



United States Department of Agriculture
Office of Inspector General





What Were OIG's Objectives

We assessed whether RMA established adequate management controls, policies, and procedures related to the preventing planting provisions of the Federal Crop Insurance Program.

What OIG Reviewed

We judgmentally selected a sample of 77 producers from 14 counties in 3 States. These producers filed 192 prevented planting claims and received a total of approximately \$43 million of the approximately \$4.6 billion paid in prevented planting payments for crop years 2008 to 2011.

What OIG Recommends

RMA should bring prevented planting coverage levels and preplanting costs consistently in line for each crop. RMA should also seek guidance on whether it can assign a prevented planting yield for insurance calculation purposes when a second crop is not planted, and take action accordingly. Finally, RMA needs to improve its criteria for determining if acres are available for planting, and emphasize that the determination must be supported and verified.

OIG audited RMA controls over the preventing planting provisions of the Federal Crop Insurance Program.

What OIG Found

The Risk Management Agency (RMA) administers the Federal Crop Insurance Program, which paid approximately \$4.6 billion in claims from producers who were prevented from planting insured crops from 2008 through 2011. The Office of Inspector General (OIG) determined that RMA needs to improve the prevented planting provisions to be more cost effective; to encourage producers to plant a crop, where possible; and to make eligibility criteria more objective and clear. Specifically, we found that, out of concern for covering a producer's preplanting costs in all cases, RMA set current prevented planting coverage levels above the percentages of guarantees that insureds needed to cover average preplanting costs. As a result, by establishing coverage levels that provided over \$480 million in potentially excessive payments, we believe that RMA inadvertently provided incentives to actively encourage prevented planting claims. Further, when RMA designed its policy for assigning a yield when a producer is prevented from planting a crop and opts to not plant a second crop, it may have misinterpreted whether being prevented from planting should impact certain insurance calculations. Under the current policy, producers planted a second crop on only 0.1 percent of prevented planting acres.

Also, we found that loss adjusters did not fully document and support eligibility for over \$43 million in prevented planting payments. RMA needs to improve its guidance to better hold approved insurance providers accountable and prevent acres that are regularly too wet for crop production from receiving prevented planting coverage.

The agency generally agreed with our eight recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: September 3, 2013

AUDIT
NUMBER: 05601-0001-31

TO: Brandon C. Willis
Administrator
Risk Management Agency

ATTN: Michael Hand
Deputy Administrator for Compliance

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: RMA: Controls Over Prevented Planting

This report presents the results of the subject audit. Your written response to the official draft report, dated August 12, 2013, is included, in its entirety, at the end of this report. Your responses and the Office of Inspector General's position are incorporated into the relevant sections of the report. Based on your written responses, we are accepting your management decisions for all audit recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

Within the United States Department of Agriculture (USDA), the Risk Management Agency (RMA) administers the Federal Crop Insurance Program, which helps producers offset the costs of potential crop failures caused by natural disasters or commodity price declines. RMA administers the program through a cooperative effort with approved insurance providers (AIP), in which AIPs sell and service crop insurance policies. Through AIPs, producers purchase over 1 million crop insurance policies each year. For crop years 2008 through 2011, producers paid about \$15 billion out of the \$38.3 billion in total premiums; the Government subsidized the remaining \$23.3 billion. For those years, producers received \$29 billion in indemnity payments related to various types of crop insurance claims, including prevented planting claims. Payments on prevented planting claims represented about \$4.6 billion, or 15.8 percent of all payments for this period.

RMA defines prevented planting as failure to plant an insured crop by the final planting date,¹ or within any applicable late planting period,² due to an insured cause of loss, such as excess moisture or drought. To be eligible for prevented planting, acres must meet numerous criteria, including that the acres are able to be planted when weather and conditions are normal for the area (i.e., are “available for planting”).

To file a claim for prevented planting, producers notify their AIPs that the producers have been prevented from planting an insured crop. AIPs then assign a loss adjuster to make a determination regarding whether the acreage qualifies for a prevented planting indemnity. Producers receiving an indemnity may either leave the affected acreage unplanted that crop year, or plant a second crop for harvest in the same crop year.³ Currently, if the producer leaves the acreage unplanted, the producer receives a full prevented planting payment and there is no effect to the producer’s actual production history (APH). APH is an individual producer’s crop yield, averaged across a 10-year period. Using APH as a basis for insurance calculations allows a producer’s history with a crop to directly impact the calculation of the premium the producer pays for a policy. If the producer elects to plant a second crop after being prevented from planting the first crop, the producer receives a reduced prevented planting payment and has a yield assigned to the APH for the first crop, which, over time, will effectively reduce the production guarantee and increase the premium.⁴

¹ The final planting date is a date by which an insurable crop must initially be planted in order to be insured for the full amount of insurance.

² The late planting period is a period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date. A producer’s guarantee on an acre is reduced by 1 percent for each day after the final planting date that the insured crop is planted.

³ A second crop is the next occurrence of planting any agricultural commodity for harvest, following a first insured crop on the same acreage.

⁴ Federal Crop Insurance Corporation 18010, *Crop Insurance Handbook*, section 3, “Definitions,” June 26, 2006, defines production guarantee as the number of pounds, bushels, tons, cartons, or other applicable units of measure determined by multiplying the approved APH yield per acre by the coverage level percentage elected.

The *Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994* required RMA to make prevented planting coverage a basic part of crop insurance policies in order to lessen the need for ad hoc disaster assistance for producers who were prevented from planting.⁵ Since 1995, a basic level of prevented planting coverage has been included in the standard provisions of the crop insurance program. Over the years, RMA has made several adjustments to the base levels of prevented planting coverage and the production revenue that a crop insurance policy guarantees. The agency also allows producers of most crops the option to purchase additional prevented planting coverage for an additional premium. Depending on the option a producer selects, this “buy-up” increases the producer’s prevented planting coverage by 5 or 10 percent.⁶ As with crop insurance premiums in general, the Government subsidizes approximately 60 percent of these options.

The crops and circumstances for which prevented planting coverage has been available and the rates at which payments are made have evolved over the years. RMA used data from USDA’s Economic Research Service (ERS) when it established the current coverage levels. ERS is a primary source of economic information and research for USDA. Its mission is to inform and enhance public and private decision-making on economic and policy issues related to agriculture, food, the environment, and rural development.

RMA maintains up to 10 years of production records related to the Federal Crop Insurance Program in its database. The Farm Service Agency (FSA) also maintains acreage records in its database and on paper at county offices, including maps and aerial photography. FSA’s records are related to programs that FSA administers, such as the Conservation Reserve Program (CRP), which provides annual rental payments to producers who agree to maintain conservation practices, such as establishing grass cover on farms to prevent soil erosion and reduce chemical runoff. RMA states that FSA records can be used during the loss adjustment process to determine planting histories, acres, and ownership interests.

