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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 402, 407, and 457

[Docket No. FCIC–26–0067]

RIN 0563-AC91

Removal of Regulatory Overreach and Federal Crop Insurance Policy Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending its regulations regarding final agency determinations and interpretations of the Federal Crop Insurance Act and its associated regulations. This action is necessary to align agency procedures with Supreme Court precedent and the Administrative Procedure Act, ensuring that interpretive determinations are not improperly characterized as legislative rules. The effect of this rule is to clarify that final agency determinations are not matters of general applicability and are binding only on the parties requesting them. Furthermore, this rule removes provisions that previously attempted to make such determinations binding on independent adjudicators, such as Federal judges and the National Appeals Division. This final rule will also remove Federal crop insurance policy provisions from the Code of Federal Regulations (CFR). This action modernizes program administration by discontinuing the practice of codifying detailed insurance contracts in regulation. Policy terms will continue to be published through official program materials and made available on the Risk Management Agency (RMA) website. This change does not affect the statutory authority of FCIC or the availability of crop insurance coverage.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Chandra Place; telephone: (816) 926-3875; email: chandra.place@usda.gov.

SUPPLEMENTARY INFORMATION

I. Statutory Limitation of Section 506(r)

Section 506(r)(1) of the Federal Crop Insurance Act provides:

> (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 the Corporation of this subtitle or any regulation issued under this subtitle.
>
> (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 subtitle or regulation may assume the interpretation is correct for the applicable reinsurance year.

The Supreme Court of the United States's holding In *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015), sets forth legal principles applicable to FCIC's implementation of provision of the FCIC Act. The Supreme Court noted that:

The APA establishes the procedures federal administrative agencies use for "rule making," defined as the process of "formulating, amending, or repealing a rule." §551(5). "Rule," in turn, is defined broadly to include "statement[s] of general or particular applicability and future effect" that are designed to "implement, interpret, or prescribe law or policy." §551(4).

Section 4 of the APA, 5 U. S. C. §553, prescribes a three-step procedure for so-called "notice-and-comment rulemaking." First, the agency must issue a "[g]eneral notice of proposed rule making," ordinarily by publication in the Federal Register. §553(b). Second, if "notice [is] required," the agency must "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." §553(c). An agency must consider and respond to significant comments received during the period for public comment. See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 416 (1971); *Thompson v. Clark*, 741 F. 2d 401, 408 (CADC 1984). Third, when the agency promulgates the final rule, it must include in the rule's text "a concise general statement of [its] basis and purpose." §553(c). Rules issued through the notice-and-comment process are often referred to as "legislative rules" because they have the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U. S. 281, 302–303 (1979) (internal quotation marks omitted).

Not all "rules" must be issued through the notice-and-comment process. Section 4(b)(A) of the APA provides that, unless another statute states otherwise, the notice-and-comment requirement "does not apply" to "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U. S. C. §553(b)(A). The term "interpretative rule," or "interpretive rule," is not further defined by the APA, and its precise meaning is the source of much scholarly and judicial debate. See generally Pierce, *Distinguishing*

> *Legislative Rules From Interpretative Rules*, 52 Admin. L. Rev. 547 (2000); Manning, *Nonlegislative Rules*, 72 Geo. Wash. L. Rev. 893 (2004). We need not, and do not, wade into that debate here. For our purposes, it suffices to say that the critical feature of interpretive rules is that they are "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." *Shalala v. Guernsey Memorial Hospital,* 514 U. S. 87, 99 (1995) (internal quotation marks omitted). The absence of a notice-and-comment obligation makes the process of issuing interpretive rules comparatively easier for agencies than issuing legislative rules. But that convenience comes at a price: Interpretive rules "do not have the force and effect of law and are not accorded that weight in the adjudicatory process." Ibid.

Section 506(r) of the FCIC Act requires FCIC to "establish procedures under which the Corporation will provide a final agency determination in response to an inquiry regarding the interpretation by the Corporation of this subtitle or any regulation issued under this subtitle." In issuing regulations to implement this requirement to "establish procedures" went well beyond establishing procedures and issued regulations that attempted to elevate final agency determinations to the status of a final rule and to preclude administrative and even judicial review of certain FCIC actions.

