

(7) Debtors whose account has not been first reported to a consumer credit reporting agency.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.142 Past-due legally enforceable debt eligible for refund offset.

For purposes of this section, a past-due, legally enforceable debt which may be referred by FCIC to IRS for offset is a debt which:

(a) Except in the case of a judgement debt, has been delinquent for at least three months but has not been delinquent for more than 10 years at the time the offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(d) With respect to which the agency has given the employee at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such employee, and has determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by FCIC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to IRS after June 30, 1986;

(f) With respect to which that FCIC has notified, or has made a reasonable attempt to notify, the employee that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, will be referred to IRS for offset against any overpayment of tax; and

(3) Which is at least \$25.00.

[53 FR 6, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

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

SOURCE: 52 FR 17543, May 11, 1987, unless otherwise noted. Redesignated at 53 FR 3, Jan. 4, 1988, and further redesignated at 53 FR 10527, Apr. 1, 1988.

§ 400.161 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

(b) *Company* means the company reinsured by FCIC or apply to FCIC for a Standard Reinsurance Agreement.

(c) *Corporation* means the Federal Crop Insurance Corporation.

(d) *FCIC* means the Federal crop Insurance Corporation.

(e) *Financial statement* means any documentation submitted by a company as required by this subpart.

(f) *Guaranty fund assessments* means the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(g) *Insurer* means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(h) *MPUL* means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

(i) *Obligations* mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

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(j) *Plan of operation* means a statement submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(k) *Quarterly Statutory Financial Statement* means the quarterly financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

(l) *Reinsurance agreement* means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(m) *Reinsured* means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

(n) *Standard Reinsurance Agreement* (Agreement) means the reinsurance agreement between the reinsured and FCIC.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 57 FR 34666, Aug. 6, 1992; 60 FR 57903, Nov. 24, 1995]

§ 400.162 Qualification ratios.

The sixteen qualification ratios include:

(a) Eleven National Association of Insurance Commissioner's (NAIC's) Insurance Regulatory Information System (IRIS) ratios found in §§ 400.170(d)(1)(ii) and 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xii), (xiii), and (xiv) and referenced in "Using the NAIC Insurance Regulatory Information System" distributed by NAIC, 120 West 12th St., Kansas City, MO 64105-1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858-0700;

(c) One ratio found in § 400.170(d)(1)(i) is calculated the same as the Gross Premium to Surplus IRIS ratio, with Gross Premium adjusted to exclude the MPCI premium assumed by FCIC; and

(d) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the

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One-Year Change to Surplus IRIS ratio but for a two-year period.

[60 FR 57903, Nov. 24, 1995]

§ 400.163 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1997 and subsequent reinsurance years or who continue with a prior years Standard Reinsurance Agreement into the 1997 and subsequent reinsurance years.

[60 FR 57903, Nov. 24, 1995]

§ 400.164 Availability of the Standard Reinsurance Agreement.

Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and provisions of the regulations of the Corporation found at chapter IV of title 7 of the Code of Federal Regulations.

§ 400.165 Eligibility for Standard Reinsurance Agreements.

A Company will be eligible to participate in an Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

§ 400.166 Obligations of the Corporation.

The Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume all obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified by including in bold face or large type the following statement as item number 1 in its General Provisions:

This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 *et seq.*), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in chapter IV of 7 CFR.

§ 400.167 Limitations on Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.168 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its

administration of the crop insurance policies reinsured.

(b) The Company shall make available to all eligible producers in the areas designated in its plan of operations as approved by the Corporation:

(1) The crop insurance plans for the crops designated in its plan of operation in those counties within a State, or a portion of a State, where the Secretary of Agriculture has determined that insurance is available through local offices of the United States Department of Agriculture; and

(2) Catastrophic risk protection, limited, and additional coverage plans of insurance for all crops, for which such insurance is made available by the Corporation, in all counties within a state, or a portion of State, where the Secretary of Agriculture has determined that insurance is no longer available through local offices of the United States Department of Agriculture.

