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An Agricultural Law Research Article

FCIC's Standard Reinsurance Agreement

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I. Introduction

Crop insurance is becoming increasingly popular with farmers as a risk management tool.¹ The Agricultural Risk Protection Act of 2000 (ARPA) is evidence that it also enjoys broad support in Congress.² ARPA significantly expanded the scope of the crop insurance program.³ It also made participation more attractive and likely by substantially increasing the share of the premiums paid by the government.⁴ It follows that there now exists an increased opportunity for disputes involving federal crop insurance.

Crop insurance can be very confusing for anyone unfamiliar with its mechanics, owing, at least in part, to the federal government's involvement in its promotion and delivery.⁵ That involvement imposes obligations on both the government and the private crop insurance providers. Certain of these obligations are not immediately obvious from contracts for crop insurance, even though they may have implications for the outcome of disputes on those contracts.⁶ Consequently, both farmers and their

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1. Authors note: As used here, "crop insurance" refers only to federally subsidized multiple peril crop insurance. Limited peril coverage, typically for fire and/or hail damage, is widely available through private insurers with no government involvement.

2. See Agricultural Risk Protection Act of 2000, Pub. L. 106-224 Secs. 101 - 173 (to be codified in scattered sections of 7 U.S.C. Secs. 1501 - 1515).

3. See generally Christopher R. Kelley, *The Agricultural Risk Protection Act of 2000: Federal Crop Insurance, the Non-Insured Crop Disaster Assistance Program, and the Domestic Commodity and Other Farm Programs*, 6 DRAKE J. AGRIC. L. 141, 159 (2001).

4. See *id.* at 148-50.

5. See, e.g., *Wiley v. Glickman*, No. A3-99-32, 1999 U.S. Dist. LEXIS 20278, at *35 (D.N.D. Sept. 3, 1999) (unreported decision). "[T]he court struggled along with the parties to find the law applicable to the confusing interstice between private insurance principles and federal farm policy." *Id.* at n.9.

6. See, e.g., *id.* at *40 (explaining that liability may be substituted from the insurer to the reinsurer in certain situations).

attorneys can benefit from a fundamental understanding of the roles and responsibilities of the different stakeholders in our federal crop insurance system. This monograph addresses the relationship between two of these stakeholders: the Federal Crop Insurance Corporation (FCIC) and the private insurance companies that it authorizes to sell and service approved policies.

II. Background

The Federal Crop Insurance Act (FCIA) created the FCIC as a wholly-owned government corporation within USDA responsible for delivery of federal multiple peril crop insurance.⁷ The FCIC is managed by a ten-member Board of Directors subject to general supervision by the Secretary of Agriculture.⁸ FCIC programs are administered by the Risk Management Agency (RMA), and the RMA Administrator is the designated Manager of the FCIC.⁹ Federal crop insurance is currently sold and serviced by private companies under reinsurance agreements with the FCIC.¹⁰

III. The Standard Reinsurance Agreement

The relationship between the FCIC and the companies providing federally subsidized crop insurance is governed by a Standard Reinsurance Agreement (SRA).¹¹ FCIC reinsurance agreements were first authorized in 1947 but saw little use until the 1980 amendments to the FCIA.¹² Reinsurance reduces the financial risks assumed by an insurer because the risks of catastrophic losses are spread among a pool of insurers.¹³ Reinsurance arrangements are often favored by insurers because they reduce their reserve requirements and enhance their profitability.¹⁴

7. See Federal Crop Insurance Act, ch. 30, 52 Stat. (1938) (codified at 7 U.S.C. Sec. 1503).

8. See Agricultural Risk Protection Act of 2000, Pub. L. 106-224, Sec. 142 (to be codified at 7 U.S.C. Sec. 1505(a)).

9. See 7 C.F.R. Sec. 2.44.

10. "Reinsurance is a contractual arrangement whereby one insurer (the ceding insurer) transfers all or a portion of the risk it underwrites pursuant to a policy or group of policies to another insurer (the reinsurer)." Barry R. Ostrager & Thomas R. Newman, *Overview of Reinsurance*, 454 PRAC. L. INST. / LIT. 339, 342 (citing *Colonial Am. Life Ins. Co. v. Comm'r*, 491 U.S. 244 (1989)); See also Barry R. Ostrager & Thomas R. Newman, HANDBOOK ON INSURANCE COVERAGE DISPUTES Sec. 15.01 (9th ed. 1998).