Objectives

The overall objective was to assess whether RMA established adequate management controls over the prevented planting provisions of the Federal Crop Insurance Program. Specifically, we evaluated whether RMA has established adequate policies and procedures for AIPs to implement and administer the prevented planting provisions.

⁵ Public Law 103-354, *Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994*.

⁶ Public Law 106-224, *Agriculture Risk Protection Act of 2000*.

Section 1: Prevented Planting Guarantee Level Provisions

Finding 1: Prevented Planting Policy Results in Payments Significantly in Excess of Producers' Costs

Based on ERS calculations, RMA's current prevented planting coverage levels exceed the average costs producers incur prior to planting a crop. Also, the established levels provide inequitable coverage by crop by exceeding preplanting costs to a greater extent for some crops than for others. RMA set the current levels above the percentages calculated by ERS out of concern that those percentages would not be sufficient to cover a producer's preplanting costs in all cases. As a result, by establishing coverage levels that provided over \$480 million in potentially excessive prevented planting payments and inequitable coverage, we believe that RMA inadvertently provided incentives for producers to actively seek prevented planting payments, rather than plant a crop or enroll land in a USDA conservation program when possible.

Congress, recognizing that producers avoid incurring some expenses by not planting, growing, or harvesting a crop when they have been prevented from planting, indicated that the amount paid on a prevented planting claim should be proportionally reduced to reflect the out-of-pocket expenses that producers have not incurred.⁷ The Federal Crop Insurance Act authorizes RMA, through the Federal Crop Insurance Corporation, to take actions needed to maintain fair and effective coverage for agricultural producers.⁸

At RMA's request, ERS performed a study focused on the costs producers incur to produce crops. The study, issued in December 1996, focused on determining whether the prevented planting coverage levels in effect at the time accurately reflected the costs that producers incurred up to the point of being prevented from planting. ERS calculated the crop-specific percentage of guarantee necessary to cover the applicable estimated preplanting costs for several crops under various scenarios.⁹ The study found that, on average, RMA's coverage levels at the time were generally less than the percentages needed to cover the average costs of producers who had completed all preplanting operations.

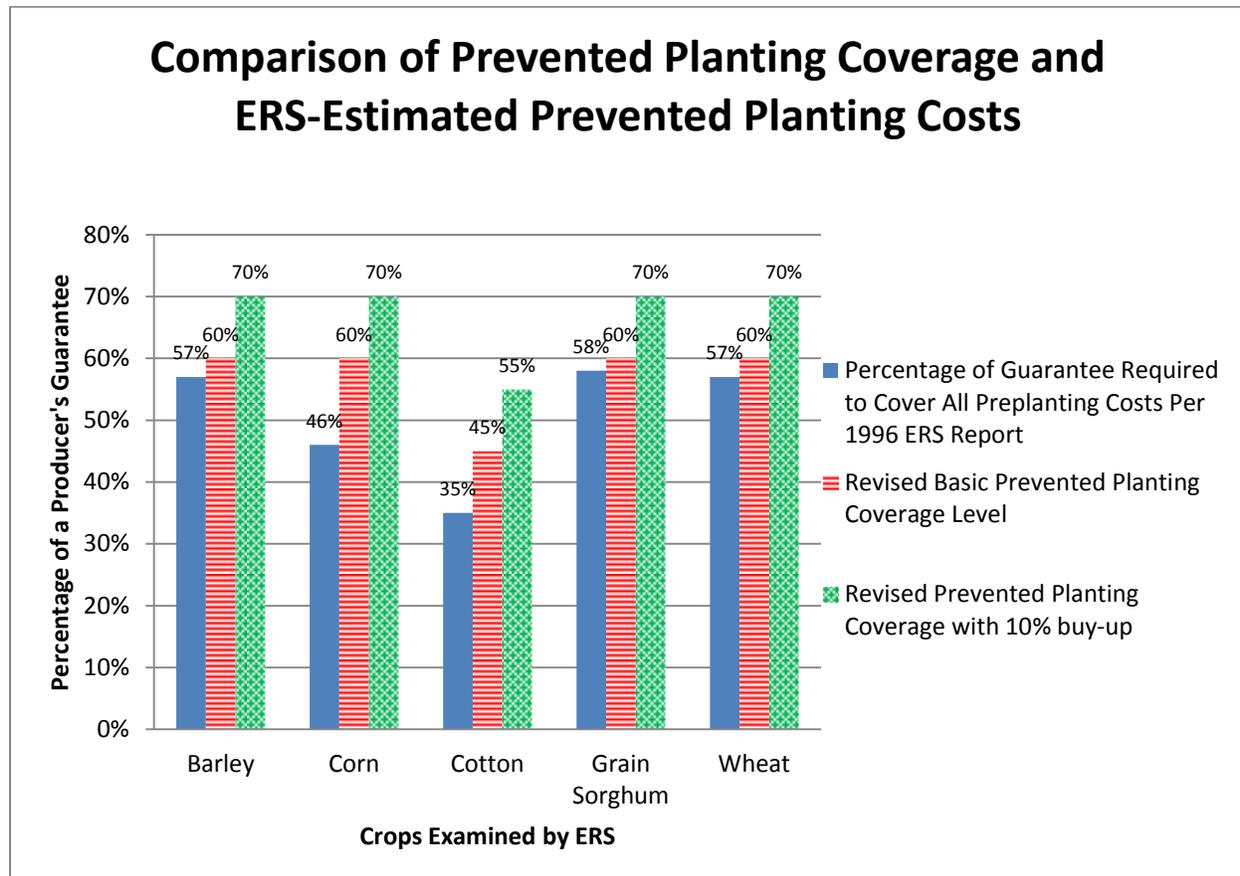
Based on the results of this study, RMA implemented revised prevented planting coverage levels, beginning with the 1998 crop year. Generally, the levels rose. See Chart 1 for a comparison of the percentages of guarantees ERS calculated and the revised coverage levels RMA implemented for the various crops.

⁷ Congressional Committee notes on House Report 103-649, August 1, 1994.

⁸ Section 506(n)(1)(D) of the Federal Crop Insurance Act, as amended on November 18, 2011.

