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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. FCIC-17-0005]

RIN 0563-AC54

General Administrative Regulations; Reinsurance Agreement – Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years.

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations; Subpart L – Reinsurance Agreement – Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years. The intended effect of this action is to clarify and improve Subpart L to better align with the existing Standard Reinsurance Agreement (SRA) and Livestock Price Reinsurance Agreement (LPRA) and to eliminate language that is no longer relevant.

DATES: This rule is effective [insert date 30 days after this rule is published in the Federal Register].

FOR FURTHER INFORMATION CONTACT: David L. Miller, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., Stop 0801, Washington, DC 20250, telephone (202) 720-9830.

SUPPLEMENTARY INFORMATION:

Background:

This rule finalizes changes to the General Administrative Regulations; Subpart L – Reinsurance Agreement – Standards for Approval; Regulations for the 2019 and Subsequent Reinsurance Years (7 CFR part 400, subpart L), that were published by FCIC on February 8, 2018, as a notice of proposed rulemaking in the Federal Register at 83 FR 5573 – 5576. The public was afforded 60 days to submit comments after the regulation was published in the Federal Register.

A total of one comment was received from one commenter. The commenter was an insurance company.

The public comment received regarding the proposed rule and FCIC’s response to the comment is as follows:

Comment: One comment was received from an insurance company asking for a definition of “outcome” which was added to Section 400.169(b).

Response: FCIC removed the term outcome and returned Section 400.169(b) to its original language.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule. Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, in order to manage the costs required to comply with Federal regulations, that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule is not subject to Executive Order 13771.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563-0069.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FCIC has assessed the impact of this rule on Indian tribes and determined that this rule does not, to its knowledge, have tribal implications that require tribal consultation under EO 13175. If a Tribe requests consultation, FCIC will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance

program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from beginning farmers or ranchers and limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of Federal crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605). This regulation pertains to all legal entities wanting a Reinsurance Agreement, to insure financial stability and capacity under this regulation.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule

will preempt State and local laws to the extent such State and local laws are inconsistent herewith. Interpretations of statutory and regulatory provisions are matters of general applicability and, therefore, no administrative appeals process is available and judicial review may only be brought to challenge the interpretation after seeking a determination of appeal ability by the Director of the National Appeals Division (NAD) in accordance with 7 CFR part 11. An interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of any Federal crop insurance program are administratively appealable and the appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, crop insurance, reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, FCIC amends 7 CFR part 400 as follows:

PART 400-GENERAL ADMINISTRATIVE REGULATIONS

1. Revise subpart L to read as follows:

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

Sec.

400.161 Definitions.

400.162 Qualification ratios.

400.163 Applicability.

400.164 Eligibility for a Reinsurance Agreement.

400.165-400.168 [Reserved]

400.169 Disputes.

400.170-400.177 [Reserved]

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

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

§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 USC 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]

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