In implementing section 506(r) through issuance of regulations set forth in 7 CFR Part 400, most notably 7 CFR 400.766(b)(2), FCIC did not adhere to the basic principles articulated by the Supreme Court and the provisions of the Administrative Procedure Act in that it attempted to make certain determinations and interpretations "binding", that is, a final rule, in certain circumstances:

> (2) All written final agency determinations issued by FCIC are binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. All written FCIC interpretations and testimony from an

employee of RMA are binding on the parties to the dispute, including the arbitrator, mediator, judge, or NAD.

The current regulations in subpart X of 7 CFR Part 400 contemplate the issuance of: 1. a "final agency determination", which prior to the issuance of this final rule was considered to be a matter of general applicability, and 2. a "FCIC interpretation" which is applicable to only "the parties to the dispute, including the arbitrator, mediator, judge, or NAD." These terms are defined as follows:

> FCIC interpretation. An interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of the Federal crop insurance program.
>
> Final agency determination. Matters of general applicability regarding FCIC's interpretation of provisions of the Act or any regulation codified in the Code of Federal Regulations, including certain policy provisions, which are applicable to all participants in the Federal crop insurance program and the appeals process.

Under the revised regulation, because a final agency determination issued pursuant to the process required by section 506(r) of the FCIC Act is not a final rule, it is binding only on the parties that requested such a determination. In revising these regulations to remove references to the "general applicability" of such determinations, there is no discernable difference between a "final agency determination" and a "FCIC interpretation." Accordingly, references to a "FCIC interpretation" are deleted. Thus, a determination on a matter outside the scope of section 506(r) is also binding only on a party who requested the determination.

FCIC may not issue a regulation that affects the authority of other Federal agencies and the Federal judiciary. Prior to the issuance of this final rule, 7 CFR 400.766(b)(2) provided that "written FCIC interpretations and testimony from an

employee of RMA are binding on . . . [a Federal] judge . . . ." There simply is no constitutional basis for this provision.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 established an independent administrative appeal system within the Department of Agriculture to hear appeals from certain agency determinations including most FCIC determinations. The National Appeals Division (NAD) performs this function. Certain agency determinations are not reviewable by NAD:

> (d) DETERMINATION OF APPEALABILITY OF AGENCY DECISIONS.— If an officer, employee, or committee of an agency determines that a decision is not appealable and a participant appeals the decision to the Director, the Director shall determine whether the decision is adverse to the individual participant and thus appealable or is a **matter of general applicability** and thus not subject to appeal. The determination of the Director as to whether a decision is appealable shall be administratively final. (emphasis added).

7 CFR 400.766(b)(3) provides:

> All written final agency determinations that are published on RMA's website are considered matters of general applicability and are not appealable to NAD. Before obtaining judicial review of any final agency determination, you must obtain an Administrative Final Determination from the Director of NAD on the issue of whether the final agency determination is a matter of general applicability.

This regulatory provision attempts to preclude review by NAD of a determination that adversely affects a participant in a FCIC program by posting the determination on a website and asserting that such a determination is a matter of "general applicability." The revised regulation makes clear that a final agency determination made pursuant to section 506(r) or outside of the purview of that section is applicable only to the party that

requested the determination. Accordingly, such a determination is not a matter of general applicability, and this regulatory provision is deleted.

Final agency determinations issued prior to [Insert date of publication in the Federal Register] are not binding on any party other than the party requesting the determination unless the determination has been incorporated by reference in a policy that is in effect on the date of publication of this final rule.

Conflict with Executive Order 14219 and the Definition of Guidance

Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative," requires federal agencies to identify and de-prioritize regulations that are not based on the **"best reading"** of their underlying statutes.

Re-evaluating the 2018 Final Rule Justification

In the 2018 Final Rule (83 FR 66590), RMA justified this binding authority by stating that Section 506(r) gave "FCIC express authority to provide interpretations... and makes them binding on all participants." However, RMA further stated that many policies are not published as regulations and "have the force of contracts but not law."

The Agency now determines that its previous interpretation—concluding that the authority to issue an interpretation (granted in Section 506(r)) inherently includes, for example, the authority to make that interpretation binding on a judge—is not the "best reading" of the Act. Such a requirement impedes the constitutional role of judges and the statutory role of NAD to independently evaluate the law and facts of a case.