11. See 7 C.F.R. Secs. 400.161-.176.

12. See Steffen N. Johnson, *A Regulatory 'Wasteland': Defining a Justified Role In Crop Insurance*, 72 N.D. L. REV. 505, 512 (1996).

13. See generally Barry R. Ostrager & Thomas R. Newman, *Overview of Reinsurance*, 454 PRAC. L. INST. / LIT. 339, 342-43.

14. See *id.* at 343 (citing *Corcoran v. Universal Reinsurance Corp.*, 713 F.Supp.77, 82 (S.D.N.Y. 1989)).

The SRA incorporates the FCIA and FCIC regulations by reference.¹⁵ Under the SRA, the FCIC reinsures approved policies written by private insurance companies.¹⁶ The FCIC obligates itself to pay a predetermined portion of the policy premium as set out in the FCIA.¹⁷ Should the reinsured company be unable to pay losses on policies because of orders or directives from a regulatory agency or court with competent jurisdiction, the FCIC agrees to do so.¹⁸ The FCIC's liability, however, is not limitless, as it can refuse by written notice to accept additional policies from the reinsured companies.¹⁹ More importantly, any liability assumed by the FCIC under the terms of the SRA is subject to adequate appropriations.²⁰

The SRA obligates the reinsured companies to sell and service federal crop insurance according to FCIC procedures.²¹ Reinsured companies must file a plan with the FCIC designating the counties and states in which it proposes to operate.²² Once the plan of operations is approved by the FCIC, a reinsured company must offer its insurance products to all eligible producers in those areas.²³ A company is also required to offer catastrophic risk protection (CAT) and traditional buy-up insurance

15. See 7 C.F.R. Sec. 400.164.

16. See *id.*

17. See 7 C.F.R. Sec. 400.166. ARPA significantly increased the subsidized share of MPCl policy premiums beginning with the 2001 reinsurance year. See Pub. L. 106-224, tit. I, sec. 101, 114 Stat. 358, 361-63 (codified as amended at 7 U.S.C. Sec. 1508(e) (2000)).

18. See 7 C.F.R. Sec. 400.166. See also 1999 Standard Reinsurance Agreement (SRA)—Section V ¶ P, available at <http://www.rma.usda.gov/policies/1999policy.html>, which provides: “[A]ll eligible crop insurance contracts affected by such directive or order that are in force and subject to this Agreement as of the date of such inability or failure to perform will be immediately transferred to FCIC without further action of the Company by the terms of this Agreement.” *Id.*

19. See 7 C.F.R. Sec. 400.167.

20. See *id.*; See also 1999 Standard Reinsurance Agreement (SRA)—Section V ¶ N, available at <http://www.rma.usda.gov/policies/1999policy.html>.

Notwithstanding any other provision of this Agreement, FCIC's ability to sustain the Agreement depends upon the FCIC's appropriation. If FCIC's appropriation is insufficient to pay the obligations under this Agreement, and FCIC has no other source of funds for such payments, FCIC will reduce its payments to the Company on a *pro rata* basis or on such other method as determined by FCIC to be fair and equitable.

Id. (emphasis original).

