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Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law Webinar Series

Understanding the Basics of Crop Insurance

October 21, 2022





Center for Agricultural and Shale Law

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Understanding Agricultural Law

A Legal Educational Series for General Practice Attorneys and Business Advisors Representing Agricultural and Rural Clients

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.



Pennsylvania Department of Agriculture's *Agricultural Business Development Center*



Established as part of the 2019 Pennsylvania Farm Bill, the [Agricultural Business Development Center](#) supports [Farm Transitions](#), linking farmers to the next phase of their life and their farm's future; [Beginning Farmers](#), providing advice and counsel to the next generation of agricultural producers; [Risk Management](#), providing information on crop insurance and other opportunities for risk management; and [Financial Assistance](#), connecting farmers with low-interest loan options and reimbursable grant programs. This initiative seeks to build the "ag literacy" and competency of the existing network of legal, engineering, accounting, and other disciplines of business advisors available to farmers.



Understanding Agricultural Law Webinar Series: *Past Topics*

Understanding the Basics of

- Agricultural Labor Laws (April 29, 2022)
- Leasing Farmland for Energy Development (May 20, 2022)
- Local Land Use Regulation of Agriculture (June 24, 2022)
- Statutory Protections for Ag Operations (July 22, 2022)
- Agricultural Cooperatives (Aug. 26, 2022)
- Livestock Market Regulation (Sept. 23, 2022)



Understanding Agricultural Law Webinar Series: *Upcoming Topics*

Friday, November 18, 2022, noon–1:00 ET

- *Understanding the Basics of* **Federal & State Conservation Programs**

Friday, December 16, 2022, noon–1:00 ET

- *Understanding the Basics of* **Licensing & Regulation of Direct Agricultural Product Sales**

Friday, January 27, 2023, noon–1:00 ET

- *Understanding the Basics of* **Agricultural Finance**



Housekeeping

- **This webinar will be recorded.**
- Use the Q&A feature for questions.
- CLE credits:
 - Link will be posted in the chat
 - Please fill out form
 - Listen for code word
 - Questions?
 - Email: aet17@psu.edu



Understanding the Basics of Crop Insurance

October 21, 2022

Presenter: Brook Duer

Center for Agricultural and Shale Law

Farmers are known as “price-takers” in normal times, dealing with perishable crops which generally must be harvested and sold in short and simultaneous windows of time across most of North America. Add to that the uncertainties of natural conditions like freezing temperatures, storms, heat, drought, natural disasters and resulting market/labor disruptions and it can be riskier to invest capital in a crop or commodity than traditional financing and banking practices can accommodate. Hedging against all these volatile conditions is an absolute necessity, not a luxury, in agriculture. Crop insurance is an ever-changing set of tools against potential financial strains that are routine for farmers. New products are routinely developed to adapt to changing farming practices, like whole farm revenue policies and innovative livestock and dairy margin coverages. Learn about the basics of all the current products developed and backed by USDA’s Risk Management Agency.



Overview of Today's Presentation

- History of federal crop insurance program
- Present USDA RMA crop insurance products
- Noninsured Crop Disaster Program & Livestock Indemnity Program, etc.
- *Note: we are not covering income/revenue support programs that do not require an “insurable event” (i.e., natural disaster), for example the Dairy Margin Coverage (DMC) program or other margin protection programs for livestock simply based upon declines in revenue.*



Farming is Steeped in Risk

- Living products.
- Relies upon natural resources.
- Weather.
- Climate change.

Insurance is the solution, but the private insurance industry has not been historically willing to take on the scope of the risk. Single peril policies like “hail policies” perhaps, but **multi-peril insurance policies** (MPIC) for crops present risks too large, small, prone to loss, and/or expensive.



Federal Crop Insurance Corporation (FCIC)

- Created in 1938 – recovery from Dust Bowl & Depression.
- Very experimental – limited in crops and areas available.
- 1980 - **Federal Crop Insurance Act.**
- Concept: “Multi-peril” coverage made widely available with premiums 30% subsidized by the federal government at maximum of 65% coverage.



FCIC (cont.)

- Public-Private Partnership model.
- Wholly-owned government corporation.
- Managed by USDA's Risk Management Agency (RMA).
- Policies and premium rates are government-approved
- Premiums partially subsidized.
- Private-sector insurance companies sell and service and are reimbursed and reinsured for admin, costs and pay outs.



Federal Crop Insurance Reform Act of 1994

- Major droughts of 1988 – 1992.
- ***Ad hoc disaster assistance bills*** interfering with building farmer motivation to purchase.
- 1994 Act made participation in crop insurance mandatory to be eligible for deficiency payments under price support programs, loans, and other benefits.
- Since mandatory - creation of catastrophic (CAT) coverage.



