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**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 460**

**Farm Service Agency**

**7 CFR Part 760**

**Commodity Credit Corporation**

**7 CFR Part 1416**

**RIN: 0560-AI52**

**[Docket ID FSA-2019-0012]**

**Agricultural Disaster Indemnity Programs**

**AGENCY:** Federal Crop Insurance Corporation, Commodity Credit Corporation, and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes provisions for providing agricultural disaster assistance as authorized by the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Disaster Relief Act). The Wildfire and Hurricane Indemnity Program Plus (WHIP+) will provide payments to eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years. The On-Farm Storage Loss Program will provide payments to eligible producers who suffered uncompensated losses of harvested commodities stored in farm structures as a result of hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and

wildfires that occurred in the 2018 and 2019 calendar years. The Wildfire and Hurricane Indemnity Program (WHIP) Milk Loss Program will provide payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years. This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment calculations for WHIP+, On-Farm Storage Loss Program, and WHIP Milk Loss Program. As required by the Disaster Relief Act, this rule also expands eligibility for 2017 WHIP to include losses incurred from Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017. This rule updates the regulations for the Tree Assistance Program (TAP) to provide assistance for eligible orchardists or nursery tree growers of pecan trees with a tree mortality rate that exceeds 7.5 percent (adjusted for normal mortality) and is less than 15 percent (adjusted for normal mortality) for losses incurred in calendar year 2018. Prevented planting supplemental disaster payments will provide support to producers who were prevented from planting eligible crops for the 2019 crop year due to excess precipitation, flood, storm surge, tornado, volcanic activity, tropical depressions, hurricanes, and cyclones in the 2019 calendar year. This rule specifies the administrative provisions, eligibility requirements, and payment calculations for prevented planting supplemental disaster payments.

**DATES:** *Effective date:* **[Insert date publication in the FEDERAL REGISTER].**

*Comment date:* We will consider comments on the Paperwork Reduction Act that we receive by: **[Insert date 60 days after publication in the FEDERAL REGISTER].**

**ADDRESSES:** We invite you to submit comments on this rule. In your comment, specify RIN [0560-AI52], and include the volume, date, and page number of this issue of the *Federal Register*. You may submit comments by either of the following methods:

- Federal Rulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FSA-2019-0012. Follow the instructions for submitting comments.
- Mail: Director, SND, FSA, US Department of Agriculture, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250-0522.

Comments will be available for viewing online at <http://www.regulations.gov>. In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** For WHIP+, 2017 WHIP, and TAP, Tona Huggins; telephone: (202) 720-7641; [tona.huggins@usda.gov](mailto:tona.huggins@usda.gov). For On-Farm Storage Loss, Shayla Watson-Porter; telephone: (202) 690-2350; or e-mail: [shayla.watson-porter@usda.gov](mailto:shayla.watson-porter@usda.gov). For WHIP Milk Loss, Douglas E. Kilgore: telephone: (202) 720-9011; or e-mail: [douglas.e.kilgore@usda.gov](mailto:douglas.e.kilgore@usda.gov). For Crop Insurance, Francie Tolle; telephone: (816) 926- 7829; or e-mail: [francie.tolle@usda.gov](mailto:francie.tolle@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Disaster Relief Act; Pub. L. 116-20) provides \$3,005,442,000, available until December 31, 2020, for disaster assistance for necessary expenses related to losses of crops (including milk, on-farm stored commodities, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019. The Secretary has directed the Farm Service Agency (FSA) to provide assistance for these losses through the following programs:

- WHIP+ for losses to eligible crops, trees, bushes, and vines;
- On-Farm Storage Loss Program; and
- WHIP Milk Loss Program.

The Disaster Relief Act authorizes TAP to cover eligible orchardists or nursery tree growers of pecan trees with a tree mortality rate that exceeds 7.5 percent (adjusted for normal mortality) and is less than 15 percent (adjusted for normal mortality) for losses incurred during the period beginning January 1, 2018, and ending December 31, 2018.

The Disaster Relief Act also expanded 2017 WHIP, authorized by the Bipartisan Budget Act of 2018 (BBA; Public Law 115–123), to cover losses due to Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017.

Grazing and livestock losses are covered by existing programs that are funded by the Commodity Credit Corporation (CCC) and administered by FSA, such as the Livestock Indemnity Program (LIP), Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP), and therefore are not covered by additional programs under this rule, as such would be a duplication of benefits. TAP provides cost-share for replanting and rehabilitation of eligible trees, while 2017 WHIP and WHIP+ provide payments based on the loss of value of the tree, bush, or vine itself. Therefore, eligible participants who suffered tree, bush, and vine losses may receive both payment under both TAP and 2017 WHIP or WHIP+ for the same acreage because they pay for different losses, if eligibility conditions are met. TAP is available only for expenses actually incurred by the eligible orchardist or nursery tree grower that are not covered, reimbursed, or paid for by anyone other than the eligible orchardist or nursery tree grower.

The On-Farm Storage Loss Program provides payments to eligible producers who suffered losses of harvested commodities, including hay, stored in on-farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

The WHIP Milk Loss Program allows dairy operations the ability to receive payments for milk that was dumped or removed without compensation from the commercial milk market due to qualifying weather events that inhibited the delivery of milk including, but not limited to, the storage of milk due to a power outage or that caused impassable roads which prevented the milk hauler access to the farm for the 2018 and 2019 calendar years.

The Federal Crop Insurance Corporation (FCIC) provides additional assistance for prevented planting for producers with crop insurance, using the higher of the projected price or harvest price where applicable. FCIC will establish prevented planting supplemental disaster payments, as administered by RMA, to provide assistance to producers who were prevented from planting eligible 2019 crop year crops in the 2019 calendar year due to specified causes of loss.

Additionally, some of the available funding is being provided to certain States through block grants to address specific losses in those states. This final rule only covers disaster assistance for necessary expenses related to the programs mentioned above and does not discuss the terms and conditions of the block grants.

For clarity, throughout this final rule, the word producer is used to refer to those persons or legal entities who have suffered losses and can apply for assistance; the term participant is used for a producer who applied and has been determined eligible.

#### **WHIP+**

WHIP+ provides assistance to eligible producers who suffered an eligible loss to crops, trees, bushes, and vines or prevented planting due to a qualifying disaster event, which includes hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 or 2019 calendar year, and conditions related to those disaster events, such as excessive rain, high winds, mudslides, heavy smoke, and related conditions. WHIP+ provides assistance for yield-based and value loss crops that suffered losses prior to harvest. Losses of harvested crops while in storage will be covered under the On-Farm Storage Loss Program, and milk that was dumped due to the weather events under WHIP Milk Loss Program will be discussed later in this rule. In

general, WHIP+ will be administered in a similar way as the 2017 WHIP, except for certain changes explained in this rule.

WHIP+ payments for crop losses cover only production losses; they do not cover quality losses except for qualifying losses to adulterated wine grapes. Eligible crops include those for which crop insurance or Noninsured Disaster Assistance Program (NAP) coverage is available, excluding crops intended for grazing. WHIP+ will provide assistance for Florida citrus tree losses, which were excluded from 2017 WHIP but were covered by a grant program administered by the State of Florida.

WHIP+ will be available for eligible farms located in counties that received a qualifying Presidential Emergency Disaster Declaration or Secretarial Disaster Designation due to one or more of the qualifying disaster events or a related condition. Only producers in primary disaster counties qualify for WHIP+ based on the declaration or designation. However, producers in counties that did not receive a qualifying declaration or designation may still apply for WHIP+, but they must also provide supporting documentation to establish that the crop was directly affected by a qualifying disaster event.

Due to the variety of eligible crops and the timing of the qualifying disaster events, eligible crops under WHIP+ include those that were intended for harvest in the 2018, 2019, and 2020 crop years. In some cases, a loss from a qualifying disaster event under WHIP+ may have also been eligible for 2017 WHIP if the event was considered an eligible related condition; in those cases, a producer may not receive payment under both programs and such producer cannot return their 2017 WHIP payment to become eligible for payment under WHIP+.

As under 2017 WHIP, the payment limitation for WHIP+ is determined by the person's or legal entity's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, a person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in payments under WHIP+, if their average adjusted gross farm income is less than 75 percent of their average of their adjusted gross income (AGI) for 2015, 2016, and 2017. The \$125,000 payment limitation is a single total combined limitation for payments for all WHIP+ payments received for the 2018, 2019, and 2020 crop years. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities and the participant provides the required certification and documentation, as discussed below, the person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to \$250,000 per crop year in WHIP+ payments, with a total combined payment limitation for the 2018, 2019, and 2020 crop years of \$500,000. The relevant tax years for establishing a producer's AGI and percentage derived from farming, ranching, or forestry related activities for WHIP+ are 2015, 2016, and 2017. This means that the average AGI will be the average of AGI for the 2015, 2016 and 2017 tax years regardless if a WHIP+ participant has losses in one or more crop years. For example, if a WHIP+ participant only suffered eligible losses in the 2018 crop year, their average AGI will be calculated based on their 2015, 2016 and 2017 tax years, the same as if a participant had losses in all three eligible crop years, 2018, 2019 and 2020..

To receive more than \$125,000 in WHIP+ payments, applicants must submit form FSA-896, Request for an Exception to the WHIP Payment Limitation of \$125,000,

accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification. If an applicant requesting the \$250,000 per crop year payment limitation is a legal entity, all members of that entity must also complete FSA-896 and provide the required certification according to the direct attribution provisions in §1400.105, "Attribution of Payments." If a legal entity would be eligible for the \$250,000 per crop year payment limitation based on the legal entity's average AGI from farming, ranching, or forestry related activities but a member of that legal entity either does not complete an FSA-896 or is not eligible for the \$250,000 per crop year payment limitation, the payment to the legal entity will be reduced for the limitation applicable to the share of the WHIP+ payment attributed to that member.

Applicable general eligibility requirements, including recordkeeping requirements and required compliance with Highly Erodible Land Conservation (HELIC) and Wetland Conservation provisions, are similar to those for the previous ad hoc crop disaster programs and current permanent disaster programs. All information provided to FSA for program eligibility and payment calculation purposes, including average AGI certifications and production records, is subject to spot check.

### **WHIP+ Application Process**

Producers must submit WHIP+ applications to their administrative FSA county office by the deadline that will be announced by the FSA Deputy Administrator for Farm Programs. A complete WHIP+ application consists of:

- FSA-894, Wildfires and Hurricanes Indemnity Program + Application;
- FSA-895, Crop Insurance and/or NAP Coverage Agreement;

- FSA-896, Request for an Exception to the WHIP Payment Limitation of \$125,000, if 75 percent or more of an applicant's average AGI is from farming, ranching, or forestry related activities and the applicant wants to be eligible to receive WHIP+ payments of more than \$125,000, up to the \$250,000 per crop year payment limitation, with an overall WHIP+ limit of \$500,000; and
- FSA-897, Actual Production History and Approved Yield Record (WHIP+ Select Crops Only), for applicants requesting payments for select crops.