To align with Executive Order 14219 and the statutory limits of 7 U.S.C. 1506(r), the Agency is striking the language in 7 CFR 400.766(b)(2) that purports to make FADs and employee testimony binding on arbitrators, mediators, judges, and the NAD. This change ensures that while FADs remain a vital tool for program consistency, they function as persuasive guidance with respect to parties that were not involved in the FAD

request rather than an unlawful restriction on judicial and quasi-judicial independence. Accordingly, the determination set forth in the FAD is applicable to only the parties involved in the request for the FAD and that determination is appealable to NAD.

II. Modernization of Public Access and Regulatory Efficiency

History of the FCIC and CFR Publications

Congress established the Federal Crop Insurance Program in 1938 through the Federal Crop Insurance Act, enacted as part of the Agricultural Adjustment Act of 1938 (Pub. L. 75-430). This legislation created the FCIC as a wholly owned government corporation to provide farmers with a means of managing production risk through federally backed crop insurance. The initial program focused on wheat and gradually expanded to other crops and regions over subsequent decades.

The creation of FCIC reflected a broader federal policy goal: stabilizing farm income and promoting agricultural resilience during periods of economic uncertainty and natural disaster. By offering insurance against crop losses due to unavoidable perils, the program aimed to reduce reliance on ad hoc disaster assistance and foster a more predictable safety net for producers.

From its inception, FCIC operated under statutory authority and published its insurance policies and related regulations in the CFR. This practice was consistent with the requirements of the Federal Register Act of 1935, which established the Federal Register as the official journal for agency rules and notices, and later the Administrative Procedure Act of 1946, which formalized rulemaking procedures, including public notice and comment.

The Supreme Court's decision in *Federal Crop Insurance Corp. v. Merrill* (1947) underscored the binding nature of these published regulations, holding that policies promulgated and published in the Federal Register were enforceable even against parties

lacking actual knowledge of their terms. This precedent reinforced the principle that publication in the Federal Register provides constructive notice to all affected persons.

Over time, however, the approach of codifying detailed insurance policy terms in the CFR has become increasingly uncommon among federal programs. This traditional method often leads to delays in implementing necessary policy adjustments, creates administrative burden in maintaining frequently updated regulations, and can result in policy language becoming outdated before rulemaking processes are complete. Most agencies now issue contractual terms through program materials rather than rulemaking, as seen in analogous contexts such as FEMA's flood reinsurance program, allowing for greater agility and responsiveness to evolving program needs. RMA, which administers FCIC programs today, is adopting this modernized approach to streamline operations and reduce regulatory complexity.

Compliance with the E-Government Act of 2002

The E-Government Act of 2002 mandates that agencies use Internet-based information technologies to enhance the "transparency, accountability, and accessibility" of Government information. Section 202 of the Act specifically requires agencies to provide the public with "timely and high-quality" electronic access to information.

By removing voluminous, frequently updated policy provisions from the static CFR and transitioning them to the RMA website, the Agency fulfills the Act's mandate to improve the efficiency of service delivery. The CFR is published annually and updated incrementally, which creates a significant lag between policy updates and public notification. In contrast, the RMA's electronic repository provides real-time, searchable, and version-controlled access to the Common Crop Insurance Policy (CCIP) and related endorsements, ensuring that participants have the most current information available.

Reduction of Regulatory Redundancy and Administrative Burden

The Agency determines that the CFR is best utilized for legislative rules that establish legal rights or obligations. Because individual crop policies and endorsements function as contracts rather than legislative rules, their presence in the CFR is not required by the Administrative Procedure Act. Removing these provisions reduces the overall size of the CFR, streamlining the regulatory landscape for small entities and reducing the regulatory thicket that complicates compliance.

This action does not alter the statutory authority of FCIC or the availability of crop insurance coverage. Farmers will continue to access policy terms through designated and easily discoverable official program documents and the RMA website. RMA commits to maintaining a comprehensive, user-friendly, and searchable online repository for all current policy provisions and related materials. Non-policy provisions related to Federal crop insurance are now consolidated in part 400.

