

on or before the applicable sales closing date. If the date of reinstatement of eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year. If the National Appeals Division determines that the person should not have been placed on the Ineligible Tracking System, reinstatement will be effective at the beginning of the crop year for which the producer was listed on the Ineligible Tracking System and the person will be entitled to all applicable benefits under the policy.

**§ 400.683 Administration and maintenance.**

(a) Ineligible producer data will be maintained in a system of records in accordance with the Privacy Act, 5 U.S.C. 552a.

(1) The Ineligible Tracking System is a record of all persons who have been determined to be ineligible for participation in any program pursuant to this subpart. This system 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 for ineligibility.

(2) Information in the Ineligible Tracking System may be used by Federal agencies, FCIC employees, contractors, and reinsured companies and their personnel who require such information in the performance of their duties in connection with any program administered under the Act. The information may be furnished to other users including, but not limited to, FCIC contracted agencies; credit reporting agencies and collection agencies; in response to judicial orders in the course of litigation; and other users as may be appropriate or required by law or regulation. The individual information will be made available in the form of various reports and notices produced from the Ineligible Tracking System, based on valid requests.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement of eligibility will be maintained by FCIC and FSA, or its contractors, reinsured companies, and Federal and State agencies. This documentation will be maintained con-

sistent with the electronic information contained within the Ineligible Tracking System.

(b) Information may be entered into the Ineligible Tracking System by FCIC or FSA personnel.

(c) All persons applying for or renewing crop insurance contracts issued or reinsured by FCIC will be subject to validation of their eligibility status against the Ineligible Tracking System. Applications or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

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

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

SOURCE: 66 FR 47951, Sept. 17, 2001, unless otherwise noted.

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

This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board as authorized under section 508(h) of the Act and for nonreinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development costs, and maintenance costs for products and the approval process.

[74 FR 8705, Feb. 26, 2009]

**§ 400.701 Definitions.**

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

*Actuarial documents.* The material for the crop or insurance year which is available for public inspection in your agent's office and published on RMA's website at <http://www.rma.usda.gov/>, or a successor website, and which shows available coverage levels, information needed to determine premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or agricultural

commodity, insurable acreage or commodities, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

*Actuarially appropriate.* Premium rates expected to cover anticipated losses and a reasonable reserve based on valid reasoning, an examination of available risk data, which for new products may be scarce but must still be of sufficient quality and quantity to reasonably determine the anticipated losses, or thorough knowledge or experience of the expected value of future costs associated with the risk to be transferred.

*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 CAT eligible crop insurance contracts, and any ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer are not considered as A&O subsidy.

*Applicant.* Any person or entity that submits a policy, plan of insurance, provisions of a policy or plan of insurance, or rates of premium to the Board for approval under section 508(h) of the Act.

*Approved insurance provider.* A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

*Board.* The Board of Directors of FCIC.

*Complete submission.* A submission determined by the Board to contain all necessary and appropriate documentation in accordance with § 400.705 and is of sufficient quality to conduct a meaningful review.

*Complexity.* Complexity takes into consideration such factors as originality, the number and type of factual determinations necessary to establish insurable interest, evaluate risk, and determine whether an indemnity is payable, the number of commodities and areas to which the product is applicable, the rating methodology, the

number of risks covered, unique policy provisions or endorsements, the delivery process of the submission, and the process of creating rules, policy terms and conditions, underwriting procedures, rating methodologies, administrative and operating procedures, and supporting materials.

*Development.* The process of drafting rules, new policy provisions, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a proposed policy or coverage.

*Disinterested third party.* A person who does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with anyone employed or contracted by the applicant or who will not benefit financially from the approval of the submission.

*Endorsement.* A document that amends a policy reinsured under the Act in a manner that supplements or amends the insurance coverage provided by that policy.

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

*Maintenance.* For the purposes of this subpart only, the process of continual support and improvement, as needed, for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, and any other actions necessary to provide adequate and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes.

*Maintenance costs.* Specific expenses associated with the maintenance of a policy during the maintenance period.

*Maintenance period.* A period of time that begins on the date the Board approves the submission for maintenance 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 that a sufficient number of producers will purchase the product and approved insurance providers will sell the product to make it economical, based on credible evidence provided by the applicant and any other relevant information.

*Marketing plan.* A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, a prescribed insurance year cycle, the data upon which such information is based, such data may include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or ancillary participants, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be effected by the policy or plan of insurance demonstrating the number of producers likely interested in purchasing the product, and a commitment from at least one approved insurance provider to sell and support such a policy or plan of insurance.

*Multiple peril crop insurance (MPCI).* All insurance policies reinsured by FCIC that offers coverage for loss of production, loss of revenue, or both.

*National Agricultural Statistics Service (NASS).* An agency of the United States Department of Agriculture, or a successor agency.

*Nonreinsured supplemental policy (NRS).* A policy, endorsement or other risk management tool that is not reinsured under the Act, or has not been submitted to FCIC under section 508(h) of the Act, that offers additional coverage, other than loss related to hail, to a policy or plan of insurance that is reinsured by FCIC.

*Non-significant changes.* Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount or type of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that does not affect liability or the amount of loss to be paid under the policy. Statutory or regulatory requirements

are included in this category regardless of impact.

*Plan of insurance.* A class of policies, such as MPCI or Group Risk Plan of Insurance, that offers a specific type of coverage to one or more agricultural commodities.

*Policy.* A contract for insurance that includes an accepted application, Basic Provisions, applicable Commodity Provisions, other applicable options and endorsements, the Special Provisions, related materials, and the applicable regulations published in 7 CFR chapter IV.

*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.

*Related material.* The actuarial documents for the insured agricultural commodity and any underwriting or loss adjustment manual, handbook, form or other information needed to administer the policy.

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

*Research and development costs.* Specific expenses incurred and directly related to the research and development of a submission, as initially approved by the Board.

*Risk Management Agency (RMA).* An agency of USDA responsible for the administration of all programs authorized under the Act and other authorities.

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

*Sales closing date.* The final calendar date on which an approved insurance

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provider may accept an application by a producer for insurance.

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

*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 this subpart.

*USDA.* The United States Department of Agriculture.

*User fees.* Fees, approved by the Board, that can be charged to approved insurance providers for use of a policy or plan of insurance.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 41918, July 20, 2005; 70 FR 44235, Aug. 2, 2005; 74 FR 8705, Feb. 26, 2009]

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

(a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from the submission, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a submission, all information provided with the submission, or generated in the approval process, may be released to the public, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b).

(c) Any submission disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b) and no information related to such submission

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will be released by FCIC unless authorized in writing by the applicant.

(d) In the submission, the applicant must state if the name of the submission may be used in Board documents including but not limited to the agenda, minutes, and Board memoranda. The applicant cannot use false names to mislead the public regarding the nature of the submission. If permission is not given to use the name of the submission, the submission will simply be referred to as a "Section 508(h) submission."

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44236, Aug. 2, 2005]

## § 400.703 Timing of submission.

(a) A submission may only be provided to FCIC, in either a hard copy or electronic format, during the first 5 business days of January, April, July, and October.

(b) Any submission not provided within the first 5 business days of a month stated in paragraph (a) of this section, will be considered to have been provided the next month stated in paragraph (a). For example, if an applicant provides a submission on January 10, it will be considered to have been received on April 1.

(c) Any submission must be provided to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

(d) The Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

[70 FR 44236, Aug. 2, 2005]

## § 400.704 Type of submission.

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

(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.