

UNITED STATES DEPARTMENT OF AGRICULTURE
General Administrative Regulations;
Interpretations of Statutory Provisions, Policy Provisions, and Procedures
OMB NUMBER: 0563-0055

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Section 533 of the Agricultural Research, Extension, and Education Reform Act of 1998 (P.L. 105-185), as amended, provides the authority for the Federal Crop Insurance Corporation (FCIC) as the only one who can render interpretations of a policy provision or procedure used in administering the Federal Crop Insurance Program under the Federal Crop Insurance Act. Section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506), was amended by adding at the end “Procedures for responding to certain inquiries...”

The Federal Crop Insurance Corporation (FCIC) will publish a Proposed Rule in the Federal Register in 2022 to revise the General and Administrative Regulation Subpart X - Interpretations of Statutory and Regulatory Provisions. Subpart X is the Administrative Regulation which provides public instructions on how to request Final Agency Determinations (FAD) interpreting crop insurance policy provisions codified in the Code of Federal Regulations. The current instructions in Subpart X have been published and functioning since 1998. The purpose of the revisions is to clarify, correct, and streamline the process for requesting policy and procedural interpretations (Final Agency Determinations) from FCIC and subsequent appeals processes, as follows:

- Defer to judicial system for nullification (i.e., remove “automatic” nullification);
- Add administrative review process for reconsideration of a FAD, in cases of disagreement;
- Remove the 4-year scope limitation on FAD requests for any requests related to open arbitration, mediation, and judicial review;
- Remove distinctions between interpretations of codified and non-codified provisions, such that all requests for interpretation will follow the same internal response process for improved efficiency;
- Streamline appeals processes by removing requirement for a National Appeals Division (NAD) appealability determination prior to pursuing appeal; and
- Clarify FCIC’s 90-day response timeline is reset upon a complete request in cases of an incomplete initial request.

Section 533 of the 1998 Research Act, as amended and Section 506(r), 7 U.S.C. 1506 states:

PROCEDURES FOR RESPONDING TO CERTAIN INQUIRIES —

(1) PROCEDURES REQUIRED – The Corporation shall establish procedures under which the Corporation will provide a final agency determination in response to an inquiry regarding the interpretation by this Corporation of this title or any regulation issued under this title.

(2) IMPLEMENTATION – Not later than 180 days after the date of enactment of this subsection, the Corporation shall issue regulations to implement this subsection. At a minimum, the regulations shall establish:

(A) the manner in which inquiries described in paragraph (1) are required to be submitted to the Corporation; and

(B) a reasonable maximum number of days within which the Corporation will respond to all inquiries.

(3) EFFECT OF FAILURE TO TIMELY RESPOND – If the Corporation fails to respond to an inquiry in accordance with the procedures established pursuant to this subsection, the person requesting the interpretation of this title or regulation may assume the interpretation is correct for the applicable reinsurance year.

Consistent with section 506(r) and 7 CFR part 400, subpart X, and corresponding sections of multiple plans of insurance Basic Provisions, this requires FCIC to provide interpretations of policy provisions and procedures (handbooks, manuals, memoranda, and bulletins) when any dispute in mediation, arbitration, or litigation requires interpretation of a policy provision or procedure. This includes determinations regarding applicability of a specific policy provision or procedure as well as the meaning of the provision or procedure. This ensures that all producers and insurance providers are treated alike.

FCIC developed this framework, in which FCIC is the only one who can render interpretations, to avoid the possibility of third parties interpreting the policy or procedure. There had been instances in the past where arbitrators' decisions have resulted in disparate treatment, whereby one producer could win an award and a neighbor with the same crop and conditions may not win an award because a different arbitrator heard the case. This was contrary to the goals of the crop insurance program. Federal crop insurance is a national program with all producers receiving the same policy for the same crop. Insurance providers are required to use procedures issued by FCIC in the service and adjustment of such policies to ensure that all producers are treated alike, and none receive special benefits or treatment because of the crop they produce, the insurance provider that insures them, or who hears their disputes.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

For final agency determination requests made under 7 CFR 400, Subpart X:

All requests for a final agency determination must:

- Be submitted to the Deputy Administrator;
- State the requestor is seeking a final agency determination;
- State the name, address, and telephone number of a contact person for the request;

- State the crop, crop year(s), and plan of insurance applicable to the request;
- Identify and quote the specific provision in the Act, regulations, procedure, or policy provision for which the requestor is requesting a final agency determination;
- Contain the requestor's detailed interpretation of the specific provision of the Act, regulation, procedure, or policy provision for which the request for interpretation is being requested;
- Not contain any specific facts, alleged conduct, or hypothetical situations or the request will be returned to the requestor without consideration;
- Contain no more than one request for an interpretation;
- Meet the 4-year limitation; and
- State if the request for a final agency determination will be used in a judicial review, mediation, or arbitration. The requirement to have the requestor identify if the request for a final agency determination will be used in a lawsuit or the settlement of a claim is necessary to:
 - Identify to FCIC if the final agency determination provided will be used prospectively and applied uniformly to all participants or if the request for a final agency determination is an attempt to validate the perceived interpretation that has already been applied;
 - Ensure that FCIC is not providing an interpretation for any specific factual situation or case;
 - Ensure that the final agency determination is reviewed and approved by the Office of General Counsel;
 - Ensure that one person or group of people cannot use this regulation to obtain information that will unfairly and adversely impact another person or group of people; and
 - Ensure the information and guidance provided by FCIC is consistent with FCIC's litigatory position.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The regulation allows submission of the request through the internet to an identified RMA electronic mail address to simplify the submission process for the respondent. Submissions can also be made through facsimile or mail.

