



**United States
Department
of
Agriculture**

Federal Crop
Insurance
Corporation

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DATE: May 13, 2010
TO: Board of Directors
Federal Crop Insurance Corporation
FROM: William J. Murphy /signed/
Manager
SUBJECT: Manager's Report
Exhibit No. 3067

This memorandum serves as the Manager's Report to the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) for the May 13, 2010, meeting.

Program Update:

SRA Update - The Risk Management Agency will be releasing the final Standard Reinsurance Agreement (SRA) that is the agreement with the agency and the private insurance companies that provide crop insurance.

Research and Development on Energy Crops - The Food, Conservation and Energy Act of 2008 required that RMA conduct research and development "regarding a policy to insure dedicated energy crops" and defines these as an annual or perennial crop "grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity or biobased product, and is not typically used for food, feed, or fiber." RMA recently awarded a contract to AgriLogic Consulting to conduct this research.

Group Risk Protection (GRP) and Group Risk Income Protection (GRIP) Final County Yields and Revenues - RMA issued final county yields and final county revenues for the 2009 GRP and GRIP plans of insurance for corn, soybeans, and grain sorghum based on county crop estimates provided by the National Agricultural Statistics Service (NASS) on April 12, 2010. Where NASS is unable to provide a county estimate for a specific crop or practice insured, either in a published or an unpublished form, RMA determines the payment yield. RMA's Informational Memorandum 10-016 specified 19 counties where RMA used the combined counties estimate for the district provided by NASS to determine the county wide yield. Final NASS yields for North and South Dakota corn remain pending, thus RMA will issue its final county yields and final county revenues for those counties upon receipt of the information from NASS.

Rate Methodology Study - RMA released the final report on the results of a periodic review of its premium rating methodology. A draft version of "A Comprehensive Review of the RMA APH and COMBO Rating Methodology Draft Final Report" was posted in November 2009 for public comment through Jan 19, 2010. Comments were received and considered by

the contractor. The final report, [A Comprehensive Review of the RMA APH And COMBO Rating Methodology Final Report](http://www.rma.usda.gov/pubs/), along with responses to comments received, is now available at: <http://www.rma.usda.gov/pubs/>.

Rice Final Planting Dates - The Jackson Regional Office has completed a review of final planting dates and the date for the end of the late planting period for rice in the region, initiated over concerns by a Mississippi rice grower, the Mississippi Extension Rice Specialist, and the Mississippi Farm Bureau Federation that the Mississippi rice final planting date (May 31) and the 25-day late planting period ending June 25 were too late. The Jackson RO agreed to review the final planting date and end of late planting period for rice in Mississippi and other states in the region with a rice insurance program (Arkansas, Louisiana, and Tennessee) as a result.

During the review, the Jackson RO considered: 1) published Extension data from and conversations with Rice Extension Specialists in Arkansas, Louisiana, and Mississippi regarding optimum planting dates for rice; 2) National Agricultural Statistics Service historical averages for the dates (85%, 90%, and 95%) plantings are completed for each state; 3) feedback from the Farm Service Agency (FSA), USA Rice Federation, Louisiana Farm Bureau Federation, and the Mississippi Farm Bureau Federation.

As a result of the review, changes to the final planting dates and the end of the late planting period are under consideration.

Klamath Basin – The Upper Klamath Basin is currently experiencing a serious drought. Reclamation’s Klamath Project serves approximately 1,400 farms (Jackson and Klamath Counties in Oregon, and Modoc and Siskiyou Counties in California) totaling some 210,000 acres. Farmers in the Klamath Basin grow a variety of crops including barley, oats, wheat, onions, potatoes, sugar beets and forage. Measured precipitation in Klamath Falls since the beginning of this water year, October 1 through February 28, has been about 45% of average. This limited precipitation has resulted in low inflows into both Gerber Reservoir and Clear Lake Reservoir. Combined, the reservoirs provide irrigation water to 26,930 acres in the upper Lost River watershed. These drought conditions will result in producers being without adequate supply from Upper Klamath Lake, Clear Lake and Gerber Reservoirs during the times necessary to implement proper irrigation practices on many crops. In response to these drought conditions, a drought declaration has already been issued by the Governor of Oregon.

Request for Applications Update – The Risk Management Education Division (RMED) has received proposal submissions in response to the 2010 Request for Applications (RFA) for Targeted States not to exceed funding of \$5,000,000 and the 2010 RFA for Small Sessions not to exceed funding of \$1,100,000. The submissions will be paneled on June 16-18, 2010. Panel members will be staff from other USDA agencies in the Washington D.C. area.

Comprehensive Information Management System (CIMS) Implementation – RMA and Farm Service Agency (FSA) continue to implement various components of CIMS. CIMS is a centralized source of 2006-10 RMA and FSA information such as producer name, address, acreage, share and other key planting information. Over 12,000 RMA, FSA State and County

offices, OIG and USDA users have access to CIMS web applications that incorporate crop insurance, FSA conservation and farm program data, and geographical information at both an individual producer level and a summarized level. On a weekly basis, CIMS identifies possible differences between RMA and FSA producer-reported entities and crop acreage to assist in early detection of misreporting or possible fraud or abuse within certain USDA programs.

