



**United States
Department
of
Agriculture**

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TO: Board of Directors
Federal Crop Insurance Corporation

Federal Crop
Insurance
Corporation

FROM: William J. Murphy /s/
Manager

1400
Independence
Avenue, SW
Stop 0801
Washington,
DC
20250-0801

SUBJECT: Manager's Report
Exhibit No. 3045

This memorandum serves as the Manager's Report to the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) for the November 19, 2009 meeting.

Program Update:

Standard Reinsurance Agreement Negotiations Update — RMA met with industry representatives on September 17, and presented findings from a report by Milliman, Inc. on company profitability. RMA received industry comments on October 19, regarding the industry's recommendations for the next Standard Reinsurance Agreement (SRA). Some companies have also met with RMA individually to raise issues and concerns regarding the next SRA. RMA has considered industry recommendations, Milliman's findings, various Office of General Counsel (OGC) and Office of Inspector General (OIG) reports, and conducted pre-decisional analysis. From these reviews, RMA is finalizing the first draft of the 2011 SRA, conducted rounds of internal clearance briefings, and expects to release this draft during the first week of December. Comments are due from the industry the first week of January.

FSA Supplemental Revenue Assistance Payments (SURE) Program:

First Data File — RMA provided the first SURE data file for crop year 2008 to the Farm Service Agency (FSA) on November 5. In addition to the data provided by RMA for prior FSA disaster programs, RMA is also providing Actual Production History yield adjustments, an adjusted guarantee, and subsequent years' production reports to FSA. FSA and RMA held several meetings on the data requirements. Test policies were generated and reviewed collectively by RMA and FSA to assure that the program extracts and provides the information necessary for FSA to generate SURE interim payments beginning in November. RMA will provide a weekly file to FSA.

Quality — FSA will use the production to count provided by RMA and allow a SURE quality adjustment using a quality adjustment reduction factor representative of the lower local price due to quality. FSA will allow quality reductions even in those situations where RMA has considered quality in the production to count. At the present time, RMA cannot identify quality adjustments specific to a policy in its data provided electronically

to FSA.

The SURE quality adjustment reduction factor will be based upon the percentage price reduction in the local price due to quality, and will consider excess moisture when due to a naturally occurring cause of loss. When producers in an area receive a reduced price in the local markets due to quality, then the FSA established national average market price will be reduced by the average percentage price difference caused by quality in the area. Each FSA State Office will determine the quality adjustment reduction factor for price. Producers will certify that they meet or exceed the FSA State Committee established quality adjustment factor (percentage of quality loss).

Extremely Wet Harvest Conditions:

In response to extremely wet harvest conditions in some parts of the country, RMA has published information on its Web site reminding interested parties of RMA's current procedures for delayed harvest, poor quality grain, and high moisture grain.

Regulatory Update:

Common Crop Insurance Policy — Enterprise Unit Provisions –The Product Administration and Standards Division and the Office of General Counsel have resolved issues and concerns with the final rule. An interim rule was published in the Federal Register on June 15, that revised enterprise unit provisions mandated by the 2008 Farm Bill. The final rule is in the final clearance process and should be published in the Federal Register within the next month.

Apple Crop Provisions —The 60 day comment period for the proposed rule ended on September 9. Producer groups, apple growers, and other interested parties expressed concerns that with the public comment period coinciding with the 2009 apple harvest, time did not provide them with a sufficient opportunity to submit comments to the proposed rule. Based on these concerns, RMA is publishing a notice in the Federal Register reopening the public comment period an additional 30 days from the date the notice is published.

IT Projects and Activities — The Information Technology Modernization (ITM) project, RMA's technology reengineering initiative, continues to make progress in implementing the COMBO policy for 2011. Significant achievements include the release of the COMBO Actuarial Data Master to the Approved Insurance Providers (AIPs) in August and October. Testing for the first phase of ITM started in October and will continue through 2010. Starting mid-November, the AIPs can begin testing COMBO premium calculation web service. The complexity of implementing the COMBO policy has required additional development resources to maintain the program schedule.

The Comprehensive Information Management System (CIMS) project is implementing new capabilities to provide SURE data to CIMS Users and expand CIMS usage within FSA. Many of the enhancements will be completed by December 1.