⁹ In ERS' study, *Estimation of Prevented Planting Payment Rates by Crop and Region*, December 11, 1996, ERS used information obtained through the Farm Costs and Returns Survey and from the National Agricultural Statistics Service to estimate preplanting costs and the average per-acre liability for five crops: corn, wheat, barley, cotton, and grain sorghum. The scenarios ERS calculated included when a producer had completed all preplanting operations (100 percent), intermediate preplanting operations (60 percent), and few preplanting operations (25 percent).

Chart 1 demonstrates the differences between the percentages of guarantees ERS calculated that the program needed to pay to cover the average preplanting costs for several crops and the actual prevented planting coverage levels RMA established.



As shown in Chart 1, the revised coverage levels, which are generally still in effect,¹⁰ significantly exceed the ERS-calculated percentages of guarantees necessary to cover preplanting costs for all five crops, particularly once additional buy-up coverage is taken into account.¹¹ If RMA had revised the basic prevented planting coverage levels to the ERS-calculated percentages

¹⁰ The prevented planting coverage levels available for cotton were initially established at 45 percent to 55 percent, following the ERS study, but were subsequently revised in crop year 1999 to their current levels of 50 percent to 60 percent.

¹¹ Producers receive a basic level of prevented planting coverage as part of their crop policy. For most crops and policies, additional prevented planting coverage is available. Producers may choose to purchase additional coverage for an additional premium. This additional coverage increases the prevented planting coverage level by 5 or 10 percent, depending on the option the producer selected.

for the above crops, prevented planting payments would have been reduced by over \$480 million for crop years 2008 through 2011.¹²

Additionally, the coverage levels RMA implemented provide inequitable coverage relative to costs across crops. For example, ERS calculated that, on average, corn producers and wheat producers require 46 percent and 57 percent of their guarantees to cover their preplanting costs, respectively. However, RMA currently offers a basic coverage level of 60 percent with buy-up coverage, available up to 70 percent for both crops. These amounts exceed the ERS--calculated levels by 14 percent and 24 percent for corn, and 3 and 13 percent for wheat. As a result, RMA's post-1998 coverage levels are far more generous, relative to preplanting costs, for producers prevented from planting corn than for producers prevented from planting wheat. This inconsistency does not lend itself to fair and equitable coverage for producers.

RMA stated that, while it generally based its coverage levels on the percentages cited in the ERS study, it also took into consideration the fact that those percentages would not be appropriate for all producers, due to factors like differences in cost levels and the ability to return inputs. While we acknowledge RMA's concerns that the average preplanting costs ERS calculated may not be representative of all producers, we believe that establishing coverage levels above those necessary to cover the costs incurred by the average producer potentially creates a moral hazard.¹³ For example, the base level of prevented planting coverage for corn significantly exceeds the ERS-calculated percentage of guarantee necessary to cover preplanting costs by 14 percent, accounting for 85 percent of the over \$480 million in potentially excessive payments calculated by OIG. This is further exacerbated by heavily subsidized premiums that allow for the purchase of buy-up coverage, a vehicle through which producers with above-average costs can raise their coverage accordingly, at minimal cost. The result is a situation where it may appear to be more advantageous for a producer to claim prevented planting than to pursue other options, such as planting in any applicable late planting period, or enrolling cropland into a USDA conservation program, when possible.

For example, prevented planting payments can significantly exceed the payments available under USDA conservation programs, such as CRP.¹⁴ The average prevented planting payment in the Prairie Pothole Region¹⁵ offered significantly higher value per acre in 2012, a year with low prevented planting activity. See Chart 2 for a comparison by State.

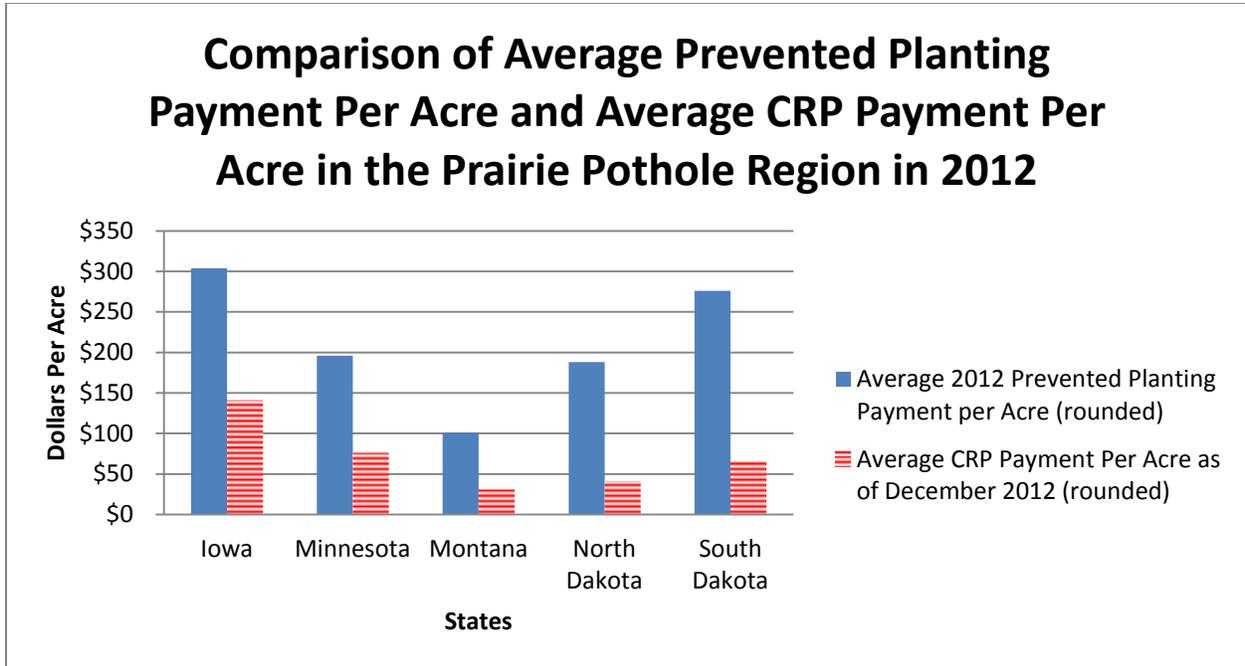
¹² We recalculated prevented planting indemnities for crop years 2008 through 2011 for barley, corn, cotton, grain sorghum, and wheat, using the 1996 ERS-calculated percentages of guarantees as the basic level of prevented planting coverage and taking into account additional buy-up coverage. For example, prevented planting indemnities for corn, which currently receive 60-, 65-, and 70-percent coverage levels, were recalculated using 46-, 51-, and 56-percent coverage levels in order to determine the potential cost savings if the ERS-calculated percentages of guarantee had been utilized. The recalculations of the five crops resulted in a reduction of \$480,795,341 in prevented planting payments. The 1996 ERS report is the most recent study available on prevented planting coverage levels and preplanting costs and, as such, was the basis for all OIG recalculations.

