



# Risk Management Agency's Inconsistent Practices Cost Farmers

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The Risk Management Agency (RMA), a division of the United States Department of Agriculture that administers the government's federally reinsured crop insurance program, has yet to settle on a consistent practice for determining the payouts under certain policies. For the 2006 crop year, RMA has interpreted the payment obligations of the Group Risk Income Protection (GRIP) plans of insurance at least three different ways – all to the detriment of west Texas insureds. In each situation, RMA has taken positions contrary to the insured farmers' interests. The result being (1) erroneously low indemnity payments that clearly contradict the express terms of the policies, (2) improper requests by insurance companies for reimbursement of indemnity payments, and (3) costly litigation.

## **Group Risk Income Protection – An Introduction**

GRIP is a method of crop insurance intended to be a risk management tool to insure against widespread loss of revenue from the insured crop in a county, whether due to low yields, low prices, or both. Essentially, the insured farmer will be entitled to a payment when the revenue for the insured's county is below a certain point, the "trigger revenue."

The "trigger revenue" is derived from multiplying the coverage level (selected by the insured farmer) by the expected county revenue. The expected county revenue is the product of the expected harvest price as outlined in the crop provisions and the estimated county yield. The estimated county yield is provided by the National Agriculture Statistics Service (NASS) and represents NASS's estimate of the total production of the crop in a county divided by its estimate of the total acres grown.

After the crop year, RMA determines the actual county revenue by multiplying the county's harvest price by NASS's estimate of the actual county yield. Ultimately, if the county revenue drops below the trigger revenue, RMA authorizes an indemnity payment.

### **Parmer County Wheat**

Clearly, the method of determining payment under a GRIP policy is complicated. One of the most important aspects, however, is proper determination of the actual county revenue. When the NASS estimates for a county's yield are dramatically off, it can have significant effects on the final payment to the insured farmer.

No wonder that several wheat farmers in Parmer County, Texas, were upset when NASS erroneously omitted several thousand acres of wheat that was actually harvested in the 2006 crop year.

The farmers believe that NASS's initial reported acreage for wheat in Parmer County was accurate, but that its estimate of total production was nearly twice the actual production. After numerous meetings with RMA and NASS, the Parmer County insureds convinced NASS to revise its numbers. However, while NASS corrected its erroneous production estimate, it subtracted nearly 10,000 acres of harvested irrigated wheat and 30,000 acres of harvested non-irrigated wheat. This action, whether a mistake or intentional, artificially inflated the final county yield for Parmer County, which substantially decreased the indemnity due under the GRIP policies.

To make matters worse, RMA's own production numbers and the production reports from the Farm Service Administration establish that the NASS estimate is wrong. However, RMA refused to correct the clear mistake, and as a result, several of the insured farmers filed an appeal to the National Appeals Division of the USDA. The RMA's "official" position in the appeal is that it is "required" by regulation to use the NASS official yield data to determine the trigger and payment yields, and that it cannot correct the NASS numbers – even if it wanted to.

### **Parmer County Corn**

Parmer County's irrigated corn farmers are facing a contradictory argument by RMA. Under their GRIP policies, the insured farmers qualified for an indemnity payment for the 2006 crop year, which at the correct coverage rate should have been about \$235 an acre. When the checks came from the insurance companies, however, they were only for \$45 an acre. Unlike the wheat case, where RMA refused to correct erroneous numbers from NASS, in this case, RMA took correct numbers from NASS and threw them out in favor of its own calculation.

The erroneously low payment seems to have been the product of RMA's improper revision of the NASS numbers for the final county yield. GRIP policies explicitly state that in calculating the final county yield, all corn planted in the county is considered, whether irrigated, non-irrigated, insured, uninsured, planted for grain, planted for silage, etc. RMA, however, issued an after-the-fact determination that non-irrigated corn was not a good farming practice in Parmer County in 2006, and thus subtracted thousands of non-irrigated acres from the NASS published yields prior to issuing the 2006 final county yields. By excluding these acres, RMA once again dramatically reduced the indemnity payments due the insured farmers.

Under the GRIP policy, RMA does not have the right or authority to manipulate the NASS yields, which by its terms consist of corn planted for all purposes, whether it is insured corn or not. The policies neither give RMA the authority to change the payment methodology nor allow RMA to remove any corn acres from the calculation. Furthermore, RMA had already maintained in the wheat case that they are required to use NASS data, even if it is incorrect. Apparently, consistency (even in the same county) is not of great concern to RMA.

To the further consternation of the insured farmers, RMA retracted its good farming practice determination in December 2007. Thus, RMA, which never had the authority to subtract the non-irrigated corn acres from the payment methodology, now admits that the reason it did so was wrong. Of course, RMA has not volunteered to correct its erroneously calculated indemnity payments.

At least two groups of Parmer County corn farmers are currently engaged in arbitration, litigation and administrative appeals with the insurance companies and RMA. A group comprised of farmers with irrigated corn acres is contesting RMA's failure to comply with the payment methodology defined by the GRIP insurance policies. A group of farmers primarily with non-irrigated acres is fighting the good farming practice determination and RMA's retroactive exclusion of non-irrigated acres from insurance coverage.

### **Moore County Wheat**

In a final example of RMA's inconsistency, wheat farmers in Moore County, Texas, received an indemnity payment under their GRIP policies only to have RMA demand that they repay thousands of dollars. In March 2007, crop insurance companies issued their payments on GRIP policies based on the NASS published yields. Then, in October 4, 2007, at the direction of RMA, the insurance companies sent a letter to the farmers explaining that RMA had made changes to correct the estimated NASS yields relating to the policy. RMA claimed that the incorrect numbers had led to an "overpayment" to the farmers.

RMA's actions are in violation of the GRIP insurance policy terms, which state that "[t]he payment will not be recalculated even though the NASS yield may be subsequently revised." RMA's explanation for its action is that the recalculation is a "correction" not a "revision." This play on words that mean the same thing is hardly a legal basis for RMA's action. Nevertheless, the Moore County insureds have been forced to hire counsel and bring an NAD appeal to protect their rights.

### **Conclusion**

In the three cases cited, RMA has taken three different positions with regard to their ability to modify the NASS estimates used in setting indemnity payments under GRIP Policies. In Parmer County Wheat, RMA refused to correct an obvious error in the NASS numbers. In Parmer County Corn, RMA modified the NASS numbers based on its own determination that non-irrigated corn was not a good farming practice – a determination that has since been reversed and was not allowed under the terms of the policy. Finally, in Moore County Wheat, RMA revised the NASS

numbers and then demanded a refund from the farmers.

The common thread of the RMA's actions is not merely inconsistency, but inconsistency at the expense of the insured farmers. In all three cases the farmers have received a wrongfully determined indemnity payment, and in all three cases the farmers have been forced to resort to litigation to enforce their rights. One must only wonder what inconsistent action RMA is taking outside of west Texas.

*Jeff Todd and Spencer Smith, attorneys with the Oklahoma-based law firm of McAfee & Taft, are currently representing groups of farmers in the Parmer and Moore County, TX administrative actions. They have represented over one hundred wheat, corn and cotton farmers in all three forums (administrative appeals, arbitration, and federal court judicial reviews) arising in crop insurance matters.*

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