An applicant must submit a separate FSA-894 for each crop year for which benefits are requested. Persons and legal entities who do not submit FSA-896 and a certification from a CPA or attorney are eligible only for the lower payment limitation of \$125,000. If not already on file with FSA, applicants must also submit AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification; CCC-902, Farm Operating Plan for Payment Eligibility; and a report of acreage on FSA-578, Report of Acreage, or in another format acceptable to FSA for all acres of each crop for which WHIP+ payments are being requested. Applicants must also submit verifiable or reliable crop records if not already on file for crop insurance or NAP purposes; producers who do not have verifiable or reliable records will have WHIP+ payments determined based on the lower of either the actual loss certified by the producer and determined acceptable by FSA or the county expected yield and county disaster yield, which is the production that a producer would have been expected to make based on the eligible disaster conditions in the county, as determined by the FSA county committee. Yield means unit of production, measured in bushels, pounds, or other unit of measure,

per area of consideration, usually measured in acres. In no case will WHIP+ payments be issued for losses that cannot be determined to have occurred to the satisfaction of FSA or for losses for which a notice of loss was previously disapproved by FSA, RMA, or an Approved Insurance Provider selling and servicing federal crop insurance policies unless that notice of loss was disapproved solely because it was filed after the applicable deadline.

### **WHIP+ Payments**

In general, all WHIP+ payments for crop production losses will take into consideration the difference between the expected value of the crop and the actual value of the crop as a result of the applicable disaster events. The value is determined by FSA using crop insurance or NAP prices. As mandated by the Disaster Relief Act, the price used to calculate a WHIP+ payment for a crop for which the producer obtained a revenue plan of insurance is the greater of the projected price or the harvest price determined by FCIC. WHIP+ payments for tree, bush, and vine losses will be calculated the same as under 2017 WHIP based on the loss of value of the trees, bushes, and vines that were destroyed or damaged due to the qualifying disaster event.

Per the Disaster Relief Act, payments under WHIP+ cannot exceed 90 percent of the total losses. Therefore, a WHIP+ factor will be applied to reduce the participant's payment to ensure that total WHIP+ payments are no more than 90 percent of the total losses by all WHIP+ participants, as described below.

The specific payment calculations that will be used for each type of commodity are detailed below. Each of the calculations includes numerous elements to determine the accurate and equitable amount to pay for the various losses. Some of the data will come

from the applications while other numbers used in the calculations will be determined by FSA. In general, the calculations are consistent with previous ad hoc disaster assistance programs administered by FSA, including 2017 WHIP.

Participants with crop insurance may receive WHIP+, crop insurance indemnity<sup>1</sup>, and supplementary disaster payments; however, as mandated by the Disaster Relief Act, the total amount of those payments combined cannot exceed 90 percent of the total losses for all 2018-2019 WHIP+ participants with crop insurance. The total amount of payments received under WHIP+ and the Noninsured Crop Disaster Assistance Program (NAP; 7 U.S.C. 7333) combined cannot exceed 90 percent of the total losses for all 2018-2019 WHIP+ participants with NAP coverage. Also, as required by the Disaster Relief Act, the total amount of payments received under WHIP+ cannot exceed 70 percent of the total losses for all 2018-2019 participants without crop insurance or NAP coverage.

As under 2017 WHIP, a payment factor (the “WHIP+ factor”) will be applied based on the level of crop insurance coverage or NAP coverage a participant obtained for a crop. The coverage level is the percentage determined by multiplying the elected yield percentage for the crop year under a crop insurance policy or NAP coverage by the elected price percentage. Participants who elected higher levels of crop insurance or NAP coverage will receive a higher level of compensation from the combination of the WHIP+ payment amount plus the crop insurance indemnity or NAP payment, as compared to a participant who elected a lower level of crop insurance or NAP coverage.

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<sup>1</sup>Crop insurance indemnity payments are those made under the Federal Crop Insurance Act (FCIA; 7 U.S.C. 1501-1524).

As detailed in the following table, the WHIP+ factors will be between 70 percent, for uninsured crops, and 95 percent, for crops for which a producer obtained greater than an 80 percent crop insurance coverage level.

Coverage Level	WHIP+ Payment Factor (percent)
No crop insurance or No NAP coverage.....	70
Catastrophic coverage.....	75
More than catastrophic coverage but less than 55 percent .....	77.5
At least 55 percent but less than 60 percent.....	80
At least 60 percent but less than 65 percent.....	82.5
At least 65 percent but less than 70 percent.....	85
At least 70 percent but less than 75 percent.....	87.5
At least 75 percent but less than 80 percent.....	92.5
At least 80 percent .....	95

Total WHIP+ payments issued to all participants will not exceed 90 percent of their collective losses, as required by the Disaster Relief Act. Therefore, including payments to individual participants based on a WHIP+ payment factor of 95 percent, total WHIP+ payments cannot exceed 90 percent of the value of total losses.

**WHIP+ Payment Calculation for Crop Losses**

WHIP+ payments for yield-based crop losses will be calculated based on all acreage of the crop in a unit. Eligible acreage includes prevented planting acreage for participants without crop insurance, therefore, the eligible acreage excludes 2019 crop year prevented planting acres of insured crops. Disaster assistance for 2019 crop year insured prevented planting acreage will be provided through prevented planting supplemental disaster payments as explained in this rule. The eligible crop acres will be multiplied by the WHIP+ yield, the price for the crop, and the WHIP+ factor, and reduced by the participant’s production multiplied by the price, and that result will be multiplied by the participant’s share and reduced by the gross insurance indemnity or

NAP payment already received by that producer for the same crop year, any salvage value, and the amount of any payment received under the Florida Citrus Recovery Block Grant Program for future economic losses. Additional adjustments will be applied to the WHIP+ payment calculation based on whether the crop was prevented from planted or unharvested to account for expenses that were not incurred.

As under 2017 WHIP, the WHIP+ yield is the approved yield based on the producer's actual production history (APH) for insured and NAP-covered crops, or the county expected yield for uninsured crops without NAP coverage and participants in Puerto Rico. Producers of select uninsured crops determined by the Deputy Administrator for Farm Programs may be provided the opportunity to submit records to establish their yield rather than use the county expected yield; those crops will be announced and publicized by FSA, and payments for those producers who choose not to submit those records will be based on the county expected yield.

FSA will adjust production of eligible adulterated wine grapes for quality deficiencies due to qualifying disaster events. Wine grapes are eligible for production adjustment only if adulteration occurred prior to harvest and as a result of a qualifying disaster event or as a result of a related condition (such as application of fire retardant). Losses due to all other causes of adulteration (such as addition of artificial flavoring or chemicals for economic purposes) are not eligible for WHIP+. Production will be eligible for quality adjustment if, due to a qualifying disaster event, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. Eligible wine grape production will be reduced by dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes, and then multiplying the

result by the number of tons of the eligible damaged grapes. Participants requesting payments for losses to adulterated wine grapes must submit verifiable sales tickets that document that the reduced price received was due to adulteration due to a qualifying disaster event. For adulterated wine grapes that have not been sold, participants must submit verifiable records obtained by testing or analysis to establish that the wine grapes were adulterated due to a qualifying disaster event and the price they would receive due to adulteration.

The participant's production for the crop year which suffered the loss (2018, 2019, or 2020, depending on the specific crop and when it would have been harvested) is based on their verifiable or reliable production records for that crop year. Reliable production records means evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the FSA county committee. These records may already be on file if the crop was covered by crop insurance or NAP. If not already on file, or if the participant believes that RMA or NAP records are inaccurate or incomplete, the participant is responsible for providing verifiable or reliable records as specified in § 760.1512. Participants who do not have verifiable or reliable records will have their payments limited to the lower of either:

- The actual loss certified by the producer and determined acceptable by FSA, or

- The county disaster yield, as established by the FSA county committee.

Assessing loss for value loss crops, such as ornamental nursery and aquaculture, is significantly different than for yield-based crops. The participant's inventory of a typical value loss crop may fluctuate from week to week, sometimes rapidly, in the course of normal business operations for reasons that may be unrelated to a disaster. As a result, WHIP+ payments for value loss crops will be based on inventory before and after the qualifying disaster event.

WHIP+ payments for value loss crops will be based on the field market value of the crop before and after the qualifying disaster event. Specifically, payments for value loss crops will be calculated using the field market value of the crop before the disaster multiplied by the WHIP+ factor, reduced by the sum of the field market value after the disaster and the value of losses due to ineligible causes of loss, multiplied by the participant's share, reduced by the gross insurance indemnity or NAP payment amount and salvage value of the crop.

NAP value loss and tropical crop eligibility provisions in 7 CFR part 1437 apply to WHIP+ for value loss and tropical crops. Nursery stock of trees, bushes, and vines are considered value loss crops rather than a tree, bush, or vine loss for WHIP+ payment calculations.

#### **WHIP+ Payment Calculation for Tree, Bush, and Vine Losses**

Payments for trees, bush, and vine losses will be calculated as under 2017 WHIP, based on federal crop insurance principles and will be determined separately for different growth stages, as determined by FSA. Each growth stage will have an associated price

and damage factor to determine the value lost when a tree, bush, or vine is damaged and requires rehabilitation but is not completely destroyed.

Payments will be calculated by multiplying the expected value of the eligible damaged and destroyed trees, bushes, or vines by the WHIP+ factor, reduced by the actual value of the trees, bushes, or vines, and multiplied by the producer's share. FSA will subtract the amount of any insurance indemnity received for trees, bushes, and vines covered by an insurance plan and any secondary use or salvage value. The expected value is determined by multiplying the total number of trees, bushes, or vines that were damaged or destroyed by a qualifying disaster event by the price based on the species of tree, bush, or vine and its growth stage. The actual value is the expected value minus the value of the producer's loss, which is calculated by multiplying the number of trees, bushes, or vines damaged by a qualifying disaster event by the damage factor, added to the number destroyed by a qualifying disaster event, and multiplied by the price.

The FSA county committee will adjust the number of damaged and destroyed trees, bushes, or vines, if it determines that the number of damaged or destroyed trees, bushes, or vines certified by the participant is inaccurate.

#### **WHIP+ Requirement to Purchase Future Crop Insurance or NAP Coverage**

The Disaster Relief Act requires all participants who receive WHIP+ payments to purchase crop insurance or NAP coverage for the next 2 available crop years. Due to potential conflicts or short time periods between WHIP+ sign-up dates and crop insurance and NAP application closing dates, FSA is requiring WHIP+ participants to obtain crop insurance or NAP for the next 2 available consecutive crop years after the crop year for which WHIP+ payments are paid, with the latest year for meeting

compliance with this provision being the 2023 crop year. In other words, if the 2 consecutive years of coverage are not met by 2023 coverage year, the participant is ineligible for and must refund WHIP+ payments. Participants must obtain crop insurance or NAP, as may be applicable, at the 60 percent coverage level or higher. Unlike 2017 WHIP, WHIP+ does not require participants receiving payment for trees, bush, or vine losses to obtain a plan of insurance for those trees, bushes, or vines; only participants who receive payment for crop losses under WHIP+ must purchase crop insurance for the applicable years.

There are situations where a WHIP+ participant does not need to meet any AGI limit for the WHIP+ payment, if for example, the WHIP+ payment is \$125,000 or less. Additionally, there may be situations for which crop insurance is not available for a specific crop and the Disaster Relief Act requires that a WHIP+ participant obtain NAP coverage. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with AGI in amount greater than \$900,000 is not eligible to participate in NAP. Accordingly, in order to reconcile this restriction in the 1985 Farm Bill and the Disaster Relief Act's requirement to obtain NAP or crop insurance coverage, WHIP+ participants may meet the Disaster Relief Act's purchase requirement by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible, or they may pay the applicable NAP service fee and premium for the 60 percent coverage level despite their ineligibility for a NAP payment. In other words, the service fee and premium must be paid even though no NAP payment may be made because the AGI of the person or entity exceeds the 1985 Farm Bill limitation.