¹³ "Moral hazard" refers to the undue risks that people are apt to take if they do not have to bear the consequences.

¹⁴ CRP is a program administered by the Farm Service Agency under which enrolled producers establish long-term, resource-conserving cover crops on cropland in exchange for rental payments, based on the agricultural rental value of the land. Other payments may also be available in exchange for performing certain maintenance or practice obligations.

¹⁵ The Prairie Pothole Region is an area consisting of the States of Iowa, Minnesota, Montana, North Dakota, and South Dakota. This region has historically experienced high levels of prevented planting activity.

Chart 2 demonstrates the difference between the average prevented planting payment per acre in crop year 2012 and the average CRP payment per acre for the States comprising the Prairie Pothole Region.



To date, the 1996 ERS report is RMA’s most recently-commissioned study that compares prevented planting coverage levels and the levels necessary to cover the preplanting expenses for different crops. Since the issuance of the report, RMA has held user forums on an ad hoc basis to discuss and evaluate different aspects of prevented planting. While the appropriateness of coverage levels was generally discussed, these forums did not include a detailed study of preplanting costs that could be used as an objective basis to determine whether coverage levels needed adjustment.

Per discussions with RMA, the agency does not have an established schedule in place for the periodic reevaluation of prevented planting coverage levels. However, producer costs and practices can change drastically over time. For example, an average producer’s share of total premium decreased from 63 percent to 38 percent between 2000 and 2011, as Government subsidies rose. Given the extent that costs can change, we believe that it is necessary to have a process in place to ensure that prevented planting coverage levels, to the extent possible, consistently and accurately reflect the levels necessary to cover the average preplanting expenses that producers incur.

RMA should obtain updated preplanting cost information and utilize it to evaluate the appropriateness of current prevented planting coverage levels. If the 1996 ERS report is still comparable to the current economic conditions, given the financial constraints under which USDA must now operate, the consistent alignment of prevented planting coverage levels and preplanting costs is an area in which RMA could potentially realize significant cost savings,

while still providing the level of risk protection Congress intended. Additionally, RMA should establish a schedule for obtaining updated cost data periodically. Once obtained, RMA needs to analyze the data to ensure that prevented planting coverage levels remain appropriate and consistent across crops.

Recommendation 1

Obtain updated pre-planting cost information and use it to reevaluate the current coverage levels provided for prevented planting. Make any necessary changes to reduce program costs, where possible, and bring the coverage levels consistently in line with preplanting costs for each crop.

Agency Response

RMA does not believe the coverage levels are excessive on average and reflect increased producer costs before planting a crop, but RMA agrees with the recommendation. On July 3, 2013, RMA awarded a Prevented Planting Evaluation contract to determine if prevented planting payments currently offered under Federal crop insurance policies are appropriate when a producer is prevented from planting a crop, but not excessive to the extent that the coverage encourages producers not to plant. Any changes deemed necessary to reflect appropriate prevented planting payments will be determined by June 30, 2014, in order to be effective for the 2015 crop year.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Establish a schedule by which prevented planting coverage levels will periodically be reevaluated to ensure that the levels remain in an appropriate and consistent relationship with preplanting costs.

Agency Response

RMA agrees with the recommendation. One of the deliverables for the Prevented Planting Evaluation contract is for the contractor to provide a methodology that will allow RMA to reevaluate prevented planting coverage levels to assure that the levels used will result in reasonable and adequate, but not excessive, prevented planting payments. By June 30, 2014, RMA will establish an appropriate schedule and update its procedures accordingly.

OIG Position

We accept management decision for this recommendation.

Finding 2: Prevented Planting APH Policy Provides an Incentive Not to Plant a Second Crop

RMA's prevented planting policy for assigning yields has potentially created an incentive for not planting a second crop, even when it is possible to do so. For producers prevented from planting, current policy only impacts a producer's APH if a second crop is planted. This occurred because when RMA designed this policy, it interpreted Congressional silence regarding an assignment of yield to prevented planting acreage when no second crop is planted as a prohibition from doing so. This interpretation is inconsistent with RMA's actions in other instances in which Congress was silent, such as allowing a late planting period for most insured crops. As a result, producers currently plant only 0.1 percent of prevented planting acres to a second crop.

One of USDA's goals is to promote agricultural production to increase food security.¹⁶ The Federal Crop Insurance Act requires RMA to maintain fair and effective coverage for agricultural producers. Also, it provides two options to producers who are prevented from planting: plant a second crop on the acreage or elect to not plant a second crop.¹⁷ If the producer opts to plant a second crop, the producer's prevented planting payment is reduced and the producer is assigned a yield for the prevented crop for those acres.¹⁸ The assigned yield for the prevented crop under this option is 40 percent lower than the insured yield. However, a producer who claims prevented planting and elects not to plant a second crop collects a full prevented planting payment and the acres claimed are not taken into account for APH purposes. Congress established the consequences of planting a second crop as a way to thwart abuse of prevented planting.¹⁹

However, an analysis of historical prevented planting data shows that producers planted a second crop significantly more often prior to the institution of the assigned yield.²⁰ While we acknowledge that there are many factors likely to cause producers to not plant a second crop, current policy creates a clear disincentive to planting a second crop, as doing so would impact a producer's APH. APH allows a producer's history with a crop to directly impact the calculation of premiums and yield guarantees for future years. Prevented planting without planting a second crop is the only loss type within the Federal Crop Insurance Program that does not impact a producer's APH. Without such an impact, a producer's true history of success or failure at producing a crop is not taken into account.

The Federal Crop Insurance Act authorizes RMA to take measures in order to maintain effective coverage for producers. We discussed with RMA officials the possibility of assigning a yield to

¹⁶ Goal 3 of *USDA's Strategic Plan 2010-2015*.

¹⁷ Section 108 of the P.L. 106-224, *Agriculture Risk Protection Act of 2000*.

¹⁸ If a producer opts to plant a second crop, the producer's prevented planting payment is reduced by 65 percent and the producer is assigned a yield to the initial crop equal to 60 percent of the producer's actual production history to calculate the producer's actual production history for subsequent crop years.

¹⁹ *Conference Report to the Agricultural Risk Protection Act of 2000*.