21. See C.F.R. Sec. 400.168(a).

22. See C.F.R. Sec. 400.168(b).

23. See *id.*

in its approved areas of operation where those products are not offered by local USDA offices.²⁴ The SRA further requires that reinsured companies use only FCIC-approved forms and loss adjustment procedures.²⁵ Reinsured policies can only be sold through licensed agents or brokers that are FCIC certified.²⁶

The FCIC's SRA has evolved over time to reflect and incorporate various amendments to the FCIA.²⁷ The current version of the SRA was authorized in 1998 and implemented in 1999.²⁸ The SRA may change again soon because ARPA specifically authorized FCIC to change its terms once between 2001 and 2005.²⁹ Under the existing SRA, the FCIC provides both proportional and non-proportional reinsurance.³⁰ Insurers are allowed to commercially reinsure any retained portion of their liability not ceded to the FCIC, provided they fully disclose the details in their plan of operations.³¹

A. Proportional Reinsurance

24. See *id.* CAT indemnifies producers for yield losses in excess of 50 percent at 55 percent of the expected market price. See 7 U.S.C. Sec. 1508(b)(2)(A)(ii). CAT premiums are paid by the government but the insured must pay an administrative fee "equal to 10 percent of the premium . . . or \$100.00 per crop per county, whichever is greater, as determined by the Corporation." See *id.* at (b)(5)(A).

25. See 7 C.F.R. Sec. 400.168(c).

26. See 7 C.F.R. Sec. 400.168(e).

27. See e.g., Johnson, *supra* note 12, at 517-18. "The 1990 Farm Bill mandated a revision of the [SRA] to ensure that reinsured companies would take greater responsibility for loss thereunder FCIC responded by revising the [SRA] to require greater risk retention by reinsured companies and to decrease the level of stop-loss insurance offered." *Id.*

28. See Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105-185, sec. 536, 112 Stat. 523, 584 (codified as amended in scattered sections of 7 U.S.C.) ("For each of the 1999 and subsequent reinsurance years, the Corporation shall ensure that each Standard Reinsurance Agreement between an approved insurance provider and the Corporation reflects the amendments to the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) that are made by this subtitle").

29. Pub. L. 106-224, tit. I, Sec. 148, 114 Stat. 358, 394 (2000) ("Notwithstanding section 536 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. Sec. 1506 note; Public Law 105-185), the Federal Crop Insurance Corporation may renegotiate the Standard Reinsurance Agreement once during the 2001 through 2005 reinsurance years.").

30. Proportional or pro-rata reinsurance refers to a contractual arrangement in which "the reinsurer agrees to indemnify the ceding insurer for a percentage of any losses from the original risk in return for a corresponding portion of the premium for the original risk." Barry R. Ostrager & Thomas R. Newman, HANDBOOK ON INSURANCE COVERAGE DISPUTES Sec. 15.02 (9th ed. 1998).

31. See 1999 Standard Reinsurance Agreement (SRA)—Section II ¶ E, available at <http://www.rma.usda.gov/policies/1999policy.html>.

Under its proportional reinsurance provisions, private insurers may designate eligible contracts into Assigned Risk, Developmental, or Commercial funds.³² Any eligible contracts, including CAT and revenue policies, can be designated to the Assigned Risk fund but maximum cession rates per state are imposed.³³ All contracts designated into the Assigned Risk fund are combined in a single fund within each State.³⁴ Except in limited circumstances, the insurer must retain 20 percent of the net book premium and associated liability for contracts designated into the Assigned Risk fund.³⁵ Any liability not retained is ceded to the FCIC in return for a corresponding percentage of the premiums.³⁶

There are three Developmental funds: fund C for CAT policies, fund R for revenue policies, and fund B for all other policies.³⁷ Insurers must retain at least 35 percent of the net book premium and liability for contracts designated into these funds but may increase that amount in five percent increments for any State, provided they specify that intention in their plan of operations.³⁸ Insurers are allowed to vary retention percentages among the three Developmental funds within a State.³⁹ As with the Assigned Risk fund, the non-retained portions of the risk and premium are ceded to FCIC.⁴⁰