The crop insurance and NAP requirements are specific to the crop and county (physical location county for insurance and administrative county for NAP) for which WHIP+ payments are paid. This means that a producer who receives a WHIP+ payment for a crop in a county is required to purchase crop insurance or NAP coverage for the crop in the county for which the producer was issued a WHIP+ payment. Producers who receive a WHIP+ payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this rule, and who fail to obtain the 2 years of crop insurance or NAP coverage must refund all WHIP+ payments for that crop in that county with interest from the date of disbursement. This is a condition of payment eligibility specified by Disaster Relief Act and is therefore not subject to partial payment eligibility or other types of equitable relief. Producers who were paid under WHIP+ on a crop in a county but do not plant that crop in a subsequent year are not subject to the crop insurance or NAP purchase requirement.

### **2017 WHIP**

The Disaster Relief Act expands eligible losses under 2017 WHIP to include losses of crops, trees, bushes, and vines due to Tropical Storm Cindy, which were not previously included under the BBA. It also expands 2017 WHIP to cover losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017. The 2017 WHIP provisions were published in the *Federal Register* on July 18, 2018 (83 FR 33795); this rule amends 7 CFR 760.1516, subpart O to incorporate the additional changes to 2017 WHIP mandated by the Disaster Relief Act.

Producers who are eligible for 2017 WHIP under these provisions must submit a complete application according to § 760.1510 by the deadline announced by FSA to apply for a 2017 WHIP payment for these losses. The BBA requires all participants who receive 2017 WHIP payments to purchase crop insurance for the next 2 available crop years; therefore, producers receiving 2017 WHIP payments under the Disaster Relief Act's expansion to 2017 WHIP eligibility must obtain crop insurance or NAP for the next 2 available consecutive crop years, with the latest year for meeting compliance with this provision being the 2023 crop year. In other words, if the 2 consecutive years of coverage are not met by 2023 coverage year, the participant is ineligible for and must refund any 2017 WHIP payments.

## **TAP**

The Disaster Relief Act provided coverage under TAP (7 CFR 1416, subpart E) for payments for 2018 pecan tree losses for growers who suffered a pecan stand mortality loss that exceeds 7.5 percent, as adjusted for normal mortality, (rather than a mortality loss that exceeds 15 percent) due to an eligible natural disaster. The provisions only apply to producers with 2018 calendar year mortality losses that exceed 7.5 percent, as adjusted for normal mortality. Similar loss thresholds were established for pecan trees under the Consolidated Appropriations Act, 2018; however, that funding only covered losses from January 1, 2017, until December 31, 2017. These provisions are specific and not open to interpretation; therefore, FSA has already implemented these provisions. This rule updates §§ 1416.400 and 1400.403 to reflect these changes. Pecan growers who suffered eligible 2017 losses can apply for these benefits through the deadline announced by FSA. Pecan growers who had more than a 15 percent mortality loss, as adjusted for

normal mortality, are already eligible under regular 2018 TAP provisions and are not affected by this change. With the exception of the amended mortality rate required for eligibility, all other TAP provisions in 7 CFR part 1416 apply.

### **On-Farm Storage Loss Program**

The On-Farm Storage Loss Program will provide payments to eligible producers who suffered losses of stored commodities, including hay, while such commodities were stored in on-farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

Harvested commodities must have been stored in structures that will be determined eligible by the Deputy Administrator for Farm Programs, which under normal circumstances, would have protected and maintained the quality of the commodity for an extended period of time – from harvest to marketing. The damages incurred must have resulted directly from a disaster related weather event which rendered the commodity useless and non-merchantable.

Persons and legal entities are subject to the same payment limitation and AGI requirements as WHIP+. Eligible producers will certify to their loss at the local service center. Producers of comingled commodities may submit joint applications to cover all losses.

Payments will be calculated by multiplying the loss quantity times a price determined by the Secretary then multiplied by a 75 percent factor. Payments will be issued after sign-up until February 2020 for losses incurred during calendar years 2018 and 2019.

## **WHIP Milk Loss Program**

The WHIP Milk Loss Program will provide payments to dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to the weather events.

The WHIP Milk Loss base period is the full month of milk production before the dumping or removal of milk occurred. Information from the base period provides the number of cows in the dairy operation, the pounds marketed for the month, and the number of days in the month. From this the average daily milk production is calculated and used with the price information to calculate the WHIP Milk Loss Program indemnity.

The claim period is for the part or whole month the dairy operation was off the commercial market. The claim eligible period begins the date the milk was removed or dumped and the end period is the date the dairy operation officially started marketing milk. The dairy operation will provide the milk marketing statement for the month that the milk dumping occurred. This will verify the days the dairy operation did not commercially produce milk. For the WHIP Milk Loss Program, the duration of claims is limited to 30 days per year for 2018 and 2019.

The dairy operation's fair market value of the dumped milk is what it would have been had the dairy operation commercially marketed the milk. The dairy operation's milk marketing statement from the affected month verifies the value calculation. The WHIP Milk Loss Program indemnity is calculated using the determined pounds of milk loss and using the pay price from the milk marketing statement including the monthly deductions for trucking and promotion. The net payment amount is multiplied by 75 percent to determine the WHIP Milk Loss Program payment.

Dairy operations that apply for the WHIP Milk Loss Program will provide, at application, a detailed personal letter of the circumstances of the milk removal, including the specifics of the weather event, what transportation limitations occurred, the milk marketing statement for the affected month, and any information on what was done with the removed milk production. Any other pertinent information should be included to provide FSA the needed information to determine eligibility for the WHIP Milk Loss Program. FSA County Offices will work with dairy operations in completing the WHIP Milk Loss Program application.

Persons and legal entities are subject to the same payment limitation and AGI requirements as WHIP+. Payments will be issued after sign-up until February 2020 for losses that incurred during calendar years 2018 and 2019.

### **Prevented Planting Supplemental Disaster Payments**

Prevented planting supplemental disaster payments provide assistance to producers who were prevented from planting eligible crops due to excess precipitation, flood, storm surge, tornado, volcanic activity, tropical depressions, hurricanes, and cyclones in the 2019 crop year. In general, prevented planting supplemental disaster payments will be administered in the same way as other Federal crop insurance programs, except for certain changes explained in this rule.

Producers who purchased a crop insurance policy and were prevented from planting due to one of the specified causes of loss will be eligible for prevented planting supplemental disaster payments if the insured crop is eligible for such payments. Eligible crops are 2019 crop-year crops with a final planting date that falls in the 2019 calendar year.

Prevented planting supplemental disaster payments for prevented planting losses will be calculated based on all qualifying prevented planting payments received for insured crops. For insured crops with a plan of insurance that provides revenue protection, the qualifying prevented planting payments will be multiplied by a factor measuring yield and price loss. For all other crops, the qualifying prevented planting payments will be multiplied by a factor based on yield only. Adjustments will be made in the case the qualifying prevented planting payments after prevented planting supplemental disaster payments are issued. Additional adjustments may apply if the qualifying prevented planting payments are reduced due to errors or other irregularities. The payment limitations required under the WHIP+ program are not applicable for prevented planting supplemental disaster payments. The values used for the factors will be 15 percent for those producers with revenue protection except those who select the harvest price exclusion option and 10 percent for those producers who do not have revenue protection..

USDA will then issue prevented planting supplemental disaster payment to the participant in a manner and at a time determined by the Administrator.

The Disaster Relief Act requires all participants who receive disaster payments to purchase crop insurance or NAP coverage for the next 2 available crop years. Participants who receive a prevented planting supplemental disaster payment must obtain crop insurance or NAP, as applicable, for the crop in the county. Participants may meet the Disaster Relief Act's purchase requirement by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible.

The crop insurance and NAP requirements are specific to the crop and county (physical location county for insurance and administrative county for NAP) for which prevented planting supplemental disaster payments are paid. Producers who receive a prevented planting supplemental disaster payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this rule, and who fail to obtain the 2 years of crop insurance or NAP coverage must refund all such payments for that crop in that county with interest from the date of disbursement. This is a condition of payment eligibility specified by Disaster Relief Act and is therefore not subject to partial payment eligibility or other types of equitable relief. Producers who were paid under WHIP+ on a crop in a county but do not plant that crop in a subsequent year are not subject to the crop insurance or NAP purchase requirement.

#### **Effective Date and Notice and Comment**

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rule involves programs for payments to certain agricultural commodity producers and therefore that exemption applies.

Due to the nature of the rule and the need to implement the regulations expeditiously to provide agricultural disaster assistance to producers who suffered certain losses in 2018 and 2019, CCC, FSA, and FCIC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, CCC is not required to delay the effective

date for 60 days from the date of publication to allow for Congressional review.

Therefore, this rule is effective upon publication in the *Federal Register*.

### **Executive Orders 12866, 13563, 13771 and 13777**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](http://regulations.gov).

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, in order to manage the costs required to comply with Federal regulations, that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M-17-21, dated April 5, 2017, specifies that “transfers” are not covered by Executive Order 13771 but that changes in resource use that accompany transfer rules may qualify as costs or cost savings under Executive Order 13771.

## Cost Benefit Analysis Summary

Natural disasters inflicted significant damage to agricultural producers across the country in 2018 and 2019:

- Hurricanes Florence and Michael brought wind and flooding to the Carolina coastal plains and to regions of Florida, Georgia and Alabama;
- The Carr, Woolsey and Camp Fires burned nearly 1 percent of California;
- Hawaii's Kīlauea volcano eruption, compounded by damage from Hurricane Lane affected high-value crops like macadamia, coffee and papaya;
- Snowstorms and heavy rains caused flooding throughout the country that destroyed crops; and
- In the spring of 2019, wet fields prevented planting on nearly 20 million acres.

The Disaster Relief Act authorizes about \$3 billion in supplemental assistance for losses of crops (including milk, on-farm stored commodities, crops prevented from planting in 2019, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of Hurricanes Michael and Florence, and other hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019. The Disaster Relief Act authorizes the Secretary of Agriculture to administer the assistance in the form of:

- 1) Augmenting the Federal Crop Insurance Program (FCIP) and NAP providing coverage against losses from eligible natural disasters in 2018 and 2019;
- 2) Payments to producers with 2019 prevented plantings;

- 3) Payments for milk losses or on-farm stored commodity losses;
- 4) Block Grants to eligible states and territories;
- 5) Expansion of 2017 WHIP eligibility for Tropical Storm Cindy, peach and blueberry losses;
- 6) TAP payments for pecan tree losses of less than 15 percent, but exceeding 7.5 percent; and
- 7) Not more than \$7 million to offset 2018 reductions to Whole Farm Revenue Protection due to payments to producers from state-controlled agricultural disaster assistance funds.

Implementation as outlined above and described in detail in this rule is expected to result in about \$2.9 billion in combined payments out of the 2018 WHIP+ and remaining 2017 WHIP appropriations, with most benefits going to producers with 2018 hurricane losses in the Southeast and 2019 prevented plantings in the midwestern states.