²⁰ For crop years 1995 through 1997, RMA did not assign a reduced yield for APH purposes to prevented planting acreage that was planted to a second crop. During that period, over 4.6 million prevented planting acres were planted to a second crop, or approximately 36 percent of all prevented planting acres. For crop years 2008 through 2011, a time period when RMA assigned reduced yields for APH purposes, only 28,708 acres, or approximately 0.1 percent of all prevented planting acres during that period, were subsequently planted to a second crop.

prevented planting acreage when a second crop is not planted. The officials stated the law is straightforward in that it only calls for an assignment of yield when a second crop is planted. We agree that the law is silent regarding the assignment of a yield for producers who are prevented from planting and elect to not plant a second crop. RMA interpreted Congress' silence on the matter to mean that Congress intended for a prevented planting claim to impact a producer's APH only if the producer elects to plant the second crop. However, this conclusion is not consistent with other decisions RMA has made in similar situations.

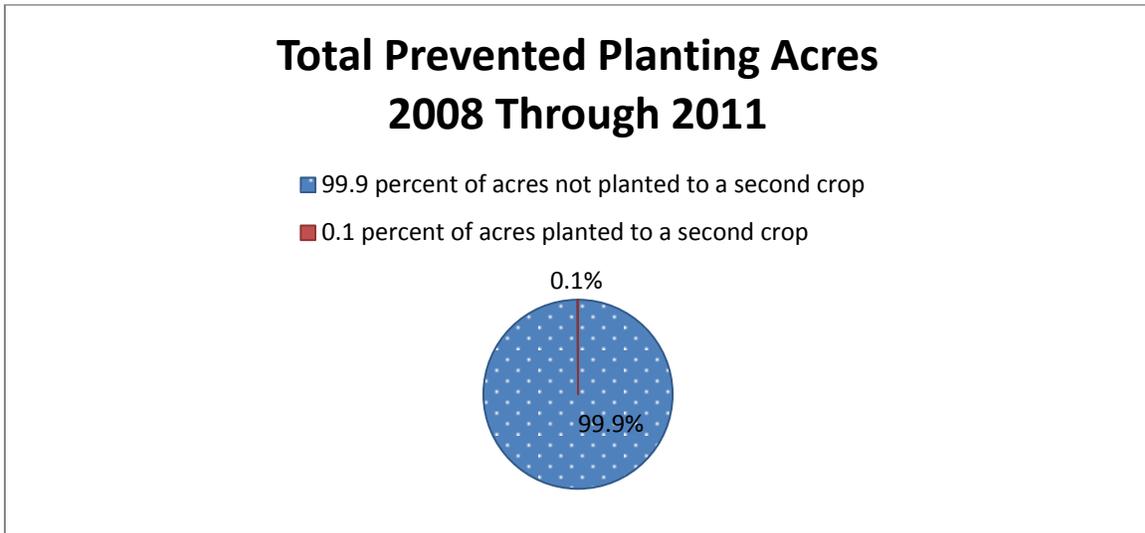
When Congress has been silent on other matters, the agency has exercised its authority to implement policies. For instance, RMA allows producers to plant most insurable crops after the final planting date—during a “late planting period”—despite no legislative requirement or specific authorization to do so. Under late planting policy, the producer's production guarantee is reduced one percent per day for each day planted after the final planting date.²¹ RMA officials stated the policy was introduced in order to maintain actuarial soundness and encourage planting.

We recognize RMA's concerns about operating within the intent of Congress. However, we believe prevented planting policy, as currently structured, has created a disincentive to planting a second crop and, thus, indirectly penalizes those that do plant. The law's silence on the assignment of a yield for producers who are prevented from planting and then do not plant a second crop does not necessarily preclude RMA from assigning such a yield. RMA acknowledged that it had not approached the Office of the General Counsel (OGC) for a formal opinion on the matter. The officials agreed that such an opinion could be obtained.

We determined that current policy has contributed to producers historically claiming prevented planting and not planting a second crop nearly 100 percent of the time. For example, producers only planted 28,708 of the more than 24 million prevented planting acres to a second crop between 2008 and 2011. During interviews, producers acknowledged the economic disincentive to planting a second crop caused by the resulting assignment of yield on the first crop. See Chart 3 for a comparison of how often producers used each option.

²¹ For instance, if a producer plants 10 days after the final plant date, the producer would receive a 10 percent (10 days times 1 percent per day) reduction in his or her production guarantee.

Chart 3 demonstrates the ratio of total prevented planting acres for which producers did and did not elect to plant a second crop for crop years 2008 through 2011.



We conclude that this disincentive has contributed to producers not planting a second crop nearly every time they are prevented from planting, which conflicts with USDA's goal of providing adequate risk management coverage, while at the same time promoting agricultural production. An assignment of yield to all prevented planting acres could reduce the disincentive. RMA is responsible for setting policy that provides fair and effective coverage for producers, and current policy appears to treat producers who plant a second crop inequitably. Accordingly, RMA should consult with OGC to determine whether an assignment of yield to all prevented planting acres is not prohibited per the Federal Crop Insurance Act.

Recommendation 3

Obtain a formal OGC opinion regarding whether RMA is prohibited from applying an assigned yield to prevented planting acreage and using it to calculate a producer's APH when a second crop is not planted.

Agency Response

RMA has already received an opinion from OGC on this matter that stated the current prevented planting yield procedures followed by RMA are consistent with statutory language. That response has been provided to OIG. However, RMA requested a formal legal opinion from OGC and when received, RMA will provide OIG with a copy of the document in response to this recommendation by September 15, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 4

If OGC determines that an assignment of yield is not prohibited, evaluate what the proper yield assignment would be, and take appropriate action to implement the results.

Agency Response

Upon receipt of OGC's formal opinion, RMA will assess whether any assignment of yield is appropriate. However, based on previous OGC opinion and discussions of assignment of yields for APH purposes for prevented planting acreage, RMA does not anticipate this to be the likely outcome.

In subsequent correspondence, RMA stated that actions required for this recommendation will be completed by December 15, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 5

If OGC determines that an assignment of yield is prohibited, prepare a decision memorandum for consideration by the Secretary and follow up accordingly. The decision memorandum should review other potential actions that could be taken, including seeking legislative change to allow RMA to apply an assigned yield to prevented planting acreage, and using it to calculate a producer's APH when a second crop is not planted.

Agency Response

Upon receipt of OGC's legal opinion, RMA will finalize a decision memorandum for the Secretary. Once the decision memorandum has been acted upon, RMA will advise OIG accordingly.

In subsequent correspondence, RMA stated that actions required for this recommendation will be completed by March 29, 2014.

OIG Position

We accept management decision for this recommendation.