The options for insurers with respect to the Commercial fund(s) are similar to those for the Developmental funds. A reinsured company must retain at least 50 percent of the net book premium and liability on contracts designated to these funds.⁴¹ The retention percentages can differ among the three funds (CAT, Revenue, Other) and can be greater than 50 percent if specified in the reinsured companies' plan of operations.⁴² Any contracts that are not designated into the Assigned Risk or Developmental funds default into the appropriate Commercial fund.⁴³ As with the non-retained

32. See *id.* ¶¶ B-C.

33. See *id.* ¶ B.1.e.

34. See *id.*

35. See *id.* ¶ B.1.a.

36. See *id.*

37. See 1999 Standard Reinsurance Agreement (SRA)—Section II ¶¶ B.2.a, available at <http://www.rma.usda.gov/policies/1999policy.html>.

38. See *id.* ¶ B.2.d.

39. See *id.*

40. See *id.*

41. See 1999 Standard Reinsurance Agreement (SRA)—Section II ¶ B.3.b, available at <http://www.rma.usda.gov/policies/1999policy.html>.

42. See *id.*

43. See *id.* ¶ B.3.a.

portion of the other funds, liability for loss and a corresponding percentage of the associated premium are ceded to the FCIC.⁴⁴

Companies must retain a minimum of 35 percent of their entire book of crop insurance business under the current SRA unless: 1) more than 50 percent of their book of business is in the assigned risk fund, or 2) all of their contracts are designated into the assigned risk or developmental funds.⁴⁵ Where either condition is satisfied, the minimum retention requirement is lowered to 22.5 percent.⁴⁶ If an insurer does not meet the overall retention requirement, the FCIC increases their minimum 20 percent retention requirement for the Assigned Risk fund on a pro-rata basis sufficient to bring them into compliance.⁴⁷

B. Stop-Loss Reinsurance

The non-proportional reinsurance provided under the SRA limits the liability exposure for insurers on their retained book of business.⁴⁸ The share of loss assumed by the FCIC on an insurer's retained book of business varies by fund and depends on the insurer's loss ratio.⁴⁹ Loss ratios are calculated separately for each fund and state. The FCIC uses a graduated system under which an insurer is responsible for decreasing percentages of ultimate net losses as its loss ratios increase.⁵⁰ For example, an insurer with a loss ratio of 150 percent on the portion of its revenue plans not ceded to the FCIC and designated to the commercial fund would be responsible for 57 percent of the ultimate net loss.⁵¹ However, if that same insurer had a 200 percent loss ratio, then it would be responsible for 57 percent of the first 160 percent of its losses and for 43 percent of the remaining loss.⁵² The FCIC assumes 100 percent of the liability for losses in excess of 500 percent.⁵³

44. See *id.* ¶ B.3.b.

45. See *id.* ¶ B.4.a.

46. See *id.*

47. See *id.* ¶ B.4.b.

48. See Barry R. Ostrager & Thomas R. Newman, HANDBOOK ON INSURANCE COVERAGE DISPUTES Sec. 15.02 (9th ed. 1998) (explaining that non-proportional or "Stop Loss" reinsurance is a form of "Excess of Loss" reinsurance which "indemnifies the ceding insurer, subject to specified limits, for all or a portion of loss in excess of a stated retention.").

49. The definition section of the SRA provides: "'Retained' as applied to . . . book of business, means the remaining liability for ultimate net losses and the right to associated net book premiums after all reinsurance cessions to FCIC under this Agreement."

50. See 1999 Standard Reinsurance Agreement (SRA)—Section II ¶ C, available at <http://www.rma.usda.gov/policies/1999policy.html>.