This rule includes an estimated \$1.223 billion in indemnities for 2018 and 2019 eligible disasters to date, and \$535million for a 10 to 15 percent expansion of existing coverage on prevented plantings by RMA. After factoring in estimated payments for on-farm storage losses of \$50 million and eligible milk losses of \$5 million, we anticipate expenditures of \$1.813 billion to count against the \$3 billion appropriated funds. Under the Disaster Relief Act, producers with 2019 losses due to eligible disasters are also eligible for WHIP+ payment. However, after accounting for prevented planting acres and without knowledge of other significant, eligible 2019 damage at this time, no assumptions are made in the cost benefit analysis about availability of funds for other 2019 disasters except that WHIP+ payments for 2019 and 2020 crop losses due to

weather events in 2019 will be prorated at 50 percent in 2019 and subsequent payments in 2020 will be made up to the remaining 50 percent of losses to the extent that appropriated funds are still available. Estimated surplus funds of \$1,187 million would be available for WHIP+ payments for 2019 and 2020 crop losses and block grants to states, the remainder could be returned to Treasury.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because USDA is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

### **Environmental Review**

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). The 1) WHIP+, 2) changes to 2017 WHIP, 3) TAP, 4) On-Storage Loss Program, 5) WHIP Milk Loss Program, and 6) prevented planting supplemental disaster payments are mandated by Disaster Relief Act. 1) The legislative intent for implementing WHIP+ is to provide payments to the producers who suffered eligible crop, tree, bush, and vine losses

resulting from qualifying disaster events in the 2018 and 2019 calendar years. 2) This rule also implements changes to 2017 WHIP to expand eligibility to producers with eligible losses due to Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017. 3) It also provides authority for TAP for 2018 pecan tree losses for growers who suffered a pecan stand mortality loss that exceeds 7.5 percent but is less than 15 percent due to an eligible natural disaster. 4) The On-Farm Storage Loss Program provides payments to eligible producers who suffered losses of harvested commodities while stored in farm structures. 5) The WHIP Milk Loss Program provides payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market. 6) Also, prevented planting supplemental disaster payments provide additional support to producers who were prevented from planting eligible crops for the 2019 crop year.

While OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. Except for TAP, the intent of the programs is to compensate producers who have suffered post- or pre-production market losses and do not have ground or other resource disturbing impacts. The limited discretionary aspects of the programs (for example, determining AGI and payment limitations) were designed to be consistent with established FSA disaster programs. As such, , and with the exception of the TAP, the FSA Categorical Exclusions found in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii), (iv), and (vi) (that

is, § 799.31(b)(6)(iii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost or supply of such commodities or programs of a similar nature or intent (that is, price support programs); § 799.31(b)(6)(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) Safety net programs administered by FSA). No Extraordinary Circumstances (7 CFR 799.33) exist. For TAP, due to the potential for ground disturbance and Extraordinary Circumstances, FSA will continue to require site-specific reviews as defined in §§ 799.32 and 799.33. The prevented planting supplemental disaster payments, as administered by RMA, are covered by the USDA Categorical Exclusion for the FCIC (7 CFR 1(b)(4)(a)(5), Exclusion of agencies, FCIC).

For the outlined reasons, FSA and RMA have determined that the implementation of the programs and the participation in the programs, with the exception of TAP, do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action; for all covered programs except TAP, this rule serves as documentation of the programmatic environmental compliance decision for this federal action. TAP will continue to utilize the Environmental Screening Worksheet (FSA-850) as documentation of each site-specific environmental review.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affect by

proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule may have significant Tribal implications that require ongoing adherence to Executive Order 13175. OTR notes that the programs are similar to programs that have been administered by FSA and RMA in the past; having not heard any concerns regarding the administration of these in the past, and the fact that provisions are mandated in the Disaster Relief Act, OTR recommended that consultation is not required at this time. Tribes can request consultation at any time. CCC, FSA, RMA, and FCIC will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

### **The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally

requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### **E-Government Act Compliance**

CCC, FSA, and FCIC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **Federal Assistance Programs**

The titles and numbers of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.129 - Wildfire and Hurricanes Indemnity Program Plus

10.120 - 2017 Wildfires and Hurricanes Indemnity Program

10.111 - Tree Assistance Program

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports WHIP+ was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. Since the information collection activities will continue for more than the approved 6 months, in addition, through this rule, FSA is requesting comments from interested individuals and organizations on the information collection activities related to WHIP+ as

described in this rule. Following the 60-day public comment period for this rule, the information collection request will be submitted to OMB for the 3-year approval to ensure adequate time for the information collection for the duration of WHIP+ and will merge with 0560-0291.

*Title:* Wildfire and Hurricane Indemnity Program Plus (WHIP+).

*OMB Control Number:* 0560-New.

*Form number(s) for WHIP+:* FSA-894, Wildfires and Hurricanes Indemnity Program Plus Application; FSA-894 Continuation, Wildfires and Hurricanes Indemnity Program Plus Application Continuation; FSA-895, Crop Insurance and/or NAP Coverage Agreement; FSA-896, Request for an Exception to the WHIP+ Payment Limitation of \$125,000, WHIP+ ONLY; and FSA-897, Actual Production History and Approve Yield Records (WHIP+ Select Crops Only). The On-Line Loss Certification, FSA-272, is for the producers who suffered losses of harvested commodities, including hay, stored in on-farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years to get payments. Also, the Wildfire and Hurricane Indemnity Program (WHIP) Milk Loss Application, FSA-375, is used by the producers who is eligible as dairy operations for milk that was dumped or removed without compensation from commercial milk market.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support both the regulation in 7 CFR part 760, subpart O, for WHIP+ that establishes the requirements or eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes and wildfires as specified in the Disaster Relief Act. The information collection is

necessary to evaluate the application and other required paperwork for determining the producer’s eligibilities and assist in producer’s payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

*Estimate of Respondent Burden:* Public reporting burden for this information collection is estimated to average 0.228 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

*Type of Respondents:* Producers or farmers.

*Estimated Annual Number of Respondents:* 26,592.

*Estimated Number of Responses Per Respondent:* 3.053.

*Estimated Total Annual Responses:* 80,552.

*Estimated Average Time Per Response:* 0.228 hours.

Estimated Annual Burden on Respondents: 18,405.

For WHIP+ and other WHIP+ programs, the per form estimated burden is:

Form Name	Form Number	Number of Respondents	Total burden hours
Wildfires and Hurricanes Indemnity Program Plus Application .....	FSA-894	21,738	10,689
Crop Insurance and/or NAP Coverage Agreement .....	FSA-895	21,738	1,710
Request for an Exception to the WHIP+ Payment Limitation of \$125,000, WHIP+ ONLY .....	FSA-896	16,332	1,307
Actual Production History and Approve Yield Records (WHIP+ Select only) .....	FSA-897	4,000	320
Wildfires and Hurricanes Indemnity	FSA-894	12,250	3,063

Program Plus Application (Continuation Sheet) .....	(continuation)		
On-Farm Storage Loss Certification	FSA-272	5,000	1,250
Wildfire and Hurricane Indemnity Program (WHIP) Milk Loss	FSA-375	200	66
AIP and RMA Agreement (non form)		14	1

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA’s estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

**List of Subjects**

**7 CFR Part 460**

Crop insurance, Disaster assistance.

**7 CFR Part 760**

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

## **7 CFR Part 1416**

Administrative practice and procedure, Agriculture, Disaster assistance, Fruits, Livestock, Nursery stock, Seafood.

For the reasons discussed above, the FCIC, FSA, and CCC amend 7 CFR chapters IV, VII, and XIV as follows:

### **Federal Crop Insurance Corporation**

#### **Chapter IV**

1. Add part 460 to read as follows:

#### **PART 460—ADDITIONAL DISASTER PAYMENTS**

##### **Subpart A –Prevented Planting Supplemental Disaster Payments**

Sec.

460.1 Applicability.

460.2 Definitions.

460.3 Eligibility and qualifying causes of loss.

460.4 Calculating prevented planting supplemental disaster payments.

460.5 Timing and issuance of payments and payment limitations.

460.6 Adjusted prevented planting supplemental disaster payments and repayment.

460.7 Requirement to purchase crop insurance.

##### **Subpart B—[Reserved]**

Authority: 7 U.S.C. 1506(1) and 1506(o); and Title I, Pub. L. 116-20.

##### **Subpart A –Prevented Planting Supplemental Disaster Payments**

###### **§ 460.1 Applicability.**

This subpart specifies the terms and conditions of prevented planting supplemental disaster payments. Prevented planting supplemental disaster payments provide additional compensation to producers prevented from planting crops insured under crop insurance policy reinsured by the Federal Crop Insurance Corporation (FCIC) due to disaster related conditions. Prevented planting supplemental disaster payments are

applicable to 2019 crop year crops prevented from planting in 2019, as determined by the Risk Management Agency (RMA).

**§ 460.2 Definitions.**

*Approved Insurance Provider (AIP)* means a legal entity which has entered into a reinsurance agreement with FCIC for the applicable reinsurance year and is authorized to sell and service policies or plans of insurance under the Federal Crop Insurance Act.

*Assignment of Indemnity* means a transfer of crop insurance policy rights whereby a policyholder assigns rights to an indemnity payment for the crop year to creditors or other persons to whom they have a financial debt or other pecuniary obligation.

*Crop insurance policy* means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

*Crop year* means the period within which the insured crop is normally grown and is designated by the calendar year in which the insured crop is normally harvested.

*Federal Crop Insurance Act* means the legal authority codified in 7 U.S.C. 1501-1524.

*Final planting date* means the latest date, established by RMA for each insurable crop, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre.

*FCIC* means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal crop insurance program.

*FSA* means the Farm Service Agency.

*Insured crop* means a crop for which the participant has purchased a crop insurance policy from an AIP.

*NAP* means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and part 1437 of this title and administered by FSA.

*Person* has the same meaning as defined in § 457.8(1) of this title.

*Prevent plant base factor* means the value announced by the Secretary used to calculate the payment for crops covered under a plan of insurance that is not a revenue protection plan of insurance, or is a revenue protection plan of insurance with the harvest price exclusion elected.

*Prevent plant revenue factor* means value announced by the Secretary used to calculate the payment for crops covered under a plan of insurance that provides revenue protection unless the harvest price exclusion is elected for that crop.

*Prevented planting* means the inability to plant an insured crop with proper equipment during the planting period as a result of an insured cause of loss, as determined by the AIP.

*Prevented planting payment* means a payment made under a crop insurance policy to compensate the policyholder when they are prevented from planting an insured crop.

*Qualifying prevented planting payment* means a prevented planting payment made under a crop insurance policy that qualifies for a prevented planting supplemental disaster payment, as specified in this subpart.

*Revenue protection* has the same meaning as defined in §457.8(1) of this title.

*Second crop* has the same meaning as defined in § 457.8(1) of this title.

**§ 460.3 Eligibility and qualifying causes of loss.**

(a) To be eligible for a payment under this subpart, the participant must be a person that is eligible to receive Federal benefits and has purchased a crop insurance policy for the insured crop from an AIP.

(1) Participants will be eligible to receive a payment in this subpart only if they were prevented from planting an insured crop due to a qualifying cause of loss, as further specified in this subpart.

(2) A person is not eligible to receive benefits in this subpart if at any time that person is determined to be ineligible for crop insurance.

