(h) submission and determined by the Board to be complete, but the 508(h) 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 508(h) 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 and maintenance costs requested by the applicant may be reduced as necessary when the requested amount is not commensurate with the complexity or the size of the area proposed to be covered.

(f) Research and development costs 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 508(h) 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 508(h) 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 508(h) 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 508(h) 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 508(h) 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 detailed estimate of the costs allowed in paragraph (f) of this section. Since costs are one measurement of the viability to develop an efficient policy, the Board may limit reimbursements for research and development to the estimated costs contained in the concept proposal, unless the submitter can justify a higher reimbursement in accordance with Board procedures.

(i) If a 508(h) submission is determined to be incomplete and is subsequently resubmitted and approved, the costs to perfect the 508(h) submission may not be considered reimbursable costs depending on the level of insufficiency or incompleteness of the 508(h) 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. 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 508(h) 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, or the user fee represents an unreasonable portion of the A&O subsidy paid to the AIP such that it prevents the AIP from meeting its other obligations under the SRA.

(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 508(h) 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 508(h) 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 or risk that does not exist 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 all underlying FCIC reinsured policies unless the underlying FCIC policy was sold by another AIP. If the underlying FCIC reinsured policy is sold by another AIP, the AIP that sold the NRS may be required to pay FCIC an amount equal to the reinsurance, A&O subsidy, and risk subsidy on the underlying FCIC policy.

(b) An electronic copy in Microsoft Office compatible format, 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 calculated under differing scenarios must be included. Electronic copies of the NRS must be sent to the Deputy Administrator for Product Management (or successor) at *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 notify the AIP that submitted the NRS policy that if they sell the NRS policy, it will result in denial of reinsurance, A&O subsidy, and risk subsidy on all underlying FCIC reinsured policies, unless the underlying FCIC policy was sold by another AIP. If the underlying FCIC reinsured policy is sold by another AIP, the AIP that sold the NRS may be required to pay FCIC an amount equal to the reinsurance, A&O subsidy, and risk subsidy on the underlying FCIC policy.

(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 RMA determines it:

(A) Creates a moral hazard, such as a financial incentive for the policyholder to behave in a way that increases the number or size of losses;

(B) Results in the underlying FCIC policy either triggering a loss sooner, or paying a larger indemnity than would otherwise be allowed by the terms and conditions of the underlying reinsured policy; or

(C) Allows for combined indemnities between the underlying FCIC reinsured policy and the NRS that are in excess of the value a producer would reasonably expect to receive for the insured

commodity if a normal crop was produced and sold at a reasonable market price.

(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 RMA determines it affects, alters, preempts, or undermines the terms or conditions of the underlying policy or procedures issued by FCIC.

(3) The NRS disrupts the marketplace. An NRS policy will be considered to disrupt the marketplace if RMA determines 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 RMA 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 75 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 need to be submitted once every five years unless a change is made to the NRS or the underlying policy. Once any changes are made to either policy, or the five year period has concluded, the NRS must be resubmitted for review.

Subpart W [Reserved]

Subpart X—Interpretations of Statutory Provisions, Policy Provisions, and Procedures

AUTHORITY: 7 U.S.C. 1506(l), 1506(o), and 1506(r).

SOURCE: 83 FR 66581, Dec. 27, 2018, unless otherwise noted.

§ 400.765 Definitions.

The definitions in this section apply to this subpart.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501–1524.

Approved insurance provider. A private insurance company that has been approved by the Federal Crop Insurance Corporation (FCIC) to sell and service Federal crop insurance policies under a reinsurance agreement with FCIC.

FAA. The Federal Arbitration Act found at 9 U.S.C. 1 *et seq*.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

FCIC interpretation. An interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of the Federal crop insurance program.

Final agency determination. Matters of general applicability regarding FCIC's interpretation of provisions of the Act or any regulation codified in the Code of Federal Regulations, including certain policy provisions, which are applicable to all participants in the Federal crop insurance program and the appeals process.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Participant. Any applicant for Federal crop insurance, an insured, or approved insurance provider or their agent, loss adjuster, employee or contractor.

Procedure. All FCIC issued handbooks, manuals, memoranda, and bulletins for any crop insurance policy reinsured by FCIC.

Proceeding. The process that starts with the filing of a complaint, notice of appeal, or other such document that commences the appeals process, and ends with the adjudicatory body issuing its decision, and includes all necessary activities, such as discovery, that occur within that time frame.

RMA. The Risk Management Agency, an agency of the United States Department of Agriculture.

You. The requestor of a final agency determination or FCIC interpretation.