1994 changes (cont.)

- CAT coverage for losses exceeding 50% of an average yield.
- Paid at 60% of established price per crop per year.
- 100% premium subsidized.
- \$50 per crop/per county.
- By 1996 – mandatory req. repealed; USDA Risk Management Agency (RMA) created.



1990s and thereafter

- RMA offered education and promotion of risk management generally and specifically multi-peril federal crop insurance.
- Btw. 1993-1998, acreage insured doubled to 180 M acres.
- 1998 - 2/3 of U.S. planted acreage of field crops insured.
- 2000 – expanded role of private sector to be involved in developing new “products.”
- By 2012: 1.17M policies, 282M acres, \$117B in crop value.



Today's model fully established by 2010s

- 2014 – federal crop insurance covers 87% of corn, 96% of cotton, 88% of soybeans, 84% of wheat.
- 130 crops, including fruits, nursery crops, pasture/forage.
- Specialty Crops: 73% of fruit, 32% of vegetables.
- Livestock and Dairy: new products to insure against “loss of gross margin” and price declines.



Federal Crop Insurance Act

7 U.S.C. § 1501 et seq.

1508. (a) Authority to offer insurance

(1) In general

If sufficient actuarial data are available (as determined by the Corporation), the Corporation may insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under 1 or more plans of insurance determined by the Corporation to be adapted to the agricultural commodity concerned. **To qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to drought, flood, or other natural disaster (as determined by the Secretary).**

(2) Period

Except in the cases of tobacco, potatoes, sweet potatoes, and hemp, **insurance shall not extend beyond the period during which the insured commodity is in the field.** As used in the preceding sentence, in the case of an aquacultural species, the term “field” means the environment in which the commodity is produced.



7 U.S. Code § 1518 - “Agricultural commodity” defined

“Agricultural commodity”, as used in this subchapter, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, **hemp**, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding stored grain, determined by the Board, or any one or more of such commodities, as the context may indicate.

RMA Regulations: [7 C.F.R. part 400](#)



Structure & Private Insurance Company Role

- ~15-20 private insurance companies authorized to sell.
- RMA approves all products, where to offer, terms, etc.
- RMA does all the underwriting analysis.
- Private ins. co incentive to sell?
 - % of administrative & operating costs (A&O) reimbursed.
 - Standard Reinsurance Agreement (SRA) negotiated.
 - Livestock Price Reinsurance Agreement (LPRA) negotiated.





Top 10 Writers Of Multiple Peril Crop Insurance By Direct Premiums Written, 2021 (\$000)

Rank	Group/company	Direct premiums written (1)	Market share (2)
1	Chubb Ltd.	\$2,642,534	17.8%
2	QBE Insurance Group Ltd.	2,516,777	16.9
3	Sompo Holdings Inc.	2,375,673	16.0
4	Zurich Insurance Group	2,240,982	15.1
5	Great American Insurance Group	1,144,193	7.7
6	Farmers Mutual Hail Insurance Company of Iowa	954,033	6.4
7	Fairfax Financial Holdings	866,653	5.8
8	American International Group (AIG)	779,715	5.2
9	Tokio Marine Group	701,133	4.7
10	AXA	179,316	1.2

(1) Before reinsurance transactions, includes state funds.

(2) Based on U.S. total, includes territories.

Source: NAIC data, sourced from S&P Global Market Intelligence, Insurance Information Institute.



Structure (cont.)

- SRA: cost allowance for A&O expense.
 - Risk-sharing terms between FCIC and company.
 - QC & performance standards of private insurer.
- Private insurer has all contact with policyholder.
- Bills/collects farmer-paid premium (minus the gov. subsidized portion); sends premiums to RMA; claims administered, and indemnity paid; RMA reimburses in full.



Structure (cont.)

- Key SRA term: At the end of the reinsurance year, there is an annual settlement between RMA and private insurer whereby the company's proportion of any underwriting gain or loss is determined and paid.



Model of Federal Crop Insurance

- Policy based upon a “normal” crop yield based on actual production history and a commodity price based on estimated market conditions.
- Farmers select a **% of normal yield** to be insured and **% of the price** they wish to receive.
 - Also, can opt for “prevented planting” coverage.
- Premium increases as % increase. Average premium subsidy is 62%.
- For basic “catastrophic coverage” (CAT) – 100% subsidized.



Two Types of Federal Crop Insurance

- **Yield-based:** indemnity paid if a yield loss occurs relative to the farmer's "normal" (historical) yield.
- **Revenue-based:** (a later development).
 - Protects against crop revenue loss resulting from declines during the growing season in **yield, price, or both**.
- Both based upon a commodity price est. annually. (not based upon a model of what it "should" be, as are some price support programs).