(b) Insured crops that are eligible for a payment under this subpart are those crops for which the final planting date for the 2019 crop year crop insurance policy is in the 2019 calendar year, as specified by the Administrator.

(1) For insured crops with more than one final planting date in the county, only those types or practices with a final planting date in the 2019 calendar year are eligible for payment under this subpart.

(2) Participants who are in violation of Highly Erodible Land or Wetlands Conservation (16 U.S.C. 3811-12, 3821) for Federal crop insurance are not eligible for payment under this subpart.

(c) A prevented planting payment will only be considered a qualifying prevented planting payment if the participant is prevented from planting the insured crop due to one of the following causes of loss:

- (1) Excess precipitation;
- (2) Flood;

- (3) Cold wet weather;
- (4) Storm surge;
- (5) Tornado;
- (6) Volcanic activity; and
- (7) Tropical depression, hurricane, or cyclone.

(d) A prevented planting payment received for failure to plant due to any cause not included in paragraph (c) of this section is not considered a qualifying prevented planting payment for the purpose of this subpart.

**§ 460.4 Calculating prevented planting supplemental disaster payments.**

(a) For insured crops covered under a crop insurance policy with a revenue protection plan of insurance that does not have the harvest price exclusion elected, the payment under this subpart for each insured crop will be calculated by summing the qualifying prevented planting payments for that insured crop and multiplying the total by the prevent plant revenue factor.

(b) For all other insured crops, the payment under this subpart for each insured crop will be calculated by summing the qualifying prevented planting payments for that insured crop and multiplying the total by the prevent plant base factor.

(c) If a qualifying prevented planting payment is reduced for any reason, such as the participant planting a second crop, the payment under this subpart will be based on the amount of the qualifying prevented planting payment after any such reduction.

**§ 460.5 Timing and issuance of payments and payment limitations.**

(a) The payment under this subpart will be issued, for each crop, to the same person or persons that received the qualifying prevented planting payment for that crop:

(1) If the insured has an assignment of indemnity in effect on the insured crop, the payment under this subpart will be made jointly in the name of the insured and all applicable assignees.

(2) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person any payment under this subpart will be paid to the person or persons determined to be entitled to the qualifying prevented planting payment.

(b) Any payments under this subpart will be made by USDA in a manner and at a time determined by the Administrator.

(c) The total amount of payments received for prevented planting supplemental disaster payments under this subpart, applicable crop insurance policy indemnities, NAP payments, and any other applicable disaster relief payment will not exceed 90 percent of the loss as determined by the Secretary.

(d) The payment limitations stated in 7 CFR 760.1507 are not applicable to prevented planting supplemental disaster payments.

**§ 460.6 Adjusted prevented planting supplemental disaster payments and repayment.**

(a) In the event that any payment under this subpart is determined to be incorrect due to a change in a qualifying prevented planting payment, erroneous information, or a miscalculation, the payment will be recalculated until October 9, 2020, unless otherwise specified by the Administrator. After that date, the payment under this subpart will be final except in cases of fraud, scheme, or device, or failure to purchase crop insurance as specified in § 460.8.

(b) In the event that the qualifying prevented planting payment is adjusted after payment under this subpart has been issued and that adjustment results in:

(1) A higher qualifying prevented planting payment, the amount of payment will be increased to the amount determined to be correct; or

(2) A lower qualifying prevented planting payment, the amount of payment will be decreased to the amount determined to be correct and the participant will be required to repay, with interest if applicable, any excess payment already received.

(c) All persons with a financial interest in the person receiving payments under this subpart are jointly and severally liable for any refund, including related charges, which is determined to be due.

(d) Interest will accrue at the annual rate of 1.25 percent simple interest per calendar month. Interest will start to accrue on the first day of the month following the notification of the amount to be refunded, provided that a minimum of 30 days has passed from the date the notification was issued.

**§ 460.7 Requirement to purchase crop insurance.**

(a) For the first 2 consecutive crop years after receiving a payment under this subpart:

(1) A participant who receives a payment under this subpart for prevented planting for a crop in a county must obtain crop insurance for all acres planted to that crop in that county; or

(2) If crop insurance is no longer available for the crop in that county, the participant must obtain NAP coverage if available for the applicable crop year. A participant will only be considered to have obtained NAP coverage for the purposes of

this section if the participant paid the NAP service fee and any premium by the applicable deadline and complied with all program requirements.

(b) If a participant fails to obtain crop insurance or NAP coverage as required in paragraph (a) of this section, the participant must reimburse the full amount of the payment under this subpart received for the applicable crop, plus interest calculated from the date of disbursement.

**Subpart B—[Reserved]**

**Farm Service Administration**

**Chapter VII**

**PART 760—INDEMNITY PAYMENT PROGRAMS**

2. The authority citation for part 760 is revised to read as follows:

Authority: 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109-234, 120 Stat. 474; Title IX, Pub. L. 110-28, 121 Stat. 211; Sec. 748, Pub. L. 111-80, 123 Stat. 2131; Title I, Pub. L. 115-123; and Title I, Pub. L. 116-20.

**Subpart O—Agricultural Disaster Indemnity Programs**

3. Revise the heading for subpart O to read as set forth above.
4. Revise § 760.1500 to read as follows.

**§ 760.1500 Applicability.**

(a) This subpart specifies the terms and conditions for the 2017 Wildfires and Hurricanes Indemnity Program (2017 WHIP) and the Wildfires and Hurricanes Indemnity Program Plus (WHIP+).

(b) The 2017 WHIP provides disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of wildfires, hurricanes, and

Tropical Storm Cindy that occurred in calendar year 2017, and for losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017.

(c) WHIP+ provides disaster assistance for necessary expenses related to losses of crops, trees, bushes, and vines, as a consequence of Hurricanes Michael and Florence, other hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019.

**§ 760.1501 [Amended]**

5. Amend § 760.1501 as follows:

a. In paragraph (a), remove the words “The 2017 WHIP is” both times it appears and add “Programs under this subpart are” in their place;

b. In paragraph (d), remove “2017 WHIP” and add “this subpart” in its place;

c. In paragraph (f), remove the words “for 2017 WHIP” and add “under this subpart” in their place.

6. Amend § 760.1502 as follows:

a. Revise the definitions of “Average adjusted gross farm income” and “Average adjusted gross income”;

b. In the definition of “County disaster yield”, remove “current” and add “applicable crop” in its place;

c. In paragraph (3) of the definition of “Crop year”, remove the words “2017 crop year” and add “calendar year in which the qualifying disaster event occurred” in their place;

- d. In the definition of “Multi-use crop”, remove “calendar” and add “crop” in its place;
- e. In paragraph (1) of the definition of “Price”, add “, and under WHIP+, the price for a crop for which the producer obtained a revenue plan of insurance is the greater of the projected price or the harvest price;” after the word “price”;
- f. Revise the definition of “Qualifying disaster event”;
- g. In the definition of “Related condition”, remove the words “hurricane or wildfire” and add “specified qualifying disaster event” in their place;
- h. In the definition of “Uninsured”, remove “2017 WHIP” and add “under this subpart” after the word “requested”; and
- i. Add in alphabetical order definitions for “WHIP+ factor” and “WHIP+ yield”.

The revisions and additions read as follows:

**§ 760.1502 Definitions.**

\* \* \* \* \*

*Average adjusted gross farm income* means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry. The relevant tax years are:

- (1) For 2017 WHIP, 2013, 2014, and 2015; and
- (2) For WHIP+, 2015, 2016, and 2017.

*Average adjusted gross income* means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity. The relevant tax years are:

- (1) For 2017 WHIP, 2013, 2014, and 2015; and

(2) For WHIP+, 2015, 2016, and 2017.

\* \* \* \* \*

*Qualifying disaster event* means:

(1) For 2017 WHIP, a hurricane, wildfire, or Tropical Storm Cindy or related condition that occurred in the 2017 calendar year; extreme cold in calendar year 2017 for losses of peach and blueberry crops in calendar year 2017; and extreme cold and hurricane damage in calendar year 2017 for blueberry productivity losses in calendar year 2018; and

(2) For WHIP+, a hurricane, flood, tornado, typhoon, volcanic activity, snowstorm, wildfire, or related condition that occurred in the 2018 or 2019 calendar year.

\* \* \* \* \*

*WHIP+ factor* means the factor in § 760.1511, determined by the Deputy Administrator, that is based on the crop insurance or NAP coverage level elected by the WHIP+ participant for a crop for which a payment is being requested; or, as applicable, the factor that applies for a crop during a crop year in which the participant had no insurance or NAP coverage.

*WHIP+ yield* means, for a unit:

(1) For an insured crop, excluding crops located in Puerto Rico, the approved federal crop insurance APH, for the crop year;

(2) For a NAP covered crop, excluding crops located in Puerto Rico, the approved yield for the crop year;

(3) For a crop located in Puerto Rico or an uninsured crop, excluding select crops, the county expected yield for the crop year; and

(4) For select crops, the yield based on documentation submitted according to §760.1511(c)(3), or if documentation is not submitted, the county expected yield.

\* \* \* \* \*

**§ 760.1503 [Amended]**

7. Amend § 760.1503 as follows:

a. In paragraph (a) remove “2017 WHIP”;

b. In paragraph (b)(3), add “solely of” before “citizens”;

c. In paragraph (b)(4), add “consisting solely of citizens of the United States or resident aliens” after “law”; and

d. In paragraph (i), remove “2017 WHIP benefits” and add “benefits under this subpart” in their place.

8. Amend § 760.1505 as follows:

a. In paragraph (b) introductory text, add “or WHIP+ yield” after “yield”;

b. In paragraph (d) introductory text, remove the words “for 2017 WHIP” and add “under this subpart” in their place;

c. In paragraph (e), remove “2017 WHIP”, and add “under this subpart” after “purposes”;

d. In paragraph (g), add “, except as specified in § 760.1513(i)” after “quality”;

e. Revise paragraph (h); and

f. Add paragraph (i).

The revision and addition read as follows:

**§ 760.1505 General provisions.**

\* \* \* \* \*

(h) FSA will use the most reliable data available at the time payments under this subpart are calculated. If additional data or information is provided or becomes available after a payment is issued, FSA will recalculate the payment amount and the producer must return any overpayment amount to FSA. In all cases, payments can only issue based on the payment formula for losses that affirmatively occurred.

(i) A participant who received a payment for a loss under 2017 WHIP cannot:

(1) Be paid for the same loss under WHIP+; or

(2) Refund the 2017 WHIP payment to be eligible for payment for that loss under WHIP+.

9. Amend § 760.1506 as follows:

a. Redesignate paragraphs (a) through (c) as paragraphs (a)(1) through (3), respectively; and

b. Add new paragraph (a) introductory text and paragraph (b).

The additions read as follows:

**§ 760.1506 Availability of funds and timing of payments.**

(a) For 2017 WHIP:

\* \* \* \* \*

(b) For WHIP:

(1) For the 2018 crop year, the calculated WHIP+ payment will be paid at 100 percent.

(2) For the 2019 and 2020 crop years, an initial payment will be issued for 50 percent of each WHIP+ payment calculated according to this subpart, as determined by the Secretary. Up to the remaining 50 percent of the calculated WHIP+ payment will be paid only to the extent that there are funds available for such payment as discussed in this subpart.