51. See *id.* ¶ C.1.a.

52. See *id.* ¶ C.1.b.

53. See *id.* ¶ C.1.d.

C. Underwriting Gains and Losses

The SRA also specifies how much of any underwriting gains an insurer may retain. This amount is calculated on a graduated basis with the percentage of gains retained decreasing as loss experience improves.⁵⁴ For example, an insurer with a loss ratio of greater than or equal to 65 percent but less than 100 percent retains 94 percent of the gain from revenue plans designated into the commercial fund.⁵⁵ Where the loss ratio is greater than or equal to 50 percent but less than 65 percent, the insurer keeps 70 percent of the gain from contracts similarly designated.⁵⁶ And where the loss ratio is less than 50 percent for revenue plans designated into the commercial fund, the insurer retains 11 percent of the gain.⁵⁷

Underwriting gains and losses for each fund are calculated separately by state and then totaled for all states to determine an insurer's net operating gain or loss for annual settlement purposes.⁵⁸ At annual settlement, the FCIC will retain 60 percent of any net gains exceeding 17.5 percent in a Reinsurance account.⁵⁹ Conversely, the FCIC will charge an insurer's Reinsurance account the amount necessary to realize a gain of 17.5 percent where it has a loss or a net gain of less than 17.5 percent.⁶⁰

Annual settlement funds maintained in the Reinsurance account are normally held for two years before being returned to the insurer on a first in - first out basis.⁶¹ The settlement procedures at termination or non-renewal of the SRA differ depending upon which party cancels. If the insurer cancels, it is entitled to 50 percent of its Reinsurance account balance at the annual settlement date with the balance due one year later.⁶² Where FCIC cancels, the entire account balance is payable to the insured one year after the first annual settlement following cancellation.⁶³

D. Risk Subsidy, Administrative and Overhead Expenses, and Loss Adjustment

54. See 1999 Standard Reinsurance Agreement (SRA)—Section II ¶ D, *available at* <http://www.rma.usda.gov/policies/1999policy.html>.

55. See *id.* ¶ D.1.a.

56. See *id.* ¶ D1.b.

57. See *id.* ¶ D.1.c.

58. See *id.* ¶ D.1.c.1-2.

59. See *id.* ¶ D.1.c.3.b.

60. See 1999 Standard Reinsurance Agreement (SRA)—Section II ¶ D.1.c.3.c, *available at* <http://www.rma.usda.gov/policies/1999policy.html>.

61. See *id.* ¶ D.1.c.3.d.

62. See *id.* ¶ D.1.c.3.e.i.

63. See *id.* ¶ D.c.3.e.ii.

The SRA provides that FCIC will subsidize crop insurance premiums as authorized by Congress.⁶⁴ These subsidy amounts have increased steadily over time, and the FCIC now pays the lion's share of premiums on most policies.⁶⁵ The SRA further provides that the FCIC will pay an Administrative and Operating (A&O) expense subsidy to the reinsured company for certain policies.⁶⁶

The amount of A&O subsidy is a function of the type of policy underwritten and its associated premium.⁶⁷ Under the current SRA, the reinsured company receives an A&O subsidy equal to 22.7 percent of the net book premium for Group Risk Protection (GRP) policies.⁶⁸ Reinsured companies receive 21.1 percent of the net book premium for eligible revenue insurance policies keyed to the higher of market price at planting or harvest and 24.5 percent for policies keyed only to market price at planting.⁶⁹ The reinsured company receives 24.5 percent of the net book premium on all other policies except CAT.⁷⁰ There is no A&O subsidy for CAT policies;⁷¹ however, the reinsured companies do receive loss adjustment expenses based on net book premium for eligible CAT contracts.⁷²

64. See 1999 Standard Reinsurance Agreement (SRA)—Section III ¶ A.1, available at <http://www.rma.usda.gov/policies/1999policy.html>.

65. FCIC pays 100% of the CAT premium. See 7 U.S.C. § 1508 (e)(2)(A). Beginning with the 2001 crop year, FCIC subsidized buy-up policy premiums as follows (first number represents the percent of yield and the second the percent of the established market price insured): 50/100 = 67%; 55/100 = 64%; 60/100 = 64%; 65/100 = 59%; 70/100 = 59%; 75/100 = 55%; 80/100 = 48%; 85/100 = 38%. See *id.* §§ (e)(2)(B) - (G).