Regional Offices Update:

California Cotton to Cotton Seed — This year, California farmers will grow only 199,000 acres of cotton, a stark contrast to the 844,000 acres grown a decade ago. The number of cotton gins has followed the acreage decline. A decade ago there were almost 100 gins in California and there are only 34 gins in the State today. Other factors have contributed acreage decline such as a reduction in water supplies, the world economic crisis, high production costs, expansion of permanent crop plantings, and diversification and competition from other states. Another factor that can keep California cotton gins in operation is cottonseed prices. In 2008, prices hit highs of more than \$400 per ton. Seed is an important feed commodity for dairies and prices for cottonseed prices rose along with other feed crop prices last year.

Update on California Water Crisis — The Obama Administration called for California Governor, Arnold Schwarzenegger, to call state lawmakers into a special session to deal with the State's water crisis. The administration summoned state officials and interested groups to a conference on how to deal with a shortage that's causing high unemployment and economic distress in the State's Central Valley. Low precipitation and water restrictions have caused economic distress. Farmers have made more than a quarter-million acres idle and put thousands out of work. Lawmakers from the Central Valley asked Federal officials to waive the Endangered Species Act for a year or two until more long-term solutions could be found to bring more water to the region (Representative Dennis Cardoza, Representative Jim Costa, Senator Dianne Feinstein, and Representative Devin Nunes). Attempts to pull back biological opinions for balancing water use and protection of endangered species had failed.

Recently, the Governor signed an \$11.1 billion bond package after the State's legislature passed five bills that will provide infrastructure funding for water management; and conservation and storage projects. This bond must go before the voters of the State for approval. It is anticipated to be on the ballot by November 2010.

European Grapevine Moth in California — An adult larva of the European grapevine moth, *Lobesia botrana*, was found by a grower in the Oakville area of Napa County last week. State scientists confirmed its identity on October 12, and it is the first known detection of the moth in the United States. The moth is a known pest in Europe, the Mediterranean, southern Russia, Japan, the Middle East, Near East, and northern and western Africa. It feeds on fruits, including olives, blackberries, cherries, nectarines, persimmons and pomegranates. The moth's larva bites into grapes, especially varieties with dense clusters, and feed on the inside. Napa County officials are working with state and Federal authorities to determine the location by setting traps. The grapevine moth overwinters in its pupa stage, making it difficult to detect until spring. No action has yet been imposed on growers. Invasive Pests affecting the Davis Region denotes potential of occurrence, but are not covered events under the Quarantine Endorsement.

San Diego County Medfly Quarantines — A 77 square mile agricultural quarantine zone has been established in the Escondido area to combat a Mediterranean fruit fly infestation. The quarantine means that farmers must have crops declared free of pests and follow other rules before they can ship produce. A mated female Medfly was found in Escondido in early September, which triggered an eradication program. Officials have also prepared a quarantine zone in Fallbrook where flies were found. The treatment with the use of sterile Medflies has begun within the surrounding nine square-mile location site. Thus far, two adult males and a mated female have been detected in traps. Residents are being urged not to move fruits and vegetables out of the area.

Citrus Psyllid (Citrus Greening) Detections in Arizona — Arizona has joined the list of States in which Asian citrus psyllids have been found in traps. Two of the pests that can carry the bacterial disease huanglongbing, also known as HLB or citrus greening, were trapped in mid-October did not test positive for HLB. Mexican officials revealed the psyllids were present in all of the country's 23 citrus-producing States. However, the Arizona Department of Agriculture has established a 20-mile quarantine area in Somerton after the third insect was found. The quarantine impacts where growers and packers can ship citrus grown in the area. Fruit from some groves east of the quarantine can be exported without restriction if packed outside the quarantine area. Residents are asked not to transport backyard fruit outside the quarantine area. Yuma County is Arizona's leading citrus-producing region, with lemons and grapefruit being the dominant commodities. The Psyllid has been found in other states, but the Psyllid did not carry the disease.