Yield Based Insurance

- A “normal” yield is assigned based up on Actual Production History (APH), usually of last 4-10 years (or some substitute equivalency).
- Commodity price is based upon estimate market conditions.
- Select a % of normal yield to insure.
- Select of % of price to receive when losses exceed the selected loss threshold.



Yield Based (cont.)

- Catastrophic (CAT) coverage is a form of yield-based.
- 100% subsidized premium; only pay admin fee of \$300 per crop, per county.
- Receive payment on losses in excess of 50% of normal yield.
- For that loss, receive payment of 55% of the est. market price.
- Called “50/55” coverage.
- Farmer “eats” the first 50% of yield loss and 45% of price loss.



Yield Based (cont.)

- “Buy-Up” – premium can be paid for more coverage.
- On same crops and county acreage as covered by CAT enrollment.
- Buy coverage of between 50/100 to 75/100 (i.e. up to 75% of “normal” crop yield and 100% of est. market price).
- Some limited areas offer 85/100.
- Always going to be some % of yield as a “deductible.”



Revenue Based Insurance

- First offered in 1997, by 2003 it surpassed Yield Based in # of policies written. Combines “production guarantee” with “price guarantee” to est. a “target revenue.”
- Receive indemnity when crop revenue falls below a defined % of the chosen target level of revenue, **regardless of whether shortfall is caused by low prices or low production.**
- **No longer just insuring against “casualty losses” but also against market conditions** (but if price goes up between planting and harvest, indemnity goes down, unless “harvest price exclusion” purchased).



Whole Farm Revenue Protection (WFRP)

- Under Revenue Based policies, a policyholder can buy a policy aggregating revenue from multiple crops, but there is a defined list of crops insurable in that manner.
- For highly diverse farms, those growing crops not eligible for traditional “revenue based” and mixed crop and animal production, WFRP insures revenue of the entire farm, not enumerated crops.
- The lower of the revenue expected on the current year’s farm or five-year historic income.
- Still evolving, but better fits direct sales, organic production – anything where you get a uniquely higher price or some niche revenue.



Controls & Disputes

- Losses not covered if fail to follow “recognized good farming practices for the insured crop.” Also, if “neglect or malfeasance.”
- “Moral Hazard” concept. As old as the hills.
- Duty to protect the crop from further damage, give prompt notice, allow access, cooperation and documentation, seek permission before destroying or abandoning crop.
- Adverse FCIC decisions: USDA Mediation program, AAA arbitration, USDA National Appeals Division (NAD).



A Work in Progress . . . holes in system remain

- Organic market prices & other niche market production
- Insuring specialty crops for food safety/contamination losses
- Animal producers for catastrophic disease events
- Integrator bankruptcy for contract growers
- Biomass producers (for renewable energy)
- Hemp growers for “hot” plants, pollination

Insurance Plans

Overview

Buying a crop insurance policy is a risk management tool available to agricultural producers. Producers should consider how a policy will work in conjunction with their other risk management strategies to insure the best possible outcome each crop year. Crop insurance agents and other agri-business specialists can assist producers in developing a good management plan.

RMA provides policies for more than 100 crops. Policies typically consist of general crop insurance provisions, specific crop provisions, policy endorsements and special provisions. See RMA's county crop program listings for information about crop policies available in specific counties and states.

Policies are available for most commodities; however, some policies are being tested as pilots or have not been expanded nationwide so are not available in all areas.

Insurance Plans provide different types of insurance coverage to specific commodities:

USDA RMA Insurance Plans

Actual Production History	High-Risk Alternate Coverage Endorsement
Actual Revenue History	Livestock Insurance Plans
Annual Forage	Margin Protection for Corn, Rice, Soybeans, and Wheat
Apiculture	Pasture, Rangeland, Forage
Area Risk Protection Insurance	Rainfall Index
Commodity Exchange Price Provisions	Revenue Protection
Common Crop Insurance Policy, Basic Provisions	Whole-Farm Revenue Protection
Dollar Plan	Yield Protection
Group Risk Plan	



Noninsured Crop Disaster Program (NAP)

- NAP provides financial assistance to producers of crops that are not eligible for crop insurance to protect against lower yields or crops unable to be planted due to natural disasters.
- NAP provides basic coverage equivalent to the catastrophic level risk protection plan of insurance coverage. This is based on the amount of **prevented planting** in excess of 35 percent of intended acreage at 55 percent of the average market price (35/55), or **loss of yield or value** in excess of 50 percent of expected production or value at 55 percent of the average market price (or other determined prices) (50/55) for the crop.
- NAP also offers higher levels of coverage (buy-up) ranging from 50 to 65 percent of production, in five percent increments (up to 65/55), or the same prevented planted coverage level of more than 35 percent of intended acreage at 100 percent of the average market price (35/100).



