

the date the policy or plan of insurance was transferred.

[70 FR 44239, Aug. 2, 2005]

§ 400.710 Preemption and premium taxation.

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

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

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

(a) Fails to perform the responsibilities stated under § 400.709(a); or

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

[70 FR 44240, Aug. 2, 2005]

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

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

(1) If it is determined to be marketable by the Board, the submission may be eligible for a one-time payment of research and development costs and reimbursement of maintenance costs for up to four reinsurance years, as determined by the Board, after the date such costs have been approved by the Board.

(2) Reimbursement of research and development costs or maintenance

costs will be considered as payment in full by FCIC for the submission.

(3) If the applicant elects at any time not to continue to maintain the submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the submission.

(b) For submissions submitted to the Board for reinsurance after publication of the interim rule on September 17, 2001, an estimated amount of the total cost for reimbursement of research and development costs and maintenance costs must be included with the original submission to the Board in accordance with this section. These estimates will be used by FCIC to evaluate if the interests of producers are protected and to track potential expenditures and will not provide a basis for making any reimbursements under this section. Documentation of actual costs allowed under this section will be used to determine any reimbursement.

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

(d) To be considered for reimbursement of:

(1) Research and development costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 immediately following the date the submission was first available to be purchased by producers;

(2) Maintenance costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 of each year of the maintenance period;

(3) The procedure and time-frame in paragraphs (d)(1) or (2) of this section, as applicable, must be followed or research and development costs and maintenance costs may not be reimbursed; and

(4) 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.

(e) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (f), (g), (h), and (k) of this section, if all applicants' requests for reimbursement of research and development costs 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 authorized under these paragraphs; and

(2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section for that year and multiplying the result by the amount of reimbursement authorized under the Act.

(f) The amount of reimbursement for research and development costs, will be determined based on the amount of reimbursement authorized under paragraph (e) of this section, adjusted for the complexity of the policy, plan of insurance, or rates of premium, as determined by FCIC, and the size of the area in which the policy, plan of insurance, or rates of premium may be offered.

(1) Policies or plans of insurance that offer new and innovative coverages that are not currently available will be eligible for a higher reimbursement than policies or plans of insurance that are, or have components that are, based on existing policies or plans of insurance.

(2) Policies or plans of insurance that offer new premium rating or market price methodologies will be eligible for a higher reimbursement than policies or plans of insurance that use existing premium rating or market price methodologies.

(3) Policies or plans of insurance that cover new commodities that are not otherwise covered by crop insurance or that offer innovative coverage and original policy language will be eligible

for a higher reimbursement than policies or plans of insurance for commodities for which insurance is currently available.

(4) Policies or plans of insurance that may be offered for sale nationwide or in large geographical regions will be eligible for higher reimbursement than those that are applicable to only a few counties or states or a small geographical region.

(5) Any reimbursement under this subpart will be scored as follows:

(i) Complexity scores:

(A) Basic or Common Provisions:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (f)(3) of this section): 0.20

(B) Commodity Provisions and Special Provisions:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (f)(3) of this section): 0.20

(C) Market prices:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (f)(3) of this section): 0.20

(D) Rates of Premium:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (f)(3) of this section): 0.20

(E) Underwriting:

(1) Uses existing policies or plans of insurance: 0.05

(2) Contains modifications to existing policies or plans of insurance: 0.10

(3) Original (See paragraph (f)(3) of this section): 0.20

(ii) Geographic scope scores:

(A) Potential national availability: 0.10

(B) Potential county, state or regional availability: 0.05

(6) Policies or plans of insurance that receive a summed total score for both complexity and geographic scope that is:

(i) Equal to or greater than 0.6 may receive the full amount of reimbursement approved by the Board under paragraph (g) of this section;

(ii) Greater than 0.25 but lower than 0.60 will receive a reimbursement that is not greater than 75 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section; and

(iii) Equal to or less than 0.25 will receive a reimbursement that is not greater than 50 percent of the full amount of reimbursement approved by the Board under paragraph (g) of this section.