Section 2: Controls Over Prevented Planting Loss Adjustment

Finding 3: Loss Adjusters are Not Documenting and Supporting Eligibility Determinations

We found that loss adjusters did not document and support a required determination related to prevented planting eligibility for any of the 192 prevented planting claims we reviewed. Furthermore, AIPs performed high dollar reviews on 73 of these claims, but did not always note the lack of documentation and support for this determination. Because RMA has not issued adequate guidance for determining whether acres are available for planting, AIPs are not being held accountable for making and supporting the required determination. As a result, over \$43 million in prevented planting payments were not fully supported, and acres that are regularly too wet for crop production may regain or continue to have eligibility for prevented planting coverage.²²

The Federal Crop Insurance Act authorizes RMA to establish loss adjustment standards, such that all claims for losses can be adjusted in a reasonably uniform and timely manner.²³ RMA's standards state that in order for acreage to be eligible for a prevented planting payment, an AIP must determine that the acres are available for planting, which, in part, requires the acres to be able to be properly and timely planted when weather and conditions are normal for the area.²⁴ AIPs must support their determinations that acres are eligible for a prevented planting payment and maintain all documentation in the producer's file for review.²⁵

Only acres that are available for planting under normal weather and conditions are eligible for prevented planting. However, we determined through review of 192 policy and associated claim files, including 73 for which AIPs performed high-dollar quality control reviews, that none of the sampled files contained adequate support to demonstrate that the acres are normally available for planting.²⁶ Furthermore, officials in RMA's Compliance Division stated that they have noted similar issues regarding the lack of support for the physically available-for-planting determination during the course of RMA's compliance reviews on prevented planting.

We attribute this lack of support to weaknesses with the loss adjustment standards for prevented planting. Specifically, after reviewing the standards and supplemental guidance, and holding discussions with officials in RMA's Product Management and Compliance Divisions, we determined that RMA's current guidance for making determinations that acres are available for planting is not practical to implement and administer. Additionally, the standard is unworkable because it is too subjective for loss adjusters to apply in a uniform manner.

²² The \$43,259,604 represents indemnity payments for the 192 policy files reviewed.

²³ Section 508(j)(1) of the *Federal Crop Insurance Act*, November 18, 2011.

²⁴ Section 4F(1)(b)(5) of the *Prevented Planting Loss Adjustment Standards Handbook*, March 8, 2011.

²⁵ Section 11A of the *Prevented Planting Loss Adjustment Standards Handbook*, March 8, 2011.

²⁶ Per the Standard Reinsurance Agreement, the high dollar reviews should have verified that the loss adjuster, for instance, completed all required eligibility determinations. Reviewers should also have confirmed that documents used to make such determinations are maintained in the producer's file. However, none of the 73 reviews noted the lack of documentation or adequate support for an available-for-planting determination. Section 11.A of the *Prevented Planting Loss Adjustment Standards Handbook*, March 8, 2011.

To reach this conclusion, we evaluated the process for verifying whether acres are physically available for planting. For prevented planting claims, RMA directs AIPs to confirm that the acres are available for planting under normal weather and conditions. However, the guidance does not provide clear definitions of “normal” weather and conditions, and does not provide adequate procedures for confirming that acres meet the requirement. In order to make an available-for-planting determination under the current standards, a loss adjuster would need to take the following steps:

- First, because RMA has not established a definition or methodology for determining “normal” weather and conditions for the area, an adjuster would need to determine what constitutes the “normal” weather and conditions for the area. However, it is not clear what evidence adjusters should use as the basis for this determination, for instance, and how much evidence would suffice.
- Then, an adjuster would need to examine the weather history for the area in order to identify a period in which conditions were “normal.” However, it is not clear, for instance, how adjusters should identify a qualifying period (i.e., crop year, insurance period, planting season, etc.).
- Finally, the adjuster would need to examine the planting records for the claimed acres for the “normal” period to verify the acres were planted within the “normal” period.

Without a definition of “normal” weather and a methodology for determining if the claimed acres were planted when weather conditions were “normal,” loss adjusters do not have a clear standard to apply when making available-for-planting determinations. Our reviews of producers’ files disclosed no support for the loss adjuster’s attempt to determine that a previous period constituted “normal” weather and conditions. We concluded that the current wording of the available-for-planting requirement is too subjective and cumbersome to be consistently enforced.

RMA has repeatedly issued guidance attempting to clarify how AIPs are to apply the requirement that acres must be available for planting under normal weather and conditions. RMA issued this guidance in the form of agency memoranda and final agency determinations, documents it uses in order to clarify or amend current provisions or procedures. For instance, RMA issues final agency determinations in response to direct requests for clarification on topics that have general program applicability. However, these clarifications have contributed to further confusion among the AIPs. For example, in one case, RMA rejected a requestor’s interpretation that normal weather patterns need to be based on 30-year average data, coupled with a review of FSA maps, showing plantings over the same time span. Instead, RMA highlighted that “weather patterns are changing and what was available to plant in the past may not be available to plant today.” However, RMA did not provide a clear, uniform methodology that AIPs could apply in order to make such a determination. Instead, RMA emphasized that AIPs must independently determine eligible acres, based on each policyholder’s individual circumstances, using generally available supporting evidence, such as weather records and FSA

information.²⁷ The lack of a clearly defined methodology does not lend itself to a uniform loss adjustment process.

Without enforcement of the available-for-planting provision, acres that are regularly too wet for crop production may regain or continue eligibility for prevented planting if they are able to be planted in an abnormally dry year—such as 2012.²⁸ This possibility was enough of a concern that RMA issued an informational memorandum, emphasizing that 2012 was abnormally dry in the Prairie Pothole Region, and the available-for-planting language contained in the special provisions should prohibit any regularly wet acres from becoming eligible for prevented planting simply because they were planted in 2012.²⁹ However, we noted that RMA released a second informational memorandum in response to allegations that some parties interpreted the first memorandum to mean that no prevented planting claims in the Prairie Pothole Region should be paid in 2012.³⁰ We heard similar comments from producers during our fieldwork. The initial response from the first memo highlights the confusion among all parties involved with prevented planting, regarding the implementation of the available-for-planting provision. The second memo emphasized that all eligibility determinations must be made on a case-by-case basis, but provided no additional guidance on how such determinations should be reached, other than repeating the various criteria.

Based on discussions with RMA and AIP personnel, we determined that it would be beneficial to revise the current “available for planting under normal weather and conditions” language to a more objective and feasible standard, so that eligibility determinations can be supported and verified during reviews. For example, RMA could replace the “normal weather and conditions” language with an additional planting history requirement. Current policy requires acres to have been planted at least once every 3 or 4 years.³¹ RMA could add a requirement that any acres failing this test must be planted for a set number of consecutive years before regaining eligibility. Such an addition would prevent regularly wet land from becoming eligible, due to being planted in a single, abnormally dry year. Additionally, as opposed to the current criteria, which are based on an undefined standard of “normal” conditions and weather, this approach would provide verifiable criteria that loss adjusters and AIPs could consistently and timely apply.

