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## **An Agricultural Law Research Publication**

# **Prevented Planting Crop Insurance: Overview, Drought, and Excessive Moisture**

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# Prevented Planting Crop Insurance: Overview, Drought, and Excessive Moisture

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It is widely understood that farming can be a risky business. Agricultural producers often find themselves at the mercy of the weather, and, in recent years, it seems that weather conditions have been increasingly extreme. Both flood and drought have plagued producers across our country, and the presence of these weather events during planting season has led to increased interest in and confusion about prevented planting crop insurance provisions. This article will highlight some of the basic prevented planting provisions and summarize a few issues relating to coverage under prevented planting crop insurance.

This article is one a series of articles that addresses various aspects of associated with federal crop insurance and related farm bill provisions. This article is general and educational in nature and is not nor is intended to serve as legal advice or as a substitute for legal advice. The information is helpful in acquainting insured producers and others about prevented planting in the federal crop insurance program.

Other articles in the series include, [\*Filing a Crop Insurance Claim: An Overview for Producers\*](#) and [\*The Federal Crop Insurance Program: Administration, Structure, and Operation\*](#). In addition, a webinar titled [\*Crop Insurance and Southern Agriculture: What You Need to Know\*](#) is available on the National Agricultural Law Center website as part of this educational series.

## ***Prevented Planting Overview***

Prevented planting coverage was added to the common crop insurance policy approximately twenty years ago.<sup>2</sup> The inclusion of prevented planting coverage resulted in an insurance product that allows for prevented planting payments when a farmer is prevented from planting due to an insured cause of loss.<sup>3</sup> Water is typically the basis for prevented planting claims. Drought, flood, and excessive rainfall can easily modify or halt a farm operation's goals for planting, and prevented planting coverage offers producers insurance for those times when weather conditions do, in fact, prevent the planting of a crop.<sup>4</sup> In summary, a prevented planting payment may be made when a producer is unable to plant an insured crop prior to the final planting date or within the late planting period. When acreage is planted during or after the late

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<sup>2</sup> United States Department of Agriculture. Risk Management Agency. *RMA Provides Guidance, Clarifies Prevented Planting Provisions*. <http://www.rma.usda.gov/news/2010/03/reiteration.html>. (2010).

<sup>3</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(a)(1) (2011).

<sup>4</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 12 (2011).

planting period, insurance coverage will be determined under the late planting provisions of the crop insurance policy.<sup>5</sup>

In order to qualify for coverage, planting must be prevented by an insured cause of loss experienced in the area and that also prevented other farmers within that area from planting farmland with similar characteristics.<sup>6</sup> Two terms should stand out to the insured producer: “area” and “similar characteristics.” The United States Department of Agriculture Risk Management Agency (RMA) has determined that “the term ‘area’ is subject to multiple reasonable interpretations, and the determination of ‘area’ may vary from case to case.”<sup>7</sup> Generally, “area” is defined by the cause of loss,<sup>8</sup> meaning that all acreage impacted by a drought or flood may be included in the area. The “similar characteristics” analysis is also important because if farmers in the area, working acreage with similar characteristics to the insured farm, were not prevented from planting, then a payment will not be made. RMA has found that acreage is considered to have similar characteristics when there is “comparable geography, topography, soil types, and the same weather conditions and exposure.”<sup>9</sup>

### ***Prevented Planting Coverage Where Neighboring Farms are Planted***

To obtain a prevented planting payment for an insured crop, the farm must be in an area where other farmers, farming acreage with “similar characteristics,”<sup>10</sup> were also prevented from planting. In times of drought, however, prevented planting coverage may still be available for farmers who choose not to plant when their neighbors choose otherwise. This may seem contrary to the basic definition of prevented planting coverage, but the United States Department of Agriculture Risk Management Agency (RMA) has recognized that drought presents a scenario where planting may not be a good farming practice.

In drought situations, it is possible that insured acreage can be planted at a time when there is not adequate soil moisture for seed germination. Producers in an area may make the decision to plant into soil with insufficient moisture for germination, in anticipation of sufficient rainfall. The decisions of these producers to plant will not necessarily bar neighboring producers, who chose against planting, from receiving a prevented planting payment.<sup>11</sup> Producers

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<sup>5</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(a)(3) (2011).

<sup>6</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 1 (2011).

<sup>7</sup> United States Department of Agriculture. Risk Management Agency Final Agency Determination, Definition of “Prevented Planting” under 7 C.F.R. § 457.8. <http://www.rma.usda.gov/regs/533/2002/fad-012.html>. (2002).

<sup>8</sup> United States Department of Agriculture. Risk Management Agency Final Agency Determination, Definition of “Prevented Planting” under 7 C.F.R. § 457.8. <http://www.rma.usda.gov/regs/533/2002/fad-012.html>. (2002).