Regulatory Matters

Administrative Procedure Act

FCIC has determined that good cause exists to issue this rule without prior notice and comment pursuant to 5 U.S.C. 553(b)(3)(B). This action is a procedural change that solely concerns the location and method of publication for detailed policy provisions, rather than their content or substance. The rule itself does not introduce, modify, or remove any specific insurance coverage, eligibility criteria, or producer obligations. Instead, it streamlines administrative processes by relocating existing policy text from the CFR to official program materials. Therefore, this rule does not alter substantive rights or obligations of producers or other stakeholders, making prior public notice and comment unnecessary and impracticable.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866, "Regulatory Planning and Review." This

determination is based on the finding that this final rule is primarily administrative and procedural in nature, as it merely relocates existing policy provisions from the Code of Federal Regulations to official program materials.

Executive Order 13563

This rule is also consistent with the principles of Executive Order 13563, “Improving Regulation and Regulatory Review,” which directs agencies to assess all costs and benefits of available regulatory alternatives and select approaches that maximize net benefits. By removing detailed policy text from the CFR, this action reduces regulatory burden, streamlines program administration, and allows for more efficient updates to policy terms, thereby enhancing the overall effectiveness and responsiveness of the Federal Crop Insurance Program without diminishing protections or benefits to producers.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA). This final rule is administrative and procedural, focusing solely on the method and location of publishing Federal crop insurance policy provisions. It does not establish new substantive requirements, impose new compliance costs, or alter the eligibility, coverage, or financial obligations of producers or Approved Insurance Providers, many of which are small entities. The removal of text from the CFR is expected to reduce, rather than increase, administrative burden for all entities by facilitating more timely access to current policy terms. Therefore, a Regulatory Flexibility Analysis is not required.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act in 5 U.S.C. 804(2). It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Accordingly, the Agency has submitted this rule and all required supporting documentation to the Comptroller General of the United States and both Houses of Congress prior to its effective date, as required by 5 U.S.C. 801(a)(1).

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." This Executive Order requires agencies to consult with tribal officials when rules have tribal implications, impose substantial direct compliance costs on tribal governments, or affect the relationship between the Federal Government and Indian tribes. The Agency has determined that this rule does not have tribal implications and does not impose substantial direct compliance costs on tribal governments.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, this rule does not impose any new or revise any existing "collection of information" requirements as defined by the Act that would require approval by OMB.

List of Subjects

7 CFR Part 400

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Drug traffic control, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

7 CFR Part 402

Administrative practice and procedure, Claims, Crop Insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 407

Acreage allotments, Administrative practice and procedure, Barley, Corn, Cotton, Crop insurance, Peanuts, Reporting and recordkeeping requirements, Sorghum, Soybeans, Wheat.

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 400, 402, 407, and 457 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

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

2. Add subpart A, consisting of §§ 400.10 through 400.17, to read as follows:

Subpart A—Administration of Reinsured Crop Insurance Policies

Sec.
400.10 General statement.
400.11 Applicability.
400.12 Availability of Federal crop insurance.
400.13 Premium rates, amounts of protection, and coverage levels.
400.14 The contract.
400.15 The application and the policy.
400.16 Appropriation contingency.
400.17 Creditors.

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

§ 400.10 General statement.

(a) *Catastrophic coverage*. The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994 (Act), requires the Federal Crop Insurance Corporation (FCIC) to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect producers in the event of a catastrophic crop loss due to loss of yield or prevented planting, if provided by FCIC, provided the crop loss or prevented planting is due to an insured cause of loss specified in

the crop insurance policy. The Catastrophic Risk Protection Endorsement is a continuous endorsement that is effective in conjunction with a crop insurance policy for the insured crop. Catastrophic risk protection coverage will be offered through approved insurance providers if there are a sufficient number available to service the area. If there are an insufficient number available, as determined by the Secretary, local offices of the Farm Service Agency will provide catastrophic risk protection coverage.

(b) *Additional coverage*. The Act directs FCIC to offer additional coverage insurance policies that provide a level of coverage greater than the level available under catastrophic risk protection. These additional coverage policies may be offered on an individual loss basis, an area loss basis, or an individual loss basis supplemented with area loss coverage and may include margin coverage.

§ 400.11 Applicability.

The provisions of this part are applicable to each crop for which Federal crop insurance coverage is available and for which the producer elects such coverage.

