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Professor You Are Wrong; Multiple Benefit Rule Does Not Affect GRIP/GRP¹

Art:

Please check your information as I do not think that GRIP/GRP is affected. GRIP has its own Basics that are equal to the "combo".

Insurance professional

Dear Insurance professional:

Thank you for raising this important question. After some additional research I think you are correct but now I am more confused. I have discovered the multiple benefits rule is in the Federal Crop Insurance Law. Below is the section of the Law that is referred to in the basic provisions in the crop insurance APH policy. The Multiple Benefits rule is included in the basic crop insurance provisions because of the following language is in the Federal Crop Insurance Act.

(n) LIMITATION ON MULTIPLE BENEFITS FOR SAME Loss.—

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(1) IN GENERAL.—Except as provided in paragraph (2), if a producer who is eligible to receive benefits under catastrophic risk protection under subsection (b) is also eligible to receive assistance for the same loss under any other program administered by the Secretary, the producer shall be required to elect whether to receive benefits under this title or under the other program, but not both. A producer who purchases additional coverage under subsection (c) may also receive assistance for the same loss under other programs administered by the Secretary, except that the amount received for the loss under the additional coverage together with the amount received under the other programs may not exceed the amount of the actual loss of the producer.

(2) ExCEPTION.—Paragraph (1) shall not apply to emergency loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 et seq.).

For those who have asked why not just delete the multiple benefit rule in the Federal Registry; the answer is RMA can not omit it because it is in the Law. It is unclear why the multiple benefits rule is not included in the GRIP/GRP basic provisions if it is required in the APH basic provisions.

The multiple benefits in the Law is then converted to an underwriting rule in the basic provisions in the APH (includes RA, IP, and CRC) contract. Below is the current Multiple Benefit language in the current APH basic policy provisions.

35. Multiple Benefits (This Language is in your current APH insurance policy).

(a) If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

RMA wants to replace section b with new language in the Federal Registry (Federal Register / Vol. 71, No. 135 / Friday, July 14, 2006 / Proposed Rules, p. 40242).

AA. Amend section 35 of § 457.8 as follows: (This Language would replace the language in your current APH insurance policy).

a. Amend paragraph (a) by removing the misspelled word “anadditional” and adding the phrase “an additional” in its place;

b. Revise paragraph (b); and

c. Add a new paragraph (d).
The revised and added text reads as follows:

35. Multiple Benefits.

* * * * *

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) For crops for which revenue protection is not available:

(i) The total value of crops for which you have an approved yield before the loss is your approved yield times the highest price election for the crop;

(ii) The total value of crops for which you have an approved yield after the loss is your production to count times the highest price election for the crop;

(iii) If you have an amount of insurance, the total value before the loss is the highest amount of insurance available for the crop; and

(iv) If you have an amount of insurance, the total value after the loss is the production to count times the price contained in the Crop Provisions for valuing production to count.

(2) For crops for which revenue protection is available and:

(i) You elect yield protection:

(A) The total value of the crop before the loss is your approved yield times the highest projected price for the crop; and

(B) The total value of the crop after the loss is your production to count times the highest projected price for the crop; or

(ii) You elect revenue protection:

(A) The total value of the crop before the loss is your approved yield times the higher of the highest projected or harvest price for the crop (If you have elected the harvest price exclusion option, the highest projected price for the crop will be used); and

(B) The total value of the crop after the loss is your production to count times the highest harvest price for the crop.

What does this all mean? The current policy says: *If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, **you may receive benefits under both programs**, unless specifically limited by the crop insurance contract or by law.*

In the past RMA has used this section to allow growers to receive both indemnity and disaster payments unless the ad hoc disaster Law prevented it. But the rule then goes on to say: ***The total amount received from all such sources may not exceed the amount of your actual loss.***

The Law says: *A producer who purchases additional coverage under subsection (c) may also receive assistance for the same loss under other programs*

*administered by the Secretary, except that the amount received for the loss under the additional coverage together with the amount received under the other programs **may not exceed the amount of the actual loss of the producer.***

The rest of the rule then defines actual loss. So if the first part of the rule that does not limit benefits is being applied, then why define the “actual loss” in greater detail? Therefore the question is what is the RMA rule (or the Law) trying to keep growers from collecting if none of the above payments have been limited in the past? Also none of these rules explain why a similar rule is not included in the GRIP/GRP basic provisions.

The only example of limits on multiple benefits that anyone was able to provide this author was the case where a chemical failed to perform and the chemical company paid for (some of?) the loss, then growers could not collect a second time from crop insurance. But the laws states program payments that are administered by the Secretary and that would seem to rule out private payments from a chemical company. Considering only combined payments that are managed by the Secretary allows growers to receive Federal crop insurance payments when the loss was also covered under private hail insurance or gains from put options when the loss was caused by price declines.

Because the Law applies to assistance administered by the Secretary combined with Federal crop insurance can not exceed the “actual loss”, this provision would seem to suggest GRIP, GRP, ad hoc disaster aid and/or FSA payments could be counted against the “actual loss”. However, USDA has never limited any of these payments in the past except in years when the limit was included in the ad hoc disaster aid law.

It looks like the intent by RMA was to define “*actual loss*” in the current policy that was not well defined. However, in the process they may have defined an “actual loss” so well that it could reduce or eliminate Federal crop indemnity payments when growers receive other Federal compensation for a crop loss if the combined payments exceed the “actual loss”.

Great Plains Growers with Multiple Year Losses. The “actual loss” being defined under the proposed RMA rule will be easier to exceed for those growers who have suffered multiple year losses because the “actual loss” is being defined based on the APH yield. Normally ad hoc disaster aid includes boiler plate language stating the program must be carried out in a way that does not discriminate against farmers who buy insurance. This raises the question would this same rule apply to growers who receive a GRIP/GRP payment that exceeds the “actual loss”? While this is not the intent of RMA, there have been other USDA programs when outside interest groups have sued USDA to enforce a statute. Example was the suit that caused USDA to release FSA payments by name.