RMA officials stated that the agency has implemented multiple guidance and policy changes to improve the administration of the program. They also stated that revisions requiring regulatory action can be very time consuming and difficult to implement. We acknowledge that RMA has devoted considerable resources over the last 15 years to address the intricacies of administering

²⁷ Final Agency Determination 119, dated July 15, 2010.

²⁸ Item 5 of the Special Provisions excludes from prevented planting “any acreage not planted to a crop that is insured under the authority of the Federal Crop Insurance Act, that is grown in the county on insurable acreage, and harvested in at least one of the four most recent crop years, using recognized good farming practices, unless such acreage was planted to an insured crop that was damaged by an insured cause of loss and adjusted for purposes of a claim under the Federal crop insurance program.”

²⁹ Informational Memorandum IS-12-003, dated July 12, 2012.

³⁰ Informational Memorandum IS-12-004, dated August 7, 2012.

³¹ Section 4F(1)(c) of the *Prevented Planting Loss Adjustment Standards Handbook* states that acres that have not been planted and harvested or insured in any of the previous three crop years are not eligible for prevented planting. Beginning in crop year 2012, the qualification requirement for producers in the Prairie Pothole Region changed to a crop having to have been grown in at least one of the previous four years.

the prevented planting provisions, while at the same time minimizing any unintended consequences to producers and the integrity of the program. However, until RMA removes the ambiguous and undefined language in the available-for-planting eligibility guidance, loss adjusters cannot consistently and properly apply that eligibility requirement to all producers. Changing the guidance to include clear and objective rules will simplify the process. It will also hold AIPs accountable for making important eligibility determinations during the loss adjustment process and during subsequent quality control reviews. By taking these steps, RMA can potentially save millions of dollars by eliminating payments for acres that are not regularly capable of being planted.

Recommendation 6

Revise the Special Provisions of Insurance to replace language regarding normal weather determinations with another more objective standard to apply when determining if acres are available for planting. Initiate any regulatory action required to implement these revisions.

Agency Response

RMA will modify the Special Provisions of Insurance for determining if acres are available for planting consistent with OIG's recommendation. This new objective standard will be incorporated for crops with a contract change date on or after November 30, 2013, effective for the 2014 crop year.

OIG Position

We accept management decision for this recommendation.

Recommendation 7

Ensure that any revisions in the prevented planting loss adjustment standards include specific instructions to require AIPs to document their determinations.

Agency Response

The Prevented Planting Loss Adjustment Standards Handbook currently contains many references requiring supporting documentation, as well as the Loss Adjustment Manual Standards Handbook, which is to be used in conjunction with the Prevented Planting Loss Adjustment Standards Handbook. RMA will include specific instructions in the 2014 Prevented Planting Loss Adjustment Standards Handbook to be issued in August 2013 requiring AIPs to maintain records (documents) as stated in the Standard Reinsurance Agreement and as described in the Loss Adjustment Manual Standards Handbook.

OIG Position

We accept management decision for this recommendation.

Recommendation 8

Issue guidance emphasizing that any quality control reviews that AIPs perform on prevented planting claims must include verification that loss adjusters comply with Federal Crop Insurance Corporation procedures, including the completion of all required eligibility determinations and the inclusion of all supporting documents in the producer's file.

Agency Response

RMA agrees and will issue within the next six months a bulletin to all AIPs stating that in accordance with Appendix IV, Quality Assurance and Program Integrity Requirements, all quality control reviews must include verification that loss adjusters comply with Federal Crop Insurance Corporation procedures, including the completion of all required eligibility determinations and the inclusion of all supporting documents in the producer's file.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

We conducted our audit of the prevented planting component of the Federal Crop Insurance Program at the RMA national office; RMA offices in Kansas City, Missouri, and Eagan, Minnesota; and 14 FSA county offices in 3 States (see exhibit B).

Our audit covered prevented planting claims filed on Federal crop insurance policies for crop years 2008 through 2011. Using RMA's database systems, we identified over 134,000 prevented planting claims, totaling nearly \$4.6 billion in payments.

We judgmentally selected 14 counties in 3 States that generally experienced a high level of prevented planting payments from crop years 2008 through 2011.³² Within each county, we judgmentally selected up to six producers with varying degrees of prevented planting activity between 2008 and 2011.³³ In total, we sampled 77 producers, who filed 192 prevented planting claims, and received a total of over \$43 million in prevented planting payments within the counties in which they were sampled over the 4-year period under review.

To accomplish our objectives, we performed the following audit procedures:

- Reviewed applicable laws, regulations, and agency procedures concerning the administration of the Federal crop insurance programs, specifically those provisions pertaining to prevented planting;
- Interviewed officials at RMA's national office in Washington, D.C., and RMA's Product Management Division in Kansas City, Missouri, to assess controls over prevented planting and to gain an understanding of RMA's expectations of the AIPs who administer the prevented planting policies, provisions, and procedures;
- Interviewed officials at the RMA Northern Regional Compliance Office in Eagan, Minnesota, to gain an understanding of how RMA enforces compliance with prevented planting policies, provisions, and procedures;
- Interviewed FSA and Natural Resources Conservation Service county office personnel, producers, and seed/fertilizer suppliers to identify any prevented planting-related issues being experienced and to determine the types of costs incurred prior to planting a crop;
- Reviewed the results of the 1996 ERS study on prevented planting and preplanting costs to determine the basis on which RMA established its current prevented planting coverage levels;

³² The sampled counties received over \$942 million in prevented planting payments out of a total of approximately \$4.6 billion paid during the applicable crop years.

³³ We requested the claim, policy, and (when applicable) quality control files from 2008 through 2011 for a sample of 63 producers from 14 counties in 3 States. We judgmentally sampled and interviewed a total of 77 producers that, in the 4-year span had: (1) no prevented planting history; (2) 1 to 3 years prevented planting history; and (3) all 4 years of prevented planting history. Therefore, 14 of the producers did not have a prevented planting claim to review.

- Interviewed ERS officials to gain an understanding of the scope and methodologies used for conducting the 1996 study on prevented planting and preplanting costs;
- Reviewed prevented planting claims, as well as policy and quality control review documents associated with the claims, to verify whether certain key provisions were correctly implemented in the loss adjustment process by the AIPs;
- Interviewed AIP personnel to determine the cause of deficiencies noted during the review of sampled prevented planting files and identify any related program weaknesses; and
- Assessed the reliability of information systems by comparing specific data within RMA's policyholder database and loss adjustment documents in sampled policy and claim files.