66. See 1999 Standard Reinsurance Agreement (SRA)—Section III ¶ A.2., available at <http://www.rma.usda.gov/policies/1999policy.html>.

67. See *id.* "A&O subsidy for eligible crop insurance contracts . . . will be paid to the Company on the monthly summary report after the Company submits, and FCIC accepts, the information needed to accurately establish the premium for such . . . contracts." *Id.* A&O subsidies are paid on a "net book premium" basis which is defined by the SRA as: "The total premium calculated for all eligible crop insurance contracts, less A&O subsidy, cancellations, and adjustments." See 1999 Standard Reinsurance Agreement (SRA)—Section I ¶ N.

68. See *id.* ¶ A.2.b. GRP policies key coverage to expected county yields based on National Agricultural Statistics Service (NASS) data rather than individual yields. See RMA Online, Group Risk Plan (GRP), available at http://www.rma.usda.gov/pubs/rme/fsh_4.html.

69. See 1999 Standard Reinsurance Agreement (SRA)—Section III ¶ A.2.c. - 2.d., available at <http://www.rma.usda.gov/policies/1999policy.html>.

70. See *id.* ¶ A.2.e.

71. See *id.* ¶ A.2.a.

72. See *id.* at Section IV. CAT loss adjustment expense was reduced from 11 percent to eight percent effective with the 2001 crop year. See Pub. L. 106-224, tit. I, sec. 103, 114 Stat. 358, 365 (codified as amended at 7 U.S.C. Sec. 1508(b)(11) (2000)).

The SRA requires the reinsured companies to remit any administrative fees collected from policyholders⁷³ and also requires the reinsured companies to disclose the amount of risk (premium) and A&O subsidy borne by the FCIC to the policyholders.⁷⁴ The FCIC will reduce A&O subsidies where the reinsured company does not provide and process all the necessary data by an agreed-upon transaction cut-off date.⁷⁵

E. General Provisions

Section V of the SRA contains the general provisions applicable to the reinsurance arrangement between the FCIC and the private insurance companies. It imposes, *inter alia*, record-keeping and reporting requirements with which the reinsured company must comply. It also sets out the provisions for corrective action, including suspension and termination, should a review establish that the company is not complying with the terms of the SRA.⁷⁶ If the reinsured company is otherwise in compliance, the SRA is automatically renewed July 1st of each following year, unless the FCIC provides written notice at least six months in advance that the contract will not be renewed.⁷⁷ The general provisions further provide that the FCIC is not responsible for the errors or omissions of the reinsured's sales agents or loss adjusters.⁷⁸

The reinsured companies can challenge any "actions, finding, or decision of FCIC" arising under the SRA.⁷⁹ The applicable procedure is different depending upon the nature of the determination being challenged. For non-compliance issues, the company must request review by the Deputy Administrator of Insurance Services.⁸⁰ By contrast, the Compliance Field Offices allow the reinsured company to respond to an initial determination before issuing a final determination.⁸¹ If the company

73. See *id.* ¶ B. Reinsured companies are required to collect administrative fees from eligible producers as follows: For CAT policies, the greater of \$100 per crop per county or 10% of the imputed premium. See 7 U.S.C. Sec. 1508(b)(5)(A). The administrative fee for additional coverage policies is \$30 per crop per county. See 7 U.S.C. Sec. 1508(c)(10)(A).

74. See 1999 Standard Reinsurance Agreement (SRA)—Section III ¶ F., available at <http://www.rma.usda.gov/policies/1999policy.html>.

75. See *id.* ¶ G. FCIC reduces A&O subsidies in 1.5% increments up to a maximum of 4.5% for data received more than twelve weeks after the final acreage reporting date for the crop where the delay is the fault of the reinsurer. See *id.*

76. See *id.* Section V ¶ J. A company has 45 days from its date of notification to correct deficiencies or the SRA automatically terminates at the end of the reinsurance year. While suspended, a company may not sell new policies, however, FCIC may require that it continue to service existing policies. See *id.* ¶¶ J.1. - J.3.