(3) In the event that, within the limits of the funding made available by the Secretary, approval of eligible applications would result in payments in excess of the amount available, FSA will prorate 2019 and 2020 payments by a national factor to reduce the payments to the remaining available funds, as determined by the Secretary. FSA will prorate the payments accordingly. ..

(4) Applications and claims that are unpaid or prorated for aforementioned reasons of fund availability will not be carried forward for payment and will be considered, as to any unpaid amount, void and non-payable.

10. Amend § 760.1507 as follows:

- a. Redesignate paragraphs (b) through (d) as paragraphs (c) through (e);
- b. Add new paragraph (b);
- b. Revise newly redesignated paragraph (c);
- c. In newly redesignated paragraph (d), remove “2017 WHIP”, and add “for the applicable period specified in this section” after “payments”; and
- d. In newly redesignated paragraph (e), remove “2017 WHIP” and add “payments under this subpart” in its place

The addition and revision read as follows:

**§ 760.1507 Payment limitation.**

\* \* \* \* \*

(b) For any WHIP+ payments, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, WHIP+ payments of not more than:

(1) \$125,000 combined for the 2018, 2019, and 2020 crop years, if less than 75 percent of the person or legal entity's average adjusted gross income is average adjusted gross farm income; or

(2) \$250,000 for each of the 2018, 2019, and 2020 crop years, if 75 percent or more of the average adjusted gross income of the person or legal entity is average adjusted gross farm income, and such payments cannot exceed a total of \$500,000 combined for all of the 2018, 2019, and 2020 crop years.

(c) A person or legal entity's average adjusted gross income and average adjusted gross farm income are determined based on the:

(1) 2013, 2014, and 2015 tax years for 2017 WHIP;

(2) 2015, 2016, and 2017 tax years for WHIP+.

\* \* \* \* \*

11. Amend § 760.1508 as follows:

a. In paragraph (a), remove the words “2017 WHIP payments”, and add “payments under this subpart” in their place; and

b. Add paragraphs (e) and (f).

The additions read as follows:

**§ 760.1508 Qualifying disaster events.**

\* \* \* \* \*

(e) For WHIP+, for a loss due to a qualifying disaster event, the crop, tree, bush, or vine loss must have occurred on acreage that was physically located in a county that received a:

(1) Presidential Emergency Disaster Declaration authorizing public assistance for categories C through G or individual assistance due to a qualifying disaster event occurring in the 2018 or 2019 calendar years; or

(2) Secretarial Disaster Designation for a qualifying disaster event occurring in the 2018 or 2019 calendar years.

(f) A producer with crop, tree, bush, or vine losses on acreage not located in a physical location county that was eligible under paragraph (b)(1) of this section will be eligible for WHIP+ for losses due to qualifying disaster events only if the producer provides supporting documentation that is acceptable to FSA from which the FSA county committee determines that the loss of the crop, tree, bush, or vine on the unit was reasonably related to a qualifying disaster event as specified in this subpart. Supporting documentation may include furnishing climatological data from a reputable source or other information substantiating the claim of loss due to a qualifying disaster event.

12. Amend § 760.1509 as follows:

a. In paragraph (b) introductory text, remove the words “for 2017 WHIP” and add “under this subpart” in their place;

b. In paragraph (b)(4), remove “or” at the end;

c. In paragraph (b)(5), remove the period and add “; or” in its place;

d. Add paragraph (b)(6);

- e. In paragraph (c)(6), remove “or” at the end;
- f. In paragraph (c)(7), remove the period and add “; or” in its place;
- g. Add paragraph (c)(8).

The additions read as follows:

**§ 760.1509 Eligible and ineligible losses.**

\* \* \* \* \*

(b) \* \* \*

(6) FSA or RMA have previously disapproved a notice of loss for the crop and disaster event unless that notice of loss was disapproved solely because it was filed after the applicable deadline.

\* \* \* \* \*

(c) \* \* \*

(8) Losses to crops that occur after harvest.

\* \* \* \* \*

13. Amend § 760.1510 as follows:

- a. Revise the section heading;
- b. Revise paragraph (a);
- c. In paragraph (c), remove the words “2017 WHIP payment” and add “payment under this subpart” in their place, and remove the words “eligibility for 2017 WHIP” and add “eligibility for payment under this subpart” in their place;
- d. Revise paragraphs (d)(1) through (4); and
- e. Remove paragraph (d)(5).

The revisions read as follows:

**§ 760.1510 Application for payment.**

(a) An application for payment under this subpart must be submitted to the FSA county office serving as the farm's administrative county office by the close of business on a date that will be announced by the Deputy Administrator. Producers must submit:

(1) For 2017 WHIP, a completed form FSA-890, Wildfires and Hurricanes

Indemnity Program Application; or

(2) For WHIP+, a completed form FSA-894, Wildfires and Hurricanes Indemnity

Program + Application.

\* \* \* \* \*

(d) \* \* \*

(1) Report of all acreage for the crop for the unit for which payments under this subpart are requested, on FSA-578, Report of Acreage, or in another format acceptable to FSA;

(2) AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation Certification; and

(3) For 2017 WHIP:

(i) FSA-891, Crop Insurance and/or NAP Coverage Agreement;

(ii) FSA-892, Request for an Exception to the WHIP Payment Limitation of \$125,000, if the applicant is requesting 2017 WHIP payments in excess of the \$125,000 payment limitation; and

(iii) FSA-893, 2018 Citrus Actual Production History and Approved Yield Record, Florida Only, for participants applying for payment for a citrus crop located in Florida;

(4) For WHIP+:

(i) FSA-895, Crop Insurance and/or NAP Coverage Agreement;

(ii) FSA-896, Request for an Exception to the WHIP Payment Limitation of \$125,000, if 75 percent or more of an applicant's average AGI is attributable to activities related to farming, ranching, or forestry and the applicant wants to be eligible to receive WHIP+ payments of more than \$125,000, up to the \$250,000 payment limitation per crop year, with an overall WHIP+ limit of \$500,000; and

(iii) FSA-897, Actual Production History and Approved Yield Record (WHIP+ Select Crops Only), for applicants requesting payments for select crops.

\* \* \* \* \*

14. Amend § 760.1511 as follows:

a. In paragraph (a) introductory text, add “subject to § 760.1514(i) and (j),” after “planting.”;

b. In paragraph (a)(1), add “or the WHIP+ yield in paragraph (d) of this section” after “section”;

c. In paragraph (a)(2), add “or WHIP+ factor” after “2017 WHIP factor”;

d. In paragraph (a)(7), remove “and”;

e. In paragraph (a)(8), remove the period and add “; and” in its place;

f. In paragraph (b), remove the words “second column” and add “second column, and the WHIP+ factor is listed in the third column” in their place, and revise the table in paragraph (b);

g. Redesignate paragraphs (d) through (g) as paragraphs (e) through (h);

h. Add new paragraph (d);

i. In newly redesignated paragraph (e), remove the words “2017 WHIP payment” and add “payment under this subpart” in their place;

j. In newly redesignated paragraph (f), remove the words “2017 WHIP payment” and add “payment under this subpart” in their place, and remove “for 2017 WHIP” and add “for payment” in their place.

The revision and addition read as follows:

**§ 760.1511 Calculating payments for yield-based crop losses.**

\* \* \* \* \*

(b) \* \* \*

**Table 1 to § 760.1511(b)**

Coverage Level	2017 WHIP Factor (percent)	WHIP+ Factor (percent)
(1) No crop insurance or No NAP coverage .....	65	70
(2) Catastrophic coverage .....	70	75
(3) More than catastrophic coverage but less than 55 percent.....	72.5	77.5
(4) At least 55 percent but less than 60 percent .....	75	80
(5) At least 60 percent but less than 65 percent .....	77.5	82.5
(6) At least 65 percent but less than 70 percent .....	80	85
(7) At least 70 percent but less than 75 percent .....	85	87.5
(8) At least 75 percent but less than 80 percent .....	90	92.5
(9) At least 80 percent.....	95	95

\* \* \* \* \*

(d) The WHIP+ yield is:

(1) The producer's APH for insured crops under a crop insurance policy that has an associated yield and for NAP covered crops, excluding all crops located in Puerto Rico;

(2) The county expected yield for crops located in Puerto Rico and uninsured crops, excluding select crops; or

(3) For select crops:

(i) Determined based on information provided on FSA-897 and supported by evidence that meets the requirements of §760.1513(c), or

(ii) If FSA-897 and supporting documentation are not submitted, the county expected yield.

\* \* \* \* \*

15. Amend § 760.1512 by adding paragraph (e) to read as follows.

**§760.1512 Production losses; participant responsibility.**

\* \* \* \* \*

(e) Under WHIP+, participants requesting payments for losses to adulterated wine grapes must submit verifiable sales tickets that document that the reduced price received was due to adulteration due to a qualifying disaster event. For adulterated wine grapes that have not been sold, participants must submit verifiable records obtained by testing or analysis to establish that the wine grapes were adulterated due to a qualifying disaster event and the price they would receive due to adulteration.

16. Amend § 760.1513 by adding paragraph (i) to read as follows.

**§ 760.1513 Determination of production.**

\* \* \* \* \*

(i) Under WHIP+, production for eligible adulterated wine grapes will be adjusted for quality deficiencies due to a qualifying disaster event. Wine grapes are eligible for production adjustment only if adulteration occurred prior to harvest and as a result of a qualifying disaster event or as a result of a related condition (such as application of fire retardant). Losses due to all other causes of adulteration (such as addition of artificial flavoring or chemicals for economic purposes) are not eligible for WHIP+. Production will be eligible for quality adjustment if, due to a qualifying disaster event, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. Grape production that is eligible for quality adjustment will be reduced by:

(1) Dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes; and

(2) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

17. Amend § 760.1514 as follows:

a. In paragraph (b), remove the words “2017 WHIP” both times it appears and add “under this subpart” in their places;

b. In paragraphs (c) and (d), remove “for 2017 WHIP”;

c. In paragraph (f), remove the words “for 2017 WHIP” and add “under this subpart in their place, and remove the words “will apply to 2017 WHIP and add “apply” in their place;

d. In paragraph (h), remove “for 2017 WHIP”; and

e. Add paragraphs (i) and (j).

The additions read as follows.

**§ 760.1514 Eligible acres.**

\* \* \* \* \*

(i) For 2017 WHIP, prevented planting acres will be considered eligible acres if they meet all requirements of this subpart.

(j) For WHIP+:

(1) 2018 and 2020 crop year prevented planting acres and 2019 crop year uninsured and NAP-covered prevented planting acres will be eligible acres if they meet all requirements of this subpart; and

(2) 2019 crop year insured prevented planting acres will not be eligible acres.

18. Amend § 760.1515 as follows:

a. In paragraph (a)(1), add “or WHIP+ factor” after “factor”;

b. In paragraph (a)(5), remove “and”;

c. Redesignate paragraph (a)(7) as paragraph (a)(6);

d. In newly redesignated paragraph (a)(6), remove the period and add “; and” in its place;

e. Add new paragraph (a)(7);

f. In paragraph (b), remove the words “2017 WHIP payment”, and add “payment under this subpart” in their place; and

g. In paragraph (c), remove “2017 WHIP”.

The addition reads as follows.