Livestock Mortality Insurance

- Historically, animal mortality coverage has been a private insurance offering for valuable breeding stock or racehorses, for example from specialty carriers like Lloyd's of London.
- “Moral Hazard” has always been the backdrop.
- Demand for coverage from animal disease has not been widely sought or utilized, even after the 2015 HPAI outbreak in the U.S.
- **There is no federally subsidized livestock mortality insurance program.** And USDA APHIS' HPAI indemnity program does not cover diagnosed poultry, only those that are depopulated to prevent disease spread.



Livestock Indemnity Program (LIP)

- LIP provides benefits to livestock producers for livestock deaths or injuries in excess of normal mortality caused by adverse weather or attacks by animals that have been reintroduced into the wild by the federal government.
- “Extreme Cold” is considered a covered eligible loss for livestock without regard to any management practice, vaccination protocol, or lack of vaccination.
- LIP now covers diseases that are caused or transmitted by a vector and are not controlled by vaccination or an acceptable management practice but DOES NOT INCLUDE HPAI.



Emergency Assistance for Livestock, Honeybees, and Farm-raised Fish (ELAP)

- ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish for losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires that are not covered by LFP* and LIP.
- Only covers fish mortality, not livestock or bees. Does cover post-disaster feed transportation and other costs, as well as costs associated with some disease testing of livestock.

**Livestock Forage Program (LFP) can provide indemnity for loss of revenue from livestock sold or otherwise disposed of due to a qualifying drought condition of forage.*

Crop Insurance Resources

USDA

- Crop and Livestock Insurance: <https://www.usda.gov/topics/farming/crop-and-livestock-insurance>
- Risk Management Agency (RMA) website: <https://www.rma.usda.gov/>
- Federal Crop Insurance Corporation: <https://www.rma.usda.gov/Federal-Crop-Insurance-Corporation>
- Insurance Plans: <https://www.rma.usda.gov/policies/#overview>
- Insurance Resources: <https://www.rma.usda.gov/en/Topics/Insurance-Resources>
- Livestock Insurance Plans: <https://www.rma.usda.gov/Topics/Livestock-Insurance-Plans>
- Whole-Farm Revenue Protection: <https://www.rma.usda.gov/Policy-and-Procedure/Insurance-Plans/Whole-Farm-Revenue-Protection>
- Article: [What's New: Risk Management Agency and the 2018 Farm Bill](#)

National Crop Insurance Services (NCIS)

- NCIS website: <https://cropinsuranceinamerica.org/>
- Resources and Materials: <https://cropinsuranceinamerica.org/resources-materials/>
- Article: [The Development of Crop Insurance & the U.S. Farm Safety Net](#)

National Association of Insurance Commissioners (NAIC)

- NAIC website: <https://content.naic.org/>
- Crop Insurance: <https://content.naic.org/cipr-topics/crop-insurance>

Insurance Information Institute (III)

- III website: <https://www.iii.org/>
- Article: [Background on: Crop Insurance](#)

Congressional Research Service (CRS)

- CRS website: <https://crsreports.congress.gov/>
- [Farm Bill Primer: Federal Crop Insurance Program](#) (August 26, 2022)
- [Federal Crop Insurance: Fruits, Vegetables and Specialty Crops](#) (May 11, 2022)
- [Federal Crop Insurance for Hemp Crops](#) (September 9, 2021)
- [Federal Crop Insurance: A Primer](#) (Feb. 18, 2021)
- [Federal Crop Insurance: Specialty Crops](#) (Jan. 14, 2019)



THANK YOU!

Upcoming Webinars from the Center for Agricultural and Shale Law

Understanding Agricultural Law Series

- Fri. Nov. 18—Understanding the Basics of Federal & State Conservation Programs
- Fri. Dec. 16—Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales
- Fri. Jan. 27—Understanding the Basics of Agricultural Finance

Quarterly Dairy Legal Update Series

- Tue. Oct. 25—2023 Farm Bill & Dairy

Legal Planning for Specialty Crop Producers Series

- Wed. Nov. 16—Licensing & Regulatory Obligations in Selling Raw and Processed Specialty Crop Products
- Wed. Nov. 30—Municipal Law & Zoning for Agritourism/Agritainment, Specialty Crop Processing & Sales
- Wed. Dec. 14—Statutory Protections/Restrictions: Understanding PA's Ag Area Security, Right-To-Farm, ACRE, and Clean & Green Laws

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