Risk Management Education Division Update:

86 Cooperative Agreements Awarded — The Risk Management Education Division (RMED) awarded a total of 16 cooperative agreements for the Targeted States Program and 70 cooperative agreements for the Small Sessions program for 2009-2010 year. A press release was issued on September 17, which announced the new partnership agreements. The release stated that:

“Crop Insurance Education in Targeted States: \$4,470,075 is being awarded to deliver crop insurance education and information to agricultural producers in 16 States designated as historically underserved with respect to crop insurance. These targeted States include: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

Commodity Partnerships for Small Agricultural Risk Management Education Sessions: \$697,875 is being awarded to fund 70 commodity partnership agreements across the country, delivering training to U.S. agricultural producers in managing production, marketing, and financial risk. The program gives priority to educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage.”

Additional funds were added to many of the small session's agreement before the end of the fiscal year. Partners were able to get additional funding by submitting updated budget information and statements of work. Once this information was received an amendment to the original agreement was processed.

FFA Convention — Seven members from RMA attended the 2009 National FFA Convention and Career Show in Indianapolis, Indiana. Students and other attendees were able to answer a variety of questions ranging from what does USDA stand for and is a pumpkin a fruit or vegetable? At the career show booth, information was also given out to Advisors, students, and parents to promote the annual FFA-RMA essay writing contest. Previous essay contest winners visited the booth and spoke about their experience of traveling to Washington, DC and how they still keep in touch with other winners of the contest. RMA staff members also served as judges for different agricultural proficiency contests.

Conference calls — Entrance conference calls are underway in RMED. RMED along with the Regional Offices are talking with recipients of this year's cooperative agreements. RMED is answering questions and providing clarification on issues that the partners may have. At this time, possible changes to the Statement of Work are made known and updates are being given to the partners.

2010 Request for Applications — The Request for Applications (RFA) for 2010 is being reviewed and changes are being made to align the way RMA awards agreements with other USDA agencies and throughout the Federal government. Some of the changes to be included will be the mandatory use of grants.gov as the only method of submission of applications. Grants.gov has a 24-hour helpdesk in order to assist applicants who are having problems using the system. The use of <http://www.grants.gov> will also eliminate the duplication of applications and also assist in streamlining the process when applying for awards and will, in turn, help RMED prepare and process agreements in a more effective manner.

RMED is working on a new award letter, award document, and award factsheet to send to applicants as their Notice of Award. RMED is also working on having cooperative agreements payments set up on the Automated Standard Application for Payments (ASAP). This will cut down on the amount of time that it takes for partners to receive their funds. RMED is also working on ensuring that all updates regarding grants and cooperative agreements are received so that this information can be delivered to partners in a timely fashion.

Compliance Update:

Recent Compliance Investigation Appeals and Sanction Activity — A Wilson County, North Carolina crop insurance agent pleaded guilty on October 21 to conspiring to make false statements, to make material false statements, to commit mail fraud and wire fraud, and to conspiring to launder money in a scheme to defraud crop insurance

companies of funds ultimately reimbursed by the Federal government. Eleven other parties, including loss adjusters, farmers, warehouse workers, and a check casher, have also entered into plea agreements in relation to this case. OIG has identified and is continuing to review additional tobacco policyholders who are suspected of failing to report insured tobacco production and receiving improper indemnity payments as a result.

Policyholders in Deaf Smith County, Texas, 2008 Group Risk Income Protection Policy for Wheat — The policyholders filed an appeal challenging RMA’s adverse decision dated May 20. The adverse decision used the final county yields for 2008 under the Group Risk Income Protection (GRIP) for wheat. RMA contends it used the final county yields that USDA’s National Agriculture Statistics Service (NASS) developed according to its regulations. The policyholders argue the final county yield that RMA used was in error. The policyholders contend that NASS figures penalize the indemnity for dry land wheat because NASS final county yield for wheat averages the lower dry land and higher irrigated wheat yield and the production figures gathered by NASS and used by RMA only considered harvested acres. The policyholders argue that they were paid a smaller indemnity than the amount owed under their GRIP policy. A National Appeals Division’s Hearing Officer ruled that the Agency decision was erroneous. RMA is requesting a Director Review of the Hearing Officer’s determination.