77. See *id.* ¶ M.

78. See *id.* ¶ W. "Liability incurred, to the extent it is caused by agent or loss adjuster error or omission, or failure to follow FCIC approved policy or procedure, is the sole responsibility of the Company." *Id.*

79. See *id.* ¶ L. The relevant appeal procedures are set out in 7 C.F.R. Sec. 400.169.

80. See 7 C.F.R. Sec. 400.169 (a).

81. See *id.* § 400.169 (b).

disagrees with a final determination, it may request a final administrative determination from the Deputy Administrator of Compliance.⁸²

Irrespective of the nature of the dispute, the reinsured company must submit a written request for review within 45 days of receipt of the disputed determination.⁸³ The SRA requires the FCIC to issue a “fully documented” decision within 90 days after receiving notice of the dispute.⁸⁴ If the FCIC cannot meet the 90-day deadline, it must notify the reinsured company within that 90 days of its inability to meet the deadline and to state when its decision will be made.⁸⁵ Final administrative determinations by the responsible Deputy Administrator may be further appealed to the Board of Contract Appeals,⁸⁶ though certain FCIC determinations are final and may not be further appealed by the reinsured company.⁸⁷ Final administrative determinations by the FCIC must be appealed in writing to USDA’s Board of Contract Appeals within 90 days.⁸⁸ Reinsured companies may seek judicial review of the Board’s findings in federal district court.⁸⁹

F. The Current Landscape

There are considerably fewer companies now with reinsurance agreements in place with FCIC than there were twenty years ago,⁹⁰ which is notable because the volume of business has increased

82. *See id.*

83. *See id.* Sec. 400.169 (a) - (c).

84. *See* 1999 Standard Reinsurance Agreement (SRA)–Section V ¶ L.2., *available at* <http://www.rma.usda.gov/policies/1999policy.html>.

85. *See id.*

86. *See* 7 C.F.R. Sec. 400.169 (d). The Board of Contract Appeals is an agency within USDA composed of licensed attorneys who are designated to act as Administrative Judges. *See* 7 C.F.R. Secs. 24.1 - 24.2. Generally, Board decisions constitute a majority decision of a three judge panel. *See* 7 C.F.R. Sec. 24.2.

87. *See* 7 C.F.R. Sec. 400.169 (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 [sic] or restrict the terms of the reinsurance agreement. . . . 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.

Id.

88. *See* 7 C.F.R. Sec. 24.5.

89. *See* 7 U.S.C. Sec. 6912(e); *See also Farmers Alliance Mutual Ins. Co. v. FCIC*, 2001 WL 30443 (D.Kan.) (dismissing action brought in district court against FCIC because reinsured had not appealed to USDA’s Board of Contract Appeals).

90. *See* UNITED STATES GEN. ACCOUNTING OFFICE, CROP INSURANCE: OPPORTUNITIES

dramatically during that same period.⁹¹ In the mid-1980's, over fifty companies contracted with the FCIC to deliver federal crop insurance,⁹² but by 1997, only sixteen companies had reinsurance agreements with the FCIC.⁹³ This decline may be partly explained by mergers and acquisitions within the insurance industry in general.⁹⁴ Many crop insurance policies are sold and serviced by managing general agents (MGA's) for the holders rather than by signatories themselves.⁹⁵ Companies using MGAs must fully disclose that fact in their annual plan of operations and certify to their compliance with certain laws and regulations.⁹⁶

Crop insurance is experiencing in recent years the same sort of concentration common to other agricultural sectors. Farm Bureau, through its interlocking Boards of Directors, reportedly owns or controls one-third of the fourteen companies which entered into the 1999 SRA with FCIC.⁹⁷ The exact relationship of the stakeholders in federal crop insurance is hard to determine because of prohibitions against revealing corporate business strategies.⁹⁸

The stakes in crop insurance are enormous. It is a huge industry generating billions of dollars in revenue.⁹⁹ The relatively few corporate players are well organized and have a powerful and influential national lobby.¹⁰⁰ The legion of sales agents representing the reinsured companies at the

EXIST TO REDUCE GOVERNMENT COSTS FOR PRIVATE-SECTOR DELIVERY, GAO/RCED-97-70 at 137 (1997).