(g) For those submissions submitted to the Board for approval after September 17, 2001, research and development costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.). Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items (directly related to research and development of the submission only) may include the following:

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total dollars. Compensation amounts will be compared with the Occupational Employment Statistics Survey (published each January by the U.S. Department of Labor, Bureau of Labor Statistics) or other substantial wage information as deemed appropriate by the Board);

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics); and

(iii) Contracted expenses if fully disclosed, documented, and:

(A) The applicant provides a copy of the contract, billing statements, accounting records, etc;

(B) The applicant provides the relationship, if any, between the applicant and the contractor, such as parent company, subsidiary, etc. (Reimburse-

ment may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any and all other involvement of the contractor with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The contracted expenses are broken out by line item (including all persons who make up the contracted party who had a substantive involvement in the development of the submission), such as:

(1) Individual names;

(2) Rate of pay;

(3) Hours allocated to the submission;

(4) Benefit rate; and

(5) Overhead;

(iv) Professional fees if fully disclosed, documented, and:

(A) The applicant provides the job title, straight-time hourly wage, total hours, and total dollars;

(B) The applicant provides the relationship, if any, between the applicant and the professional, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any other involvement of the professional with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The professional fees are broken out by line item (including all persons who make up the professional party who had a substantive involvement in

the development of the submission), such as;

- (1) Individual names;
 - (2) Rate of pay;
 - (3) Hours allocated to the submission;
 - (4) Benefit rate; and
 - (5) Overhead;
 - (v) 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);
 - (vi) 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); and
 - (vii) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars); and
- (2) The following expenses are specifically not eligible for research and development and maintenance cost reimbursement:
- (i) Copyright or patent fees;
 - (ii) Training costs;
 - (iii) State filing fees and expenses;
 - (iv) Normal ongoing administrative expenses;
 - (v) Paid or incurred losses;
 - (vi) Loss adjustment expenses;
 - (vii) Sales commission;
 - (viii) Marketing costs;
 - (ix) Indirect overhead costs;
 - (x) Lobbying costs;
 - (xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;
 - (xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;
 - (xiii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance; and

(xiv) Costs associated with building rents or space allocation.

(h) Requests for reimbursement of maintenance costs for submissions approved after September 17, 2001, must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period. Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board. Maintenance costs for the following activities may be reimbursed:

- (1) Expansion of the original submission into additional counties or states;
- (2) Non-significant changes to the policy and any related material;
- (3) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and
- (4) Any other activity that qualifies as maintenance.

(i) If the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not follow the criteria set forth in this regulation, the product may be withdrawn at the discretion of the Board and no further maintenance reimbursement will be paid.

(j) Not later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, the applicant must notify FCIC regarding its election of the treatment of the policy or plan of insurance for subsequent reinsurance years.

(1) The applicant must notify FCIC 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. It is the sole responsibility of the applicant to collect such fees from the approved insurance providers and any indebtedness for such fees must be resolved by the applicant and approved insurance provider. Applicants may request that FCIC provide the number of policies sold by each approved insurance provider. 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; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) 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.

(3) Requests for approval of the user fee must be accompanied by written documentation to support that the amount requested will only cover maintenance costs.

(4) The Board will approve the amount of user fee 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 other approved insurance providers.

(5) Reasonableness of the user fees will be determined by the Board based on a comparison with 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.

(6) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that other approved insurance providers are unable to pay such fees because of the volume of business currently underwritten by the approved insurance provider.

(7) 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.

(8) If the applicant does not notify FCIC at least six months prior to the last day of the last reinsurance year in which a maintenance reimbursement

will be paid, as approved by the Board, ownership of the policy or plan of insurance will be automatically transferred to FCIC beginning with the next reinsurance year.

(k) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research and development costs, or maintenance costs under this section or the amount of reimbursement.

(l) For the 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.

(m) Notwithstanding the definition in § 400.701, the maintenance period ends for an approved submission once the applicant no longer performs the maintenance responsibilities, as determined by FCIC, or the applicant gives FCIC notice they no longer wish to maintain the submission.

(n) 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.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44241, Aug. 2, 2005]

§ 400.713 Nonreinsured supplemental (NRS) policy.

(a) Unless notified by FCIC, three hard copies, or an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, at least 120 days prior to the first sales closing date applicable to the policy.