CIMS enables Approved Insurance Providers (AIP) to develop more efficient and faster policy services for their insured producers by allowing the electronic data to be loaded directly from CIMS to AIP systems, reducing paper document requests from FSA county offices. Since February 2009, AIPs have submitted over 13 million requests for insured producer data.

Regulatory Update:

Basic Provisions and Related Crop Provisions Final Rule - The final rule for the Common Crop Insurance Policy that provides revenue protection and yield protection within one Basic Provisions and the applicable Crop Provisions that replace the Crop Revenue Coverage, Income Protection, Indexed Income Protection and Revenue Assurance Plans of Insurance was published in the *Federal Register* on March 30, 2010. The final rule is effective for the 2011 crop year for all crop programs with a contract change date of April 30, 2010 or later. RMA released the policies via its Website on April 27, 2010.

Apple Crop Provisions – The proposed rule to amend the Apple Crop Provisions was published in the *Federal Register* on September 8, 2009, and the public was afforded 60 days to submit written comments. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the *Federal Register* on November 17, 2009, extending the initial 60-day comment period for an additional 30 days, until December 17, 2009. The final rule is in Product Management's concurrence process.

Meetings:

Common Crop Insurance Policy Training - A training session for the new Common Crop Insurance Policy is being held in Overland Park, Kansas on May 18-19, 2010. This train-the-trainer meeting, being sponsored jointly by RMA and National Crop Insurance Services (NCIS) is to provide AIPs details regarding the changes within the new policies that combine Crop Revenue Coverage, Income Protection, Indexed Income Protection and Revenue Assurance plans of insurance with the Common Crop Insurance Policy. Meeting attendees will include AIP representatives and RMA Functional Area representatives.

Future Farmers of America - The RMA sponsored Future Farmers of America (FFA) contest winners came to Washington DC in celebration of their accomplishment. They received their awards, met with their respective Senators and Representatives and toured Capitol Hill. To win the contest, the students submit an original, 1000-word essay on risk management strategies used in a supervised agricultural experience. Students are expected to analyze risks, describe their risk management strategy, and point out which 'tools' they used to minimize risk and how they applied the tools

Recent Compliance Investigation, Appeals, and Sanction Activity:

Group Risk Plan (GRP) Rangeland Appeals - RMA has received approximately 70 appeal notices from the National Appeal Division for 2008 Group Risk Plan (GRP) Rangeland pilot crop insurance program in Montana. Prehearings have been set up on an individual basis; however, they will likely be consolidated into a one group appeal. The appeals are all in regard to policyholders disagreement with the NASS yield used to calculate the indemnity.

National Program Operations Review (NPOR) - The regional Compliance Offices will review the following 2009 Approved Insurance Providers during 2010:

- CRCO- Hudson Insurance Company (HU)
- MRCO- Agrinational Insurance Company (AN)
- NRCO- Farmers Mutual Hail Company (FH)
- SRCO- John Deere Risk Protection (PE)
- WRCO- Stonington Insurance Company (ST)

Because of significant ongoing and anticipated OIG Audit and Investigation activity in the ERCO region, the ERCO will not be assigned a NPOR for this year.

Recent Compliance Investigation, Appeals, and Sanction Activity - [Litigation] -

ACCEPTANCE INSURANCE COMPANIES, INC. v. UNITED STATES. On October 1, 2009, 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 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 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 RMA rejected the proposed sale, Acceptance possessed no more or no less of a property interest in American Growers than it did prior to RMA's rejection. In its conclusion, the Appeals Court held that contrary to Acceptance's arguments, when 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 RMA rejected the proposed sale. The Appeals Court affirmed the decision of the Court of Federal Claims that dismissed Acceptance's takings claim. RMA acknowledges the exceptional work done by the USDA, Office of General Counsel and Department of Justice attorney's assigned to this case throughout this litigation. **UPDATE – On May 3, 2010, the United States Supreme Court rejected Acceptance's cert petition for further review. The Court's rejection ends this matter in favor of RMA and the actions taken in relation to the proposed sale and transfer of American Grower's policies to another insurance provider immediately prior to American Grower's failure.**

Supplemental Revenue Assistance Program (SURE) Referrals - As of May 4, 2010, regional Compliance Offices have received 774 SURE referrals from Farm Service Agency (FSA). Compliance began receiving SURE program referrals from FSA in January. Since FSA relies on crop insurance program data to calculate payments under SURE, FSA is in a position to discover reporting discrepancies while reviewing producer applications. Compliance anticipates that entity, reported acreage, and production discrepancies will constitute the majority of the referrals, similar to our experience with the Crop Disaster Programs.

Current Crop Disaster Program (CDP) Referrals - RMA continues to work to resolve the 6,761 CDP referrals received to date from FSA 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.

Final Findings Issued Since the February Board Meeting - Since the February Board meeting, Compliance has issued final findings to AIPs for the following amounts: premium overstatements \$80,780; indemnity overpayments \$3,673,250; premium understatements \$10,251; and indemnity underpayments of \$23,255. During this period, RMA assessed civil fines in the amount of \$34,421 for violations of the Federal crop insurance program. Compliance review activities also resulted in the non-payment or waiver of questioned claims totaling \$39,036.