91. See generally, BARRY K. GOODWIN & VINCENT H. SMITH, THE ECONOMICS OF CROP INSURANCE AND DISASTER AID, 34, 48 (1995); See also UNITED STATES GEN. ACCOUNTING OFFICE, *supra* note 86, at 23 ("Insurance premiums written by participating companies during this same period increased from \$747 million in 1990 to \$1.6 billion in 1996.").

92. See UNITED STATES GEN. ACCOUNTING OFFICE, *supra* note 90, at 137.

93. See *id.*

94. See *id.* at 23 ("The number of companies selling and servicing crop insurance for FCIC has decreased from 27 in 1990 to 16 in 1996 because of business acquisitions and changing business relations.").

95. See *id.* at 68 - 69. Appendix II of GAO's report reflects that in 1994-95, American Agrisurance was the managing general agency for SRA holder Redland Insurance Company and that Blakely Crop Hail, Inc. was the managing general agency for SRA holder Farmers Alliance Mutual Insurance Company. See *id.*

96. See 1999 Standard Reinsurance Agreement (SRA)—Section V ¶ G.3., available at <http://www.rma.usda.gov/policies/1999policy.html>. The SRA holder must certify that managing general agents are "in full compliance with the laws and regulations of the State" where incorporated. See *id.*

97. See *Federal Crop Insurance: Insuring the Farm Bureau's Future*, RURAL COMMUNITY UPDATES (Defenders of Wildlife, Grass Roots Environmental Effectiveness Network Project, Albuquerque, N.M.), Sept. 2, 1999, at 1.

98. See 5 U.S.C. Sec. 552 (b)(4).

99. See UNITED STATES GEN. ACCOUNTING OFFICE, CROP INSURANCE: USDA NEEDS A BETTER ESTIMATE OF IMPROPER PAYMENTS TO STRENGTHEN CONTROLS OVER CLAIMS, GAO/RCED-99-266 at 3 (1999) ("From 1981 through 1998, FCIC paid farmers \$14.1 billion for insured crop losses, and in 1998 alone, FCIC paid \$1.7 billion.").

100. See UNITED STATES GEN. ACCOUNTING OFFICE, *supra* note 90, at 96 ("NCIS is an

state and local levels complement and increase that influence considerably.¹⁰¹ This may help explain why privately delivered federal crop insurance, despite its shortcomings, has emerged as a dominant policy element of our farm safety net.¹⁰²

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association composed, among others, of all of the current holders of Standard Reinsurance Agreements ("SRA").

101. See, e.g., UNITED STATES GEN. ACCOUNTING OFFICE, *supra* note 90, at 34 ("Despite this prohibition [on reporting lobbying expense as crop insurance delivery expense], we found in our sample of company transactions that the companies included a total of \$418,400 for lobbying and related expenses in their expense reporting for 1994 and 1995.").

102. See, e.g., UNITED STATES DEPARTMENT OF AGRICULTURE OFFICE OF INSPECTOR GENERAL - REPORT TO THE SECRETARY ON FEDERAL CROP INSURANCE REFORM, No. 05801-2-At, at 1 (1999) (observing that "[b]ecause the reinsured companies incur minimal costs from reinsured losses, they have little reason to effectively monitor risky policyholders, little reason to deny claims of questionable losses, and no cause to find fault with their own practices."). OIG's report also concluded that risk-sharing arrangements with the private companies worked to the disadvantage of small and limited resource producers and resulted in excessive administrative costs. See *id.*