[83 FR 66581, Dec. 27, 2018, as amended at 90 FR 54530, Nov. 28, 2025]

§ 400.766 Basis and applicability.

(a) The regulations in this part prescribe the rules and criteria for obtaining a final agency determination or an FCIC interpretation.

(1) FCIC will provide a final agency determination or an FCIC interpretation, as applicable, for statutory, regulatory, or other policy provisions or procedures that were in effect during the 4 most recent crop years from the crop year in which your request was submitted. For example, for a request received in the 2025 crop year, FCIC will consider requests for the 2025, 2024, 2023, and 2022 crop years.

(2) If FCIC determines a request is outside the scope of crop years authorized in paragraph (a)(1) of this section, you will be notified within 30 days of the date of receipt by FCIC.

(3) If the statutory, regulatory, or other policy provisions or procedures have changed for the time period you seek an interpretation you must submit a separate request for each policy provision or procedure by year. For example, if you seek an interpretation of section 6(b) of the Small Grains Crop Provisions for the 2022 through 2025 crop years but the policy provisions were revised starting with the 2024 crop year, you must submit two requests, one for the 2022 and 2023 crop years and another for the 2024 and 2025 crop years.

(b) With respect to a final agency determination or an FCIC interpretation:

(1) If there is a dispute between participants that involves a final agency determination or an FCIC interpretation:

(i) The parties are required to seek an interpretation of the disputed provision from FCIC in accordance with this subpart. (This may require that the parties seek a stay of the proceedings until an interpretation is provided, if such proceedings have been initiated.); and

(ii) The final agency determination or FCIC interpretation may take the form of a written interpretation or, at the sole discretion of FCIC, may take the form of testimony from an employee of RMA expressly authorized in writing to provide interpretations of policy or procedure on behalf of FCIC.

(2) All written final agency determinations issued by FCIC are binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. All written FCIC interpretations and testimony from an employee of RMA are binding on the parties to the dispute, including the arbitrator, mediator, judge, or NAD.

(3) All written final agency determinations that are published on RMA's website are considered matters of general applicability and are not appealable to NAD. Before obtaining judicial review of any final agency determination, you must obtain an Administrative Final Determination from the Director of NAD on the issue of whether the final agency determination is a matter of general applicability.

(4) With respect to an administrative review of an FCIC interpretation:

(i) If either party to the proceeding does not agree with the written FCIC interpretation, a request for administrative review may be filed in accordance with 7 CFR part 400, subpart J. If you seek administrative review from FCIC, such request must be submitted in accordance with § 400.767(a).

(ii) FCIC will not accept requests for administrative review from NAD, a mediator, or arbitrator.

(iii) The RMA Office of the Deputy Administrator for Product Management will make a determination on the request for administrative review not later than 30 days after receipt of the request.

(iv) Regardless of whether you have sought administrative review, you may appeal an FCIC interpretation under this subsection to NAD in accordance with 7 CFR part 11.

[83 FR 66581, Dec. 27, 2018, as amended at 90 FR 54530, Nov. 28, 2025]

§ 400.767 Requestor obligations.

(a) All requests for a final agency determination or FCIC interpretation submitted under this subpart must:

(1) Be submitted to the Deputy Administrator using the guidelines provided on RMA's website at *www.rma.usda.gov* through one of the following methods:

(i) In writing by certified mail or overnight delivery, to the Deputy Administrator, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141–6205; or

(ii) By electronic mail at *subpartx@rma.usda.gov;*

(2) State whether you are seeking a final agency determination or FCIC interpretation;

(3) Identify and quote the specific provision in the Act, regulations, procedure, or policy provision for which you are requesting a final agency determination or an FCIC interpretation;

(4) Contain no more than one request for an interpretation. (You must make separate requests for each provision if more than one provision is at issue. For example, if there is a dispute with the interpretation of Paragraph 3 of the Loss Adjustment Manual, then one request for an interpretation is required. If there is a dispute with the interpretation of Paragraph 3 of the Loss Adjustment Manual and Paragraph 2 of the Macadamia Nut Loss Adjustment Standards Handbook, then two separate requests for an interpretation are required).;

(5) State the crop, crop year(s), and plan of insurance applicable to the request;

(6) State the name, address, and telephone number of a contact person for the request;

(7) Contain your detailed interpretation of the specific provision of the Act, regulations, procedure, or policy provision for which the request for interpretation is being requested; and

(8) Not contain any specific facts, alleged conduct, or hypothetical situations or the request will be returned to the requestor without consideration.

(b) You must advise FCIC if the request for a final agency determination or FCIC interpretation will be used in a judicial review, mediation, or arbitration.