**§ 760.1515 Calculating payments for value loss crops.**

(a) \* \* \*

(7) Subtracting the amount of any payment for future economic losses received under the Florida Citrus Recovery Block Grant Program.

\* \* \* \* \*

**§ 760.1516 [Amended]**

19. Amend § 760.1516 as follows:

a. In paragraph (b)(1), add “or WHIP+ factor” after “factor”; and

b. In paragraph (f), remove the words “this section” and add “2017 WHIP” in their place.

20. Amend § 760.1517 as follows:

a. Revise paragraph (a) introductory text;

b. In paragraph (b), remove the words “but not later than the 2021 crop years” and add “subject to paragraph (c) of this section” in their place;

c. Redesignate paragraph (c) as paragraph (d);

d. Add new paragraph (c); and

e. In newly redesignated paragraph (d), add “or WHIP+ payment” after “payment” in the first sentence.

The revision and addition read as follows:

**§ 760.1517 Requirement to purchase crop insurance or NAP coverage.**

(a) For the first 2 consecutive crop years for which crop insurance or NAP coverage is available after the enrollment period for 2017 WHIP or WHIP+ ends, subject to paragraph (c) of this section, a participant who receives payment under this subpart for a crop loss in a county must obtain:

\* \* \* \* \*

(c) The final crop year to purchase crop insurance or NAP coverage to meet the requirements of paragraphs (a) and (b) of this section is the:

(1) 2021 crop year for 2017 WHIP payment eligibility, except as provided in paragraph (c)(2) of this section;

(2) 2023 crop year for:

(i) WHIP+ payment eligibility; and

(ii) 2017 WHIP payment eligibility for losses due to Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017.

\* \* \* \* \*

21. Add subpart P, consisting of §§ 760.1600 through 760.1612, to read as follows:

**Subpart P – On-Farm Storage Loss Program**

Sec.

760.1600 Applicability.

760.1601 Administration.

760.1602 Definitions.

760.1603 Eligible producers.

760.1604 Eligible commodities.

- 760.1605 Miscellaneous provisions.
- 760.1606 General provisions.
- 760.1607 Availability of funds and timing of payments.
- 760.1608 Payment limitation and AGI.
- 760.1609 Qualifying disaster events.
- 760.1610 Eligible and ineligible losses.
- 760.1611 Application for payment.
- 760.1612 Calculating payments on-farm storage losses.

## **Subpart P – On-Farm Storage Loss Program**

### **§ 760.1600 Applicability.**

(a) This subpart specifies the terms and conditions for the On-Farm Storage Loss Program. The On-Farm Storage Loss Program will provide payments to eligible producers who suffered uncompensated losses of harvested commodities stored in on farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

(b) The regulations in this subpart are applicable to crops of barley, small and large chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, soybeans, oilseeds, hay and other crops designated by Commodity Credit Corporation (CCC) stored in on-farm structures. These regulations specify the general provisions under which the On-Farm Storage Loss Program will be administered by CCC. In any case in which money must be refunded to CCC in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This provision will apply, unless waived by the Deputy Administrator, irrespective of any other rule.

(c) Eligible on-farm structures include all on-farm structures deemed acceptable by the Deputy Administrator for Farm Programs.

(d) Adjusted Gross Income (AGI) and payment limitation provisions specified in part 760.1607 of this chapter apply to this subpart.

**§ 760.1601 Administration.**

(a) The On-Farm Storage Loss Program will be administered under the general supervision of the Executive Vice President, CCC and will be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any required action not taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by a county committee that is not in compliance with this part; or

(2) Require a county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify non-statutory deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the On-Farm Storage Loss Program.

(f) A representative of CCC may execute applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, will be null and void.

(g) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, and payment factors established by the On-Farm Storage Loss Program, are not subject to appeal.

**§ 760.1602 Definitions.**

The definitions in this section apply for all purposes of program administration. Terms defined in §§ 760.1502 and 760.1421 of this chapter also apply, except where they conflict with the definitions in this section.

*Administrative County Office* is the FSA County Office where a producer's FSA records are maintained.

*CCC* means the Commodity Credit Corporation.

*COC* means the FSA county committee.

*Covered commodity* means wheat, oats, and barley (including wheat, oats, and barley used for haying), corn, grain sorghum, long grain rice, medium grain rice, seed cotton, pulse crops, soybeans, other oilseeds, and peanuts as specified in 7 CFR 1412 and produced and mechanically harvested in the United States.

*Crop* means with respect to a year, commodities harvested in that year.

Therefore, the referenced crop year of a commodity means commodities that when planted were intended for harvest in that calendar year.

*Crop year* means the relevant contract or application year. For example, the 2014 crop year is the year that runs from October 1, 2013, through September 30, 2014, and references to payments for that year refer to payments made under contracts or applications with the compliance year that runs during those dates.

*FSA* means the Farm Service Agency of the United States Department of Agriculture.

*Oilseeds* means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as designated by CCC or the Secretary.

*Qualifying disaster* event means a hurricane, flood, tornado, typhoon, volcanic activity, snowstorm, or wildfire or related condition that occurred in the 2018 or 2019 calendar year.

*Recording FSA County Office* is the FSA County Office that records eligibility data for producers designated as multi-county producers.

*Related condition* means damaging weather or an adverse natural occurrence that occurred as a direct result of a hurricane or wildfire qualifying disaster event, such as excessive rain, high winds, flooding, mudslides, and heavy smoke.

*Secretary* means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

*STC* means the FSA State committee.

**§ 760.1603 Eligible producers.**

(a) To be an eligible producer, the producer must:

(1) Be a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop.

(2) Comply with all provisions of this part and, as applicable:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(iii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(v) 7 CFR part 1400—Payment Limitation & Payment Eligibility; and

(vii) 7 CFR part 1403—Debt Settlement Policies and Procedures.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust is considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee is considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. On-Farm Storage Loss Program documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive a program payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian;

(3) Any program application signed by the minor is cosigned by a person determined by the FSA county committee to be financially responsible; or

(e) A producer must meet the requirements of actively engaged in farming, cash rent tenant, and member contribution as specified in 7 CFR part 1400 to be eligible for program payments.

**§ 760.1604 Eligible commodities.**

(a) Commodities eligible to be compensated for loss made under this part are:

(1) Covered Commodities;

(2) Hay; and

(3) Stored in an on-farm structure that under normal circumstances, would have maintained the quality of the commodity throughout harvest until marketing or feed if not for the qualifying weather event.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

**§ 760.1605 Miscellaneous provisions.**

(a) All persons with a financial interest in the legal entity receiving payments under this subpart are jointly and severally liable for any refund, including related charges, which is determined to be due to FSA for any reason.

(b) In the event that any application for payment under this subpart resulted from erroneous information or a miscalculation, the payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement.

(c) Any payment to any participant under this subpart will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 792 of this chapter apply to payments made under this subpart.

(d) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 792 of this chapter.

(e) The regulations in 7 CFR parts 11 and 780 apply to determinations under this subpart.

**§ 760.1606 General provisions.**

Losses will be determined total production in storage at time of loss. Eligibility and payments will be based on physical location of storage. Payments will be made on commodities that were completely lost or destroyed while in storage due to the qualifying weather related event.

**§ 760.1607 Availability of funds and timing of payments.**

For the On-Farm Storage Loss Program, payments will be issued as applications are approved.

**§ 760.1608 Payment limitation and AGI.**

(a) Per loss year, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly payments of not more than \$125,000.

(b) The direct attribution provisions in § 760.1507 of this part apply for payment limitation as defined and used in this rule.

**§ 760.1609 Qualifying disaster events.**

(a) The On-Farm Storage Loss Program will provide a payment to eligible producers who suffered losses of harvested commodities while such commodities were stored in on farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

(b) For a loss due to or related to an event specified in paragraph (a) of this section, the loss must have occurred on acreage that was physically located in a county that received a:

(1) Presidential Emergency Disaster Declaration authorizing public assistance for categories C through G or individual assistance due to a hurricane occurring in the 2018 or 2019 calendar year; or

(2) Secretarial Disaster Designation for a hurricane occurring in the 2018 or 2019 calendar year.

(c) A producer with a loss not located in a physical location county that was eligible under paragraph (b)(1) of this section will be eligible for a program payment for losses due to hurricane and related conditions only if the producer provides supporting documentation that is acceptable to FSA from which the FSA county committee determines that the loss of the commodity was reasonably related to a qualifying disaster event as specified in this subpart and meets all other eligibility conditions. Supporting documentation may include furnishing climatological data from a reputable source or other information substantiating the claim of loss due to a qualifying disaster event.

(d) For a loss due to wildfires and conditions related to wildfire in the 2018 or 2019 calendar year, all counties where wildfires occurred, as determined by FSA county committees, are eligible program payments; a Presidential Emergency Disaster Declaration or Secretarial Disaster Designation for wildfire is not required. The loss must be reasonably related to wildfire and conditions related to wildfire, as specified in this subpart's definition of qualifying disaster event.

(e) For a loss due to floods, tornadoes, typhoons, volcanic activity, snowstorms or any other directly related weather disaster event, the loss must be reasonably related to the disaster event as specified in this subpart's definition of qualifying disaster event.

**§ 760.1610 Eligible and ineligible losses.**

(a) Except as provided in paragraphs (b) of this section, to be eligible for payments under this subpart the commodity stored in an eligible structure must have suffered a loss due to a qualifying disaster event.

(b) A loss will not be eligible for the On-Farm Storage Loss Program this subpart if any of the following apply:

(1) The cause of loss is determined by FSA to be the result of poor management decisions, poor farming practices, or previously damaged structures;

(2) The cause of loss was due to failure of the participant to store the commodity in an eligible structure before the qualifying disaster event; or

(3) The cause of loss was due to water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected by the containment or release of the water.

(c) The following types of loss, regardless of whether they were the result of an eligible disaster event, are not eligible losses:

(1) Losses to crops that have not been harvested.

(2) Losses to crops not intended for harvest;

(4) Losses caused by improper storage;

(5) Losses caused by the application of chemicals; and

(6) Losses caused by theft.

**§ 760.1611 Application for payment.**

(a) An application for payment under this subpart must be submitted to the FSA county office serving as the farm's administrative county office by the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a producer, the application for payment is considered to contain information and certifications of and pertaining to the producer regardless of who entered the information on the application.

(c) The producer applying for the On-Farm Storage Loss Program under this subpart certifies the accuracy and truthfulness of the information provided in the

application as well as any documentation filed with or in support of the application. All information is subject to verification or spot check by FSA at any time, either before or after payment is issued. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility for this program. FSA may at any time, including before, during, or after processing and paying an application, require the producer to submit any additional information necessary to implement or determine any eligibility provision of this subpart. Furnishing required information is voluntary; however, without it FSA is under no obligation to act on the application or approve payment. Providing a false certification will result in ineligibility and can also be punishable by imprisonment, fines, and other penalties.

(d) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this subpart unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all required documentation.

(e) Application approval and payment by FSA does not relieve a participant from having to submit any form required, but not filed.

**§ 760.1612 Calculating payments on-farm storage losses.**

(a) Payments made under this subpart to a participant for loss of stored commodities are calculated, except hay or silage, by:

(1) Multiplying the eligible quantity of the eligible commodity by the RMA determined price;

(2) Multiplying the result from paragraph (a)(1) of this section by a 75 percent factor.

