



January 21, 2011

Ms. Leiann Nelson
Senior Underwriter, Product Management
Risk Management Agency
United States Department of Agriculture, Beacon Facility
Mail Stop 0801
P.O. Box 419205
Kansas City, MO 64141-6205

Dear Ms. Nelson:

The National Association of Wheat Growers (NAWG) is transmitting this letter electronically to comment on the Federal Crop Insurance Corporation's (FCIC) proposed rule regarding a Good-Performance Refund (GPR) published in the Federal Register on January 6, 2011. NAWG is a nonprofit trade association of 21 state wheat grower organizations that advocates to benefit the wheat industry at state and national levels.

NAWG commends the U.S. Department of Agriculture and the FCIC for the efforts made in attempting to reinvest funds made available from the recent renegotiation of the Standard Reinsurance Agreement. NAWG supports the reinvestment of the funds into the federal crop insurance program to benefit producers. However, the funds should be reinvested in a manner consistent with federal law and made to accomplish FCIC's mission to strengthen the economic stability of agricultural producers and rural communities.

Our comments consist of the following components: (1) disputed statutory authority to provide a refund; (2) disputed statutory authority to compare one commodity against another commodity and to consider the entire nation as *one "area"*; and (3) a narrative discussion of concerns for unintended consequences resulting from the draft GPR.

1. Disputed Statutory Authority to Provide a Refund

The refund proposed in the GPR is not authorized by the Federal Crop Insurance Act (7 U.S.C. § 1508 (2011) (Crop Insurance)).

The proposed GPR cites statutory authority under 7 U.S.C. § 1508(d)(3) (2011) ("PERFORMANCE-BASED DISCOUNT—The Corporation may provide a performance-based premium discount for a producer of an agricultural commodity who has good insurance or production experience relative to other producers of that agricultural commodity in the same area, as determined by the Corporation."). The section was added by the Agricultural Risk Protection Act of 2000, Pub. L. No. 106-639, § 101(b)(2).

The statute refers explicitly to a "discount." The statute does not refer to a "refund," as proposed by the GPR.

A search of FCIC Regulations (7 C.F.R. § 400) yields no definition of either "discount" or "refund."

According to the Merriam-Webster Dictionary (available online at www.merriam-webster.com), the following are definitions for "discount" and "refund":

Discount: “A reduction made from the gross amount or value of something: as a reduction made from a regular or list price.”

Refund: “To return (money) in restitution, repayment, or balancing of accounts.”

By definition, there is a clear contrast between “discount” and “refund.” The return of money to producers as proposed by the GPR does not approach the statutory requirement of reducing producers’ regular or list price of future purchases - in this case the future purchase of federal crop insurance.

Therefore, a plain reading of the statute, which has not been further refined by FCIC Regulation, would require the GPR or similar program under the stated authority to provide a discount, and not provide a refund.

2. Disputed Statutory Authority to Compare One Commodity Against Another Commodity, and to Consider the Entire Nation as One “Area”

The proposed structure of eligibility for the GPR, which lacks criteria for comparisons of producers who grow “. . . that agricultural commodity in the same area . . .”, would instead include all agricultural commodities and all producers in the entire nation as one “area” for consideration.

This is contrary to the plain reading of the statute, which suggests that producers of an agricultural commodity would be compared against producers of that same agricultural commodity in the same area of the country.

Commodity Comparison for Eligibility

The comparison of commodities against other commodities as proposed in the GPR is not authorized by the Federal Crop Insurance Act.

The proposed GPR’s eligibility criteria include (1) prior participation in federal crop insurance programs, and (2) limited claims for a period of time.

The proposed rule does not include criteria for comparing producers of one commodity to other producers of that commodity, as required by the statute. The effect of not including such criteria will result in all commodities compared against each other.

For example, the proposed GPR would have the effect of comparing the performance of a wheat producer with the performance of producers of other commodities. This is contrary to a plain reading of the statute.

Instead, the rule should be revised to include criteria that will compare the performance of wheat producers with the performance of other wheat producers.

Considering the Entire Nation as One “Area”

The “area” covered by the proposed GPR is not authorized by the Federal Crop Insurance Act.

The statute cited above includes the relevant language, “. . . relative to other producers of that agricultural commodity in the same area, as determined by the Corporation.”

While the statute expressly provides FCIC with the authority to determine how to carry out a “performance-based discount”, a plain reading of the statute suggests “area” should include more than one area for the entire nation.

For example, the proposed GPR would have the effect of comparing the performance of a wheat producer in Oregon with the performance of producers of commodities in Florida. This is contrary to a plain reading of the statute.

Instead, the rule should be revised to include criteria that will compare the performance of wheat producers in Oregon with the performance of other wheat producers either within Oregon, or to wheat producers in a nearby State or region of the country.

3. Concern for Unintended Consequences

The proposed GPR may have the following unintended consequences:

The narrow criteria used to determine a “good performer” would have the effect of concentrating refunds to only a few specific geographic areas of the country for producers who already pay less for premiums under the current FCIC rating structure. Under the proposed GPR, producers found eligible as “good performers” will most likely live in areas not susceptible to losses covered by crop insurance. In effect, the GPR would lower the premiums for those who need the refund the least, and discourage growers from purchasing buy-ups of higher levels of coverage. The result is unfair, unjust, and contrary to the goals of the federal crop insurance program to provide affordable risk protection to all of our nation’s farmers.

The criteria do not require producers to be enrolled in the federal crop insurance program for the current year. It is bad public policy to allow the distribution of refunds to those who may not be currently enrolled. While the stated goals of providing relief in time for making future crop insurance purchases is laudable, under the proposed rule, recipients would be permitted instead to use the federal funds to buy a flat-screen television or any other product. A much preferred and justifiable method would limit the use of funds under the GPR to provide a discount for subsequent purchases of federal crop insurance products.

We appreciate the opportunity to provide comments and look forward to working with you and your colleagues in working toward a revised final version of the GPR.

For more information, please contact Eric J. Steiner at (202) 547-7800 x 3.

Sincerely,

A handwritten signature in black ink that reads "Dana Peterson". The signature is written in a cursive, flowing style.

Dana Peterson
CEO

DP:es