(Policyholder) v. RMA and (Approved Insurance Provider), Warren County Tennessee —A policyholder has filed a Complaint in the United States District Court, Eastern District of Tennessee Winchester Division, Winchester, Tennessee. Policyholder is seeking damages not to exceed \$3,500,000. On or about April 7, 2006, Policyholder’s farm was hit by a tornado and hail storm that damaged his nursery crop. Policyholder filed a claim. RMA and the AIP conducted a large claim review and denied the loss for damages and declared the insurance application void. Policyholder is claiming that RMA and the AIP breached its contract by failing and refusing to properly pay the insurance claim within 60 days. Policyholder claims that RMA and the AIP are jointly and severally liable for the damages suffered by Policyholder as a result of the tornado and hail storm.

Acceptance Insurance Companies, Inc. v. United States — On October 1, the United States Court of Appeals for the Federal Circuit decided in favor of RMA regarding a suit brought by Acceptance in relation to the failure of American Growers Insurance Company in 2002. The Court held that when the RMA rejected the proposed sale of American Growers’ policies to another company, the government did not actually “take” American Growers. Rather, Acceptance still maintained possession of American Growers and held the same property interest as it had prior to the RMA’s rejection—a property interest that included having American Growers subject to the coverage and capital requirements of the pertinent crop insurance regulations. Put another way, when the RMA rejected the proposed sale, Acceptance possessed no more or no less of a property interest in American Growers than it did prior to the RMA’s rejection. In its conclusion, the Appeals Court held that contrary to Acceptance’s arguments, when the RMA rejected the proposed sale, it did not actually take American Growers’ insurance policy portfolio. Rather, Acceptance, through its ownership of American Growers, retained possession of

the policies, but was barred from selling them to a particular buyer. As a result, it was prevented from realizing a business expectation. Acceptance did not have a cognizable property interest for Fifth Amendment purposes in the ability to freely transfer American Growers' portfolio of insurance policies. Thus, there was no cognizable property interest that could be "taken" when the RMA rejected the proposed sale. The Appeals Court affirmed the decision of the Court of Federal Claims that dismissed Acceptance's takings claim. RMA wishes to acknowledge the exceptional work that was done by the USDA, Office of General Counsel and Department of Justice attorney's assigned to this case throughout this litigation.

Sanction/Disqualification of Policyholder; Delta County, Texas — The Southern Regional Compliance Office review of this matter was initiated based on a referral from the policyholder's Approved Insurance Provider, regarding the legitimacy of certifications and claims made by the policyholder for its crop year 2007 corn crop. The AIP alleges that all the corn acreage insured on the policy identified as unit 0112 was cut for silage and that the corn production submitted by the policyholder as evidence of a loss was actually harvested from acreage owned by the policyholder that was not insurable because the intended use of the crop land on that acreage was for silage. The policyholder had reported to his agent and FSA that the intended use of unit 0112 corn was silage. The policyholder later signed an Acreage Report showing unit 0112 as grain. The AIP has provided sworn statements, loss adjuster special reports and satellite imagery and reports that prove unit 0112 was harvested for silage. RMA's initial finding that the corn reported on the policy was not insurable because the intended use of the crop was not to be harvested as grain. This resulted in a premium overstatement.

Current Crop Disaster Program Referrals — RMA continues to work with the AIPs to resolve the 6,761 Crop Disaster Program referrals received to date from Farm Service Agency offices. About half of these referrals result from policyholders reporting one entity to RMA and another to FSA. These referrals are the result of FSA identifying discrepancies noted between downloaded 2005, 2006, and 2007 crop year insurance data and data certified for farm programs at FSA.

Compliance Database Modernization Project — The Compliance Activities and Results System (CARS) project is now live and operational. As part of the overall RMA ITM project, CARS represents the completion of obtaining a replacement database management system for Compliance cases and reporting. Work is in progress to complete the vision of a final system that will accommodate an all electronic exchange of findings and responses to each of the companies. Compliance has started the initial tests with one company to develop the processes necessary for paperless interactions.

Final Findings Issued Since the July Board Meeting

Since the September Board meeting Compliance has issued final findings to AIPs for the following amounts: premium overstatements \$39,256; indemnity overpayments \$130,436; premium understatements \$5,171; and indemnity underpayments \$562. Compliance review activities also resulted in the non-payment or waiver of questioned claims totaling \$52,316.