(b) Payments made under this subpart to a participant for loss of stored hay or silage, by:

(1) Multiplying the eligible quantity of the eligible commodity by a price as determined by the Secretary;

(2) Multiplying the result from paragraph (b)(1) of this section by a 75 percent factor.

22. Add subpart Q, consisting of §§ 760.1700 through 760.1718, to read as follows:

#### **Subpart Q – Milk Loss Program**

Sec.

- 760.1700 Applicability
- 760.1701 Administration.
- 760.1702 Definitions.
- 760.1703 Payments to dairy farmers for milk.
- 760.1704 Normal marketings of milk.
- 760.1705 Fair market value of milk.
- 760.1706 Information to be furnished.
- 760.1707 Application for payments for milk loss.
- 760.1708 Payment limitation and AGI.
- 760.1709 Limitation of authority.
- 760.1710 Estates and trusts; minors.
- 760.1711 Setoffs.
- 760.1712 Overdisbursement.
- 760.1713 Death, incompetency, or disappearance.
- 760.1714 Records and inspection of records.
- 760.1715 Assignment.
- 760.1716 Instructions and forms.
- 760.1717 Availability of funds.
- 760.1718 Calculating payments for milk losses.

#### **Subpart Q – Milk Loss Program**

##### **§ 760.1700 Applicability**

This subpart specified the terms and conditions for the Milk Loss Program. The Milk Loss Program will provide payments to dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to the results from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar year.

**§ 760.1701 Administration.**

This milk loss payment program will be carried out by FSA under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

**§ 760.1702 Definitions.**

The following definitions apply to the Milk Loss Program.

*Affected farmer* means a person who produces whole milk which is removed from the commercial market any time or who produces but was unable to deliver milk to a commercial market as a result of a qualifying event limited to:

- (1) Weather-related event prevented transportation of the milk,
- (2) Weather-related event caused a power outage or structural damage causing milk to be unmerchantable.

*Application period* means any period during calendar year 2018 and 2019 which an affected farmer's whole milk is dumped or removed without compensation from the commercial market due to a qualified disaster event for which application for payment is made.

*Base period* means the calendar month or 4-week period immediately preceding when the producer was unable to deliver milk to a commercial market as a result of a qualifying disaster event.

*Claim period* means the calendar month, or months, in which milk was dumped or removed and usually is the calendar month immediately following the base period.

*Commercial market* means:

(1) The market to which the affected farmer normally delivers his whole milk and from which it was removed; or

(2) The market to which the affected manufacturer normally delivers his dairy products and from which they were removed.

*County committee* means the FSA county committee.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA.

*FSA* means the Farm Service Agency, U.S. Department of Agriculture.

*Milk handler* means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he dumped milk or was unable to deliver milk to the commercial market due to a qualifying weather related event.

*Pay period* means:

(1) In the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk handler in settling with the affected farmer for his whole milk, usually biweekly or monthly; or

(2) In the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

*Payment subject to refund* means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

*Person* means an individual, partnership, association, corporation, trust, estate, or other legal entity.

*Qualifying disaster event* means a hurricane, flood, tornado, typhoon, volcanic activity, snowstorm, or wildfire or related condition that occurred in the 2018 or 2019 calendar year.

*Removed from the commercial market* means:

- (1) Produced and destroyed or fed to livestock;
- (2) Produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk); or
- (3) Produced and otherwise diverted to other than the commercial market.

*Same loss* means the event or trigger that caused the milk to be removed from the commercial market.

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom the Secretary delegates authority to act as the Secretary.

*State committee* means the FSA State committee.

*Whole milk* means milk as it is produced by cows.

### **§ 760.1703 Payments to dairy farmers for milk.**

A milk loss payment may be made to an affected farmer who is determined by the FSA county committee to be in compliance with all the terms and conditions of this

subpart in the amount equal to 75 percent of the fair market value of the farmer's normal marketings for the application period, less:

(a) Any amount he received for whole milk marketed during the applications period; and

(b) Any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

**§ 760.1704 Normal marketings of milk.**

(a) The FSA county committee will determine the affected farmer's dumped milk normal marketings which, for the purposes of this subpart, will be the sum of the quantities of whole milk for which the farmer would have sold in the commercial market in each of the pay periods in the application period be it not for the removal of his whole milk from the commercial market as a result of a qualifying disaster event.

(b) Normal marketings for each pay period are based on the average daily production during the base period.

(c) Normal marketings determined in paragraph (b) of this section are adjusted for any change in the daily average number of cows milked during each pay period the milk is off the market compared with the average number of cows milked daily during the base period.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period will be reduced so that they represent only that part of such pay period which is within the application period.

**§ 760.1705 Fair market value of milk.**

(a) The FSA county committee will determine the fair market value of the affected farmer's dumped milk normal marketings, which, for the purposes of this subpart, will be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period but for the qualifying disaster event.

(b) The FSA county committee will determine the net proceeds the affected farmer would have received in each of the pay periods in the application period:

(1) In the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundred-weight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings; or

(2) In the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk, as determined by the FSA county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the FSA county committee will deduct from the gross price any transportation, administrative, and other costs of

marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.

**§ 760.1706 Information to be furnished.**

The affected farmer must furnish to the FSA county committee complete and accurate information sufficient to enable the FSA county committee or the Deputy Administrator to make the determinations required in this subpart. Such information must include, but is not limited to:

(a) A copy of the notice from, or other evidence of action by, the public agency which resulted in the dumping or removal of the affected farmer's whole milk from the commercial market.

(b) The specific weather or disaster event and its results on milk marketing for the loss period.

(c) The quantity and butterfat test of whole milk produced and marketed during the base period. This information must be a certified statement from the affected farmer's milk handler or any other evidence the FSA county committee accepts as an accurate record of milk production and butterfat tests during the base period.

(d) The average number of dry cows, bred heifers, and cows milked during the base period and during each pay period in the application.

(e) If the affected farmer markets his whole milk through a milk handler, a statement from the milk handler showing, for each pay period in the application period, the average price per hundred-weight of whole milk similar in quality to that marketed by the affected farmer during the base period used to determine his normal marketings. If the milk handler has information as to the transportation, administrative, and other costs

of marketing which are normally incurred by producers who market through the milk handler but which the affected farmer did not incur because of the dumping or removal of his whole milk from the market, the average price stated by the milk handler will be the average gross price paid producers less any such costs. If the milk handler does not have such information, the affected farmer will furnish a statement setting forth such costs, if any.

(f) The amount of proceeds, if any, received by the affected farmer from the marketing of whole milk produced during the application period.

(g) The amount of any payments not subject to refund made to the affected farmer by the milk handler with respect to the whole milk produced during the application period and remove from the commercial market.

(h) Such other information as the FSA county committee may request to enable the FSA county committee or the Deputy Administrator to make the determinations required in this subpart.

**§ 760.1707 Application for payments for milk loss.**

(a) The affected farmer or his legal representative must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county FSA office for the county where the farm headquarters are located no later than 60 days after the designated deadline announced by the Secretary for 2018 and 2019 losses.

(b) The application for payment will cover application periods of at least 30 days, except that, if the entire application period, or the last application period, is shorter than 30 days, applications for payment may be filed for such shorter period. The application

for payment must be accompanied by the information required for the Milk Loss Program as any other information which will enable the FSA county committee to determine whether the making of this payment is precluded for any of the reasons as determined ineligible by the Deputy Administrator.

**§ 760.1708 Payment limitation and AGI.**

(a) Per loss year, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly payments of not more than \$125,000.

(b) The direct attribution provisions in § 760.1507 apply for payment limitation as defined and used in this subpart.

**§ 760.1709 Limitation of authority.**

(a) FSA county executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The FSA State committee may take any action authorized or required by the regulations in this subpart to be taken by the FSA county committee when such action has not been taken by the FSA county committee. The FSA State committee may also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee will preclude the Deputy Administrator or his designee from determining any question arising under the

regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

**§ 760.1710 Estates and trusts; minors.**

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate will, for the purpose of this subpart, be considered to represent an insolvent affected farmer or manufacturer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee will be considered to be the production of the person or manufacturer he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer or manufacturer who is a minor will be eligible for milk loss payments only if he meets one of the following requirements:

(1) The right of majority has been conferred on him by court proceedings or by statute;

(2) A guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

**§ 760.1711 Setoffs.**

(a) If the affected farmer or manufacturer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, milk loss payments due the affected farmer the regulations in this part will be applied, as provided in the Secretary's setoff regulations, 7 CFR part 13, to such indebtedness.

(b) Compliance with the provisions of this section will not deprive the affected farmer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

**§ 760.1712 Overdisbursement.**

If the milk loss payment disbursed to an affected farmer exceeds the amount authorized under the regulations in this subpart, the affected farmer or manufacturer will be personally liable for repayment of the amount of such excess.

**§ 760.1713 Death, incompetency, or disappearance.**

In the case of the death, incompetency, or disappearance of any affected farmer who would otherwise receive a milk loss payment, such payment may be made to the person or persons specified in the regulations contained in part 707 of this chapter. The person requesting such payment must file Form FSA-325, “Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent,” as provided in that part.

**§ 760.1714 Records and inspection of records.**

(a) The affected farmer, as well as his milk handler and any other person who furnished information to such farmer or to the FSA county committee for the purpose of enabling such farmer to receive a milk loss payment under this subpart, must maintain any existing books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed.

(b) The affected farmer, his milk handler, and any other person who furnishes such information to the affected farmer or to the FSA county committee must permit

authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

**§ 760.1715 Assignment.**

No assignment will be made of any milk loss payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart will be null and void.

**§ 760.1716 Instructions and forms.**

Affected farmers may obtain information necessary to make application for a milk loss payment from the county FSA office.

**§ 760.1717 Availability of funds.**

Milk loss program payments will be made on a first-come, first-served basis. Applications received after all funds are used will not be paid.

**§ 760.1718 Calculating payments for milk losses.**

(a) Payments made under this subpart to a participant for loss of milk as a result of a qualifying disaster event are calculated as follows:

(1) Amount of the fair market value of the farmer's normal marketings for the application period; less

(2) Any amount the farmer received for whole milk marketed during the application period; and

(3) Any payment not subject to refund which the farmer received from a milk handler with respect to whole milk removed from the commercial market during the application period;

(4) Multiplied by a program factor of 75 percent.

(b) [Reserved]

**Commodity Credit Corporation**

**Chapter XIV**

**PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE**

**PROGRAMS**

23. The authority citation for part 1416 is revised to read as follows:

Authority: Title I, Pub. L. 113-79, 128 Stat. 649; Title I, Pub. L. 115-123; Title VII, Pub. L. 115-141; and Title I, Pub. L. 116-20.

**Subpart E—Tree Assistance Program**

24. Amend § 1416.400 by revising paragraph (c) to read as follows:

**§ 1416.400 Applicability.**

\* \* \* \* \*

(c) Eligible pecan tree losses incurred in the 2017 and 2018 calendar years not meeting the mortality loss threshold of paragraph (b) of this section with a tree mortality loss in excess of 7.5 percent (adjusted for normal mortality) will be compensated for eligible losses as specified in §1416.406. For 2017 calendar year losses, up to a maximum of \$15,000,000 is available.

Richard Fordyce,  
Administrator,  
Farm Service Agency.

Robert Stephenson,  
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