(c) The Company shall provide the Corporation, on forms approved by the Corporation all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants determined to be ineligible for crop insurance coverage and all insured producers cancelled or terminated from insurance, along with the reason for such action, the crop program, and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex age, handicap, or national origin.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 61 FR 34368, July 2, 1996; 61 FR 65153, Dec. 11, 1996]

§ 400.169 Disputes.

(a) If the company believes that the Corporation has taken an action that

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is not in accordance with the provisions of the Standard Reinsurance Agreement or any reinsurance agreement with FCIC, 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 Corporation 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 Corporation with respect to these issues. 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 Corporation rendered under any Corporation 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 Corporation's determination, must request a reconsideration of that determination in writing, within 45 days of the receipt of the determination. The determinations of the Deputy Administrator 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 Corporation

under paragraph (a) or (b) of this section may be appealed to the Board of Contract Appeals in accordance with the provisions of subtitle A, part 24 of title 7 of the Code of Federal Regulations.

[65 FR 3782, Jan. 25, 2000]

§ 400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer 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 insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to the MPUL for the company's estimated retained premium proposed to be reinsured, multiplied by the appropriate Minimum Surplus Factor found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.5%) of all its reinsured retained premium is written in that state;

MINIMUM SURPLUS TABLE

Number of states in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiplied by MPUL)
1 through 10	2.5
11 or more	2.0

(d) Have and meet the ratio requirements of the Gross Premium to Surplus and Net Premium to Surplus required ratios and at least ten of the fourteen analytical ratios in this section based on the most recent Annual Statutory Financial Statement, or comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus.	Less than 900%.
(ii) Net Premium to Surplus.	Less than 300%.

Ratio	Ratio requirement
(2) Analytical:	
(i) Two-Year Overall Operating Ratio.	Less than 100%.
(ii) Agents' Balances to Surplus.	Less than 40%.
(iii) One-Year Change in Surplus.	Greater than -10% and less than 50%.
(iv) Two-Year Change in Surplus.	Greater than -10%.
(v) Combined Ratio After Policyholder Dividends.	Less than 115%.
(vi) Change in Writing	Greater than -33% and less than 33%.
(vii) Surplus Aid to Surplus.	Less than 15%.
(viii) Quick Liquidity	Greater than 20%.
(ix) Liabilities to Liquid Asset.	Less than 105%.
(x) Return on Surplus	Greater than -5%.
(xi) Investment Yield	Greater than 4.5% and less than 10%.
(xii) One-Year Reserve Development to Surplus.	Less than 20%.
(xiii) Two-Year Reserve Development to Surplus.	Less than 20%.
(xiv) Estimated Current Reserve Deficiency to Surplus.	Less than 25%.

(e) Submit to FCIC all of the following statements:

- (1) Annual and Quarterly Statutory Financial Statements;
- (2) Statutory Management Discussion & Analysis;
- (3) Most recent State Insurance Department Examination Report;
- (4) Actuarial Opinion of Reserves;
- (5) Annual Audited Financial Report; and
- (6) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

[60 FR 57903, Nov. 24, 1995]

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of §400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with

the insurance department of any state in which it is licensed.

[60 FR 57904, Nov. 24, 1995]

§ 400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.

An insurer with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements in §400.170(d) may qualify if, in addition to the requirements of §400.170 (a), (b), (c) and (e), the insurer:

(a) Submits a financial management plan acceptable to FCIC to eliminate each deficiency indicated by the ratios, or an acceptable explanation why a failed ratio does not accurately represent the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

[60 FR 57904, Nov. 24, 1995]

§ 400.173 [Reserved]

§ 400.174 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this chapter. FCIC may require the insurer to update its financial statements during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this chapter.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 60 FR 57904, Nov. 24, 1995]

§ 400.175 Revocation and non-acceptance.

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statements or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

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(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 60 FR 57904, Nov. 24, 1995]

§ 400.176 State action preemptions.

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of punitive or compensatory damages or an award of attorney fees or other costs against the Company issuing such policy, unless a determination is obtained from the Corporation that the Company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by the Corporation 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.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 69 FR 48730, Aug. 10, 2004]

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§ 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.