Final agency determinations will be posted to the RMA website for the benefit of the public and all participants of the Federal crop insurance program.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information requested by this regulation, as proposed, is not being collected in any other manner.

Each submission will contain a separate reference and respondent's interpretation. Final agency determinations are provided to the requestor in writing by email. Final agency determinations made in response to a request will be posted on the RMA website as well. As determinations are made and posted for the public, final agency determinations should reduce redundancy.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The request for a final agency determination is voluntary. There is no greater burden on small businesses or other small entities than on any other entity. The information requested is believed to be the minimum needed to comply with the requirements of section 533 of the 1998 Research Act and corresponding sections of the Basic Provisions.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

FCIC would not be able to comply with the statutory mandates of section 533 of the 1998 Research Act and the regulatory requirements of the corresponding sections of multiple plans of insurance Basic Provisions if the requested information was not collected with each submission. The request for a final agency determination is voluntary and there are no minimum or maximum request levels established.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

None of the special circumstances are applicable to this submission.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (D) soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The 60-day notice was published on May 4, 2022, at 87 FR 26338. No comments regarding this notice were received.

FCIC consulted with the following representatives:

Kurt Henke, Henke-Bufkin PA, 662.624.8500

Darin T. Judd, Thompson Welch Soroko & Gilbert LLP, 415.448.5000

Renee Shoemaker, Global Ag Insurance Services, LLC, 559.797.9022

They had no comments.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gifts will be made to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

For requests made under 7 CFR 400, Subpart X, as proposed, the respondent's social security number or tax identification number is not being requested. The respondent's name and address will be handled according to established FCIC procedures for implementing the Privacy and

Freedom of Information Acts.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No information of a sensitive nature is being requested.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

Burden estimates for Subpart X are based on an anticipated 75 respondents for a total of 75 requests and 600 hours. The requests could come from agents, loss adjusters, employees, contractors, or lawyers with an agreement with FCIC.

FCIC estimates the total burden cost per year to requestors is \$23,472. See below:

Potential Requestors	No. of requests	Time per request	Total burden hours	Hourly wage	Cost
7 CFR 400, Subpart X - agents, loss adjusters, employees, contractors, or lawyers with an agreement with FCIC	75	8 hours	600	\$39.12*	\$23,472

**Average of all respondent's wages.*

The hourly wage for each respondent was estimated as follows:

41-3021 Insurance Sales Agent	\$33.22
13-1031 Claims Adjusters, Examiners, and Investigators	\$33.97
13-2053 Insurance Underwriter	\$38.65
43-9061 Office Clerk-General	\$18.16
23-1011 Lawyers	\$71.59
Average of above	\$39.12

Information obtained from the Bureau of Labor Statistics at http://www.bls.gov/oes/current/oes_nat.htm.

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There are no capital and start-up, or maintenance and operation costs associated with this collection.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

Costs to the Federal Government will be for receiving, tracking, and responding to requests.

Item	Cost	Requests	Total
Average salary at step 4 for Federal employees GS-9 through GS-15	\$55.74 per hr. x 60 hours per request to receive, track, research, prepare response, obtain clearance, issue determination, maintain file	75	\$3,344.40 per request Expected for 75 requests: \$250,830.00
Total		75	\$250,830.00

The hourly wage for each Federal employee grade step 4 was estimated as follows:

Risk Management Specialist - Grade 13	\$49.74
Branch Chief - Grade 14	\$58.78
Assistant – Grade 9	\$28.85
Directors - Grade 15	\$69.14
Underwriter - Grade 15	\$69.14
Lawyer – Grade 14	\$58.78
Average of above	\$55.74

Information obtained from the Office of Personnel Management at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/RUS_h.pdf

Cost to Federal Government: The estimated annual cost: \$3,344.40 per request x 75 requests equals \$250,830.00.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

There was an increase of 45 respondents and responses which increased the total burden hours by 360 hours for a total of 75 responses and 600 burden hours due to an increase in the number of requestors requesting final agency determinations.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

Information collection results will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification statement identified in Item 19 of the 83-I

This information collection meets the certification requirements of SF-83-1, Item 19.

18. B. Collections of Information Employing Statistical Methods:

The information collections represented in this docket do not employ statistical methods.