We conducted fieldwork between April 2012 and March 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Abbreviations

AIP	Approved Insurance Provider
APH.....	Actual Production History
CRP	Conservation Reserve Program
ERS	Economic Research Service
FSA	Farm Service Agency
RMA	Risk Management Agency
OGC	Office of the General Counsel
OIG	Office of Inspector General
USDA.....	United States Department of Agriculture

Exhibit A: Summary of Monetary Results

Exhibit A summarizes the monetary results for our audit report by finding and recommendation number.

Finding No.	Recommendation	Description	Amount	Category
1	1	Prevented planting payments paid in excess of the percentages of guarantees calculated by ERS.	\$480,795,341	Funds To Be Put To Better Use
3	6	Prevented planting payments paid without adequate support for acres being available for planting.	\$43,259,604	Questioned Costs No Recovery
Total			\$524,054,945	

Exhibit B: FSA County Offices Visited

State	County
North Dakota	Cass
	Ramsey
	Ward
	Sargent
	Dickey
	Barnes
South Dakota	Clay
	Brown
	Edmunds
	Spink
	Marshall
Iowa	Fremont
	Van Buren
	Wayne

**USDA'S
RISK MANAGEMENT AGENCY'S
RESPONSE TO AUDIT REPORT**



August 12, 2013

**United States
Department of
Agriculture**

Farm and Foreign
Agricultural
Services

Risk
Management
Agency

1400 Independence
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Stop 0801
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TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

FROM: Michael Hand /S/
Audit Liaison Official

SUBJECT: Office of Inspector General Audit 05601-0001-31, Official Draft Report,
RMA: Controls Over Prevented Planting

Outlined below is the Risk Management Agency's (RMA) response to the subject report.

RECOMMENDATION NO. 1:

Obtain updated pre-planting cost information and use it to reevaluate the current coverage levels provided for prevented planting. Make any necessary changes to reduce program costs, where possible, and bring the coverage levels consistently in line with pre-planting costs for each crop.

RMA Response:

RMA does not believe the coverage levels are excessive on average and reflect increased producer costs before planting a crop, but RMA agrees with the recommendation. On July 3, 2013, RMA awarded a Prevented Planting Evaluation contract to determine if prevented planting payments currently offered under Federal crop insurance policies are appropriate when a producer is prevented from planting a crop, but not excessive to the extent that the coverage encourages producers not to plant. Any changes deemed necessary to reflect appropriate prevented planting payments will be determined by June 30, 2014, in order to be effective for the 2015 crop year.

RECOMMENDATION NO. 2:

Establish a schedule by which prevented planting coverage levels will periodically be reevaluated to ensure the levels remain in an appropriate and consistent relationship with pre-planting costs.

RMA Response:

RMA agrees with the recommendation. One of the deliverables for the Prevented Planting Evaluation contract is for the contractor to provide a methodology that will allow RMA to reevaluate prevented planting coverage levels to assure that the levels used will result in reasonable and adequate, but not excessive, prevented planting payments. By June 30, 2014, RMA will establish an appropriate schedule and update its procedures accordingly.

RECOMMENDATION NO. 3:

Obtain a formal OGC opinion regarding whether RMA is prohibited from applying an assigned yield to prevented planting acreage and use it to calculate a producer's Actual Production History (APH) when a second crop is not planted.

RMA Response:

RMA has already received an opinion from OGC on this matter that stated the current prevented planting yield procedures followed by RMA are consistent with statutory language. That response has been provided to OIG. However, RMA requested a formal legal opinion from OGC and when received, RMA will provide OIG with a copy of the document in response to this recommendation by September 15, 2013.

RECOMMENDATION NO. 4:

If OGC determines that an assignment of yield is not prohibited, evaluate what the proper yield assignment would be, and take appropriate action to implement the results.

RMA Response:

Upon receipt of OGC's formal opinion, RMA will assess whether any assignment of yield is appropriate. However, based on previous OGC opinion and discussions of assignment of yields for APH purposes for prevented planting acreage, RMA does not anticipate this to be the likely outcome.

RECOMMENDATION NO. 5:

If OGC determines that an assignment of yield is prohibited, prepare a decision memorandum for consideration by the Secretary and follow up accordingly. The decision memorandum will review other potential actions that could be taken including seeking legislative change to allow RMA to apply an assigned yield to prevented planting acreage, and use it to calculate a producer's APH when a second crop is not planted.

RMA Response:

Upon receipt of OGC's legal opinion, RMA will finalize a decision memorandum for the Secretary. Once the decision memorandum has been acted upon, RMA will advise OIG accordingly.

RECOMMENDATION NO. 6:

Revise the Special Provisions of Insurance to replace language regarding normal weather determinations with another more objective standard to apply when determining if acres are available for planting. Initiate any regulatory action required to implement these revisions.

RMA Response:

RMA will modify the Special Provisions of Insurance for determining if acres are available for planting consistent with OIG's recommendation. This new objective standard will be incorporated for crops with a contract change date on or after November 30, 2013, effective for the 2014 crop year.

RECOMMENDATION NO. 7:

Ensure that any revisions in the prevented planting loss adjustment standards include specific instructions to require Approved Insurance Providers (AIPs) to document their determinations.

RMA Response:

The Prevented Planting Loss Adjustment Handbook (PP LASH) currently contains many references requiring supporting documentation, as well as the Loss Adjustment Manual (LAM) Standards Handbook, which is to be used in conjunction with the PP LASH. RMA will include specific instructions in the 2014 PP LASH to be issued in August 2013 requiring AIPs to maintain records (documents) as stated in the Standard Reinsurance Agreement and as described in the LAM Standards Handbook.

RECOMMENDATION NO. 8:

Issue guidance emphasizing that any quality control reviews that AIPs perform on prevented planting claims must include the verification that loss adjusters comply with Federal Crop Insurance Corporation procedures, including the completion of all required eligibility determinations and the inclusion of all supporting documents in the producer's file.

RMA Response:

RMA agrees and will issue within the next six months a bulletin to all Approved Insurance Providers (AIPs) stating that in accordance with Appendix IV Quality Assurance and Program Integrity Requirements, all quality control reviews must include verification that loss adjusters comply with Federal Crop Insurance Corporation procedures, including the completion of all required eligibility determinations and the inclusion of all supporting documents in the producer's file.

Should you have any questions or would like additional information concerning this matter, please contact Nicole Smith Lees at (202) 260-8085.

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