<sup>9</sup> United States Department of Agriculture. Risk Management Agency Final Agency Determination, Definition of “Prevented Planting” under 7 C.F.R. § 457.8. <http://www.rma.usda.gov/regs/533/2002/fad-012.html>. (2002).

<sup>10</sup> United States Department of Agriculture. Risk Management Agency Final Agency Determination, Definition of “Prevented Planting” under 7 C.F.R. § 457.8. <http://www.rma.usda.gov/regs/533/2002/fad-012.html>. (2002).

<sup>11</sup> United States Department of Agriculture. Risk Management Agency Final Agency Determination, Definition of “Prevented Planting” under 7 C.F.R. § 457.8. <http://www.rma.usda.gov/regs/533/2002/fad-012.html>. (2002).

who chose not to plant will receive prevented planting payments so long as RMA determines that planting into ground with insufficient moisture is a “poor farming practice.”<sup>12</sup>

In the event of a drought, a producer may wonder whether planting is the proper course of action. What a producer should remember is that all planting decisions should be based on sound agronomic principles. Moreover, decisions and farming practices should be documented to the fullest extent practicable. The decision to plant, as well as the decision not to plant, could be sound in a given situation and prevented planting acreage can sometimes be found in the same area as planted acreage.

### ***Drought and Prevented Planting: Lack of Moisture and Failure of Irrigation Equipment***

To qualify for prevented planting coverage, during times of drought, on non-irrigated land, a producer should document insufficient soil moisture for seed germination or insufficient soil moisture for “progress toward crop maturity due to a prolonged period of dry weather.”<sup>13</sup> The common crop insurance policy requires that the producer provide documentation for use in establishing insufficient soil moisture and that documentation must be verifiable through the weather records of “sources whose business it is to record and study the weather.”<sup>14</sup> Weather reports from local weather news outlets or the National Weather Service typically satisfy this “verifiable” requirement.<sup>15</sup>

Prevented planting provisions also cover irrigated acreage against drought as well as “failure of the irrigation water supply” and “failure or breakdown of irrigation equipment or facilities,” resulting from drought.<sup>16</sup> Collection of a prevented planting payment on irrigated acreage requires documentation that “there is not a reasonable expectation of having adequate water to carry out an irrigated practice or you are unable to prepare the land for irrigation using your established irrigation method.”<sup>17</sup> Producers should recognize that the failure or breakdown of irrigation equipment can provide a basis for prevented planting payments, but the failure or breakdown must be the result of an insured cause of loss,<sup>18</sup> such as drought.

### ***Prevented Planting in Times of Excessive Moisture***

Prevented planting crop insurance can also be valuable to producers in times of excessive rainfall and flood.<sup>19</sup> Again, covered losses will depend in large part on a producer’s individual circumstances, due to the potential variation in elevation and soil type within a single geographic area. If prevented from planting due to excessive moisture, producers should remember to timely report the prevented planting situation to their insurance agent. Under the current policy,

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<sup>12</sup> United States Department of Agriculture. Risk Management Agency Final Agency Determination, Definition of “Prevented Planting” under 7 C.F.R. § 457.8. <http://www.rma.usda.gov/regs/533/2002/fad-012.html>. (2002).

<sup>13</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(d)(1)(i) (2011).

<sup>14</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(d)(1)(i) (2011).

<sup>15</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(d)(1)(i) (2011).

<sup>16</sup> See Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(d)(1) (2011).

<sup>17</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(d)(1)(ii) (2011).

<sup>18</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 17(d)(2)(ii)(B) (2011).

<sup>19</sup> United States Department of Agriculture. *Prevented Planting Insurance Provisions Flood: A Risk Management Agency Fact Sheet*. <http://www.rma.usda.gov/pubs/rme/ppflood.pdf> (May 2011).

this notice must usually be given within 72 hours of the final planting date for the crop.<sup>20</sup> Moreover, insurance providers can be expected to ask for “expert” documentation of farm conditions.<sup>21</sup> In summary, producers should be certain to refer to their crop insurance policies in the event of a possible prevented planting situation as final planting dates will vary by crop and region.

### ***Conclusion***

Prevented planting crop insurance coverage can be confusing at first glance. What it is important to remember is that planting decisions should be made in accordance with sound agronomic principles. Furthermore, producers should take care to document their farming practices as such documentation may become necessary to collect under the prevented planting provisions.

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<sup>20</sup> Common Crop Insurance Policy. 7 C.F.R. 457.8, § 14(b)(3)(i) (2011).

<sup>21</sup> See United States Department of Agriculture. *Prevented Planting Insurance Provisions Flood: A Risk Management Agency Fact Sheet*. <http://www.rma.usda.gov/pubs/rme/ppflood.pdf> (May 2011).