(1) You must identify the type of proceeding (for example, mediation, arbitration, or litigation), if applicable, in which the interpretation will be used, and the date the proceeding is scheduled to begin, or the earliest possible date the proceeding would likely begin if a specific date has not been established;

(2) The name, address, telephone number, and if applicable, fax number, or email address of a contact person for both parties to the dispute;

(3) Unless the parties elect to use the expedited review process available under the AAA rules or the appeal is before NAD, requests must be submitted not later than 90 days before the date the mediation, arbitration, or litigation proceeding in which the interpretation will be used is scheduled to begin.

(i) If the rules of the court, mediation, or arbitration require the interpretation prior to the date the proceeding begins, add 90 days to the number of days required prior to the proceeding. For example, if a court requires the interpretation 20 days prior to the date the proceeding begins, you must submit the request 110 days before the proceeding is scheduled to begin.

(ii) Notwithstanding paragraph (b) of this section, if during the mediation, arbitration, or litigation, an issue arises that requires a final agency determination or FCIC interpretation, the mediator, arbitrator, judge, or magistrate must promptly request a final agency determination or FCIC interpretation in accordance with § 400.767(a).

(4) FCIC at its sole discretion may authorize personnel to provide an oral or written final agency determination or FCIC interpretation, as appropriate.

(c) If multiple parties are involved and have opposing interpretations, a joint request for a final agency determination or FCIC interpretation including both requestor interpretations in one request is encouraged. If multiple insured persons are parties to the dispute, and the request for a final

agency determination or FCIC interpretation applies to all parties, one request may be submitted for all insured persons instead of separate requests for each person. In this case, the information required in this section must be provided for each person.

[83 FR 66581, Dec. 27, 2018, as amended at 90 FR 54531, Nov. 28, 2025]

§ 400.768 FCIC obligations.

(a) FCIC will not provide a final agency determination or FCIC interpretation for any request regarding, or that contains, specific factual information to situations or cases, such as acts or failures to act of any participant under the terms of a policy, procedure, or any reinsurance agreement.

(1) FCIC will not consider specific factual information to situations or cases in any final agency determination or FCIC interpretation.

(2) FCIC will not consider any examples or hypotheticals provided in your interpretation because those are fact-specific and could be construed as a finding of fact by FCIC. If an example or hypothetical is required to illustrate an interpretation, FCIC will provide the example in the interpretation.

(b) If, in the sole judgment of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide a final agency determination or FCIC interpretation, but will notify you within 30 days of the date of receipt by FCIC that the request is unclear, ambiguous, or incomplete.

(c) If FCIC notifies you that a request is unclear, ambiguous or incomplete under paragraph (b) of this section, the 90-day time period for FCIC to provide a response is stopped on the date FCIC notifies you. On the date FCIC receives a clear, complete, and unambiguous request, FCIC has the balance of the days remaining in the 90-day time period to provide a response to you. For example, FCIC receives a request for a final agency determination on January 10. On February 10, FCIC notifies you the request is unclear. On March 10, FCIC receives a clarified request that meets all requirements for FCIC to provide a final agency determination. FCIC has 60 days from March 10, the balance of the 90-day time period, to provide a response.

(d) FCIC reserves the right to modify the request if FCIC determines that a request for a final agency determination is really a request for an FCIC interpretation or vice versa.

(e) FCIC will provide you a written final agency determination or FCIC interpretation within 90 days of the date of receipt for a request that meets all requirements in § 400.767.

(f) If FCIC does not provide a response within 90 days of receipt of a request, you may assume your interpretation is correct for the applicable crop year. However, your interpretation shall not be considered generally applicable and shall not be binding on any other program participants. Additionally, in the case of a joint request for a final agency determination or FCIC interpretation, if FCIC does not provide a response within 90 days, neither party may assume their interpretations are correct.

(g) FCIC will publish all final agency determinations as specially numbered documents on the RMA website because they are generally applicable to all program participants.

(h) FCIC will not publish any FCIC interpretation because it is only applicable to the parties in the dispute. You are responsible for providing copies of the FCIC interpretation to all other parties.

(i) When issuing a final agency determination or FCIC interpretation, FCIC will not evaluate the insured, insurance provider, agent, or loss adjuster as it relates to their performance in following FCIC policy provisions or procedures. Interpretations will not include any analysis of whether the insured, insurance provider, agent, or loss adjuster complied with the policy provision or procedure in question.

[83 FR 66581, Dec. 27, 2018, as amended at 90 FR 54531, Nov. 28, 2025]

PART 401 [RESERVED]

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

Sec.

402.1 General statement.
402.2 Applicability.
402.3 OMB control numbers.