§ 400.12 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this section on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Act. The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance is offered through approved insurance providers reinsured by FCIC that offer contracts containing the terms and conditions approved by the FCIC. These contracts are clearly identified as being reinsured by FCIC. FCIC may offer the contract for the catastrophic level of coverage directly to the insured through local offices of the Department of Agriculture only if the Secretary determines that the availability of local agents is not adequate. Those contracts are specifically identified as being offered by FCIC.

(c) Except as specified in the contract, no person may have in force more than one Federal crop insurance contract on the same crop for the same crop year in the same county.

(d) A person that has received a fee or penalty for violation of the contract must repay all amounts received with interest at the rate contained in the contract.

(e) An insured whose contract with FCIC or with a company reinsured by FCIC under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multiple peril crop insurance under the Act with FCIC or with a company reinsured by FCIC unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility.

(f) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for insurance or policies of insurance under the Act and the present status of any such applications or insurance.

§ 400.13 Premium rates, amounts of protection, and coverage levels.

(a) The Manager shall establish premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed for the insured crop which will be included in the actuarial documents on file in the applicable agents' office for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance or a coverage level and price from among those contained in the actuarial documents for the crop year.

§ 400.14 The contract.

(a) The insurance contract shall become effective upon the acceptance by FCIC or the insurance provider of a complete, duly executed application for insurance on a form prescribed or approved by FCIC.

(b) Changes made in the contract shall not affect its continuity from year to year.

(c) No indemnity shall be paid unless the insured complies with all terms and conditions of the contract, except as provided in the policy.

(d) The forms required under this part and by the contract are available at the office of the insurance provider, or such other location as specified by FCIC, if applicable.

§ 400.15 The application and the policy.

(a) Application for insurance on a form prescribed by FCIC, or approved by FCIC, must be made by any person who wishes to participate in the program, to cover such person's share in the insured crop as landlord, owner-operator, crop ownership interest, or tenant. No other person's interest in the crop may be insured under an application unless that person's interest is clearly shown on the application and unless that other person's interest is insured in accordance with the procedures of FCIC. The application must be submitted to FCIC or the reinsured company through the crop insurance agent and must be submitted on or before the applicable sales closing date on file.

(b) FCIC or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon FCIC's determination that the insurance risk is excessive.

§ 400.16 Appropriation contingency.

Notwithstanding the cancellation date stated in the policy, if there are insufficient funds appropriated by the Congress to deliver the crop insurance program, the policy will automatically terminate without liability.

§ 400.17 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 400.765 [Amended]

3. In 400.765, remove the definitions of “FCIC interpretation”, “Final agency determination”, and “You”.

4. Revise §§ 400.766 through 400.768 to read as follows:

§ 400.766 Basis and applicability.

(a) This subpart sets forth the procedure for a participant to make a request for a final agency determination with respect to a:

(1) Provision of the Act;

(2) Provision of this part;

(3) Provision of a crop insurance policy re-insured by FCIC;

(4) Handbook, manual, memorandum, and a non-binding guidance document issued by FCIC; and

(5) Bulletins issued to AIPs.

(b) A final agency determination is applicable to only the party requesting such a determination.

(c)(1) A request for a final agency determination must be made as provided in § 400.767(a). FCIC will make a determination on the request not later than 90 days after receipt of the request.

(2)(i) A request for a administrative review of a final agency determination made under this section may be made by a producer or applicant in accordance with subpart J or an appeal may be made to NAD as provided in part 11 of this Title.

(ii) A request for a administrative review of a final agency determination made under this section may be made by a reinsured company.

(3) FCIC will provide a final agency determination with respect to the crop year in which the request is made. If the crop insurance policy or other FCIC action was effective in any of the immediately preceding three crop years, the participant may request a determination for such years. For example, for a request received in the 2027 crop year, FCIC will consider a request for a final agency determination for the 2027, 2026, 2025, and 2024 crop years. A request for an interpretation that is outside of this timeframe will not be considered.

(4) If statutory, regulatory, policy provision, or procedure has changed during the time period for which an interpretation is requested, FCIC will provide, at the request of the participant, a final agency determination for each such crop year.

§ 400.767 Request for a final agency determination.

(a) A request for a final agency determination must:

(1) Be submitted to the Deputy Administrator as provided on RMA's website at www.rma.usda.gov through one of the following methods:

(i) By certified mail or overnight delivery, to the Deputy Administrator, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141-6205; or

(ii) By electronic mail at subpartx@rma.usda.gov;

(2) Identify and quote the specific provision in the Act, regulation, insurance policy provision, or procedure that is the subject of the request. The request for a final agency determination may pertain to only such provision unless other provisions are directly related to the subject provision;

(3) State the crop, crop year(s), and plan of insurance applicable to the request;

(4) State the name, address, and telephone number of a contact person for the request;

(5) Contain the requestor's detailed interpretation of the specific provision of the Act, regulation, crop insurance policy, or procedure that is the subject of the request; and

(6) Not contain any specific facts, alleged conduct, or hypothetical situations or the request will be returned to the requestor without consideration.

(b) If multiple parties are involved in a dispute and have opposing interpretations of a matter that FCIC may consider under this subpart, a joint request for a final agency determination in one request is encouraged. If multiple insured entities are parties to the dispute, and the request for a final agency determination applies to all parties, one request may be submitted for all insured entities. In this case, the information required in paragraphs (a) and (c) of this section must be provided for each person.

(c)(1) If the final agency determination will be used in a judicial, mediation, or arbitration proceeding, the requestor must identify:

(i) The type of proceeding and the date the proceeding is scheduled to begin, or the earliest possible date the proceeding would likely begin if a specific date has not been established; and

(ii) The name, address, telephone number, and or email address of a contact person for each party to the dispute;

(2) A request for a final agency determination must be submitted not later than 90 days before the date the mediation, or arbitration proceeding in which the determination will be used is scheduled to begin unless the parties elect to use the expedited review process available under the AAA rules.

(3)(i) FCIC will cooperate to the extent practicable to accommodate the schedule of a court, mediator, arbitrator, and NAD when a FCIC matter is pending before such entity. A party requesting a final agency determination should advise such entity that

FCIC acts on requests for final agency determinations within 90 days but cannot provide an exact date on which such a determination will be issued.

(ii) During litigation, mediation, arbitration, and appeals before NAD, if an issue arises and the presiding official determines that a final agency determination may assist in the resolution of the dispute, FCIC will honor a request for a final agency determination from such entity. Such a request should conform, to the extent practicable, to the provisions of paragraphs (a)(2) through (5) of this section. Such a determination is not binding on the presiding official and is a guidance document.

§ 400.768 FCIC response.

(a)(1) FCIC will not provide a final agency determination for any request that contains specific factual information to situations or cases, such as acts or failures to act of any participant under the terms of a policy, procedure, or any reinsurance agreement. A properly filed request will be reviewed by FCIC and a final agency determination will be issued within 90 days of receipt of the request.

(2) FCIC will not consider any examples or hypotheticals provided in the request because those are fact-specific and could be construed as a finding of fact by FCIC. If an example or hypothetical is required to illustrate an interpretation, FCIC will provide the example in the interpretation.

(b)(1) If, in the sole judgment of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide a final agency determination and the requestor will be notified within 30 days of the date of receipt by FCIC that the request is unclear, ambiguous, or incomplete.

(2) When FCIC provides a notification under paragraph (b)(1) of this section, the 90-day time period for FCIC to provide a response is stopped on the date FCIC issues the notification. On the date FCIC receives an acceptable request, FCIC has the balance of the days remaining in the 90-day time period to provide a final agency determination. For

example, FCIC receives a request for a final agency determination on January 10. On February 10, FCIC issues a notification that the request is unclear. On March 10, FCIC receives an acceptable request. FCIC has 60 days from March 10, the balance of the 90-day time period, to provide a response.

(c) If FCIC does not provide a response within 90 days of receipt of a request, the requested interpretation is applicable for the applicable crop year. Additionally, in the case of a joint request for a final agency determination when the requestors have differing interpretations, if FCIC does not provide a response within 90 days, neither party may assume their interpretation is correct.

(d) When issuing a final agency determination, FCIC will not evaluate the insured, insurance provider, agent, or loss adjuster as it relates to their performance in following FCIC policy provisions.

PART 402 [Removed and reserved]

5. Remove and reserve part 402.

PART 407 [Removed and reserved]

6. Remove and reserve part 407.

PART 457 [Removed and reserved]

7. Remove and reserve part 457.

Heather Manzano,
Acting Manager,
Federal Crop Insurance Corporation.

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