Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA); Noninsured Crop Disaster Assistance for 2012 Fruit Crop Losses

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) are announcing the availability of Noninsured Crop Disaster Assistance Program (NAP) payments under the 2012 NAP Frost Freeze (NAPFF) Program, which will provide payments for losses to 2012 annual fruit crops grown on bushes or trees in counties that received Secretarial disaster designations due to frost or freeze for the 2012 crop year. This retroactive assistance for 2012 losses is authorized by the Agricultural Act of 2014 (the 2014 Farm Bill). Eligible causes of loss for NAPFF are not limited to frost or freeze, although to be eligible for payment, losses must have occurred in a county that had a Secretarial disaster designation due to frost or freeze for the 2012 crop year. Other qualifying causes of loss, as specified in the current NAP regulations, include damaging weather or adverse natural occurrences such as flooding. The funding available for this program is such sums as may be necessary to cover eligible 2012 fruit losses.

DATES: Applications: Applications for payment must be submitted to Farm Service Agency (FSA) county offices by **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**.

Comments: To comment on the information collection request in Paperwork Reduction Act Requirements section of this document, we will consider comments we receive by **[Insert 60 Days from Publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, telephone (202) 720-7641.

SUPPLEMENTARY INFORMATION:

Background

NAP is operated by the Farm Service Agency (FSA) for CCC as authorized by section 196 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7333). The current NAP regulations are in 7 CFR part 1437. NAP is administered under the general supervision of the Executive Vice-President of CCC (who also serves as Administrator, FSA) and is carried out by FSA State and county committees. NAPFF is a one-time program authorized by section 12305 of the 2014 Farm Bill (Pub. L. 113-79) to provide NAP payments to producers who had losses to 2012 annual fruit crops grown on a bush or tree. Except as otherwise specified in this NOFA, NAPFF will be administered using the existing regulations and procedures for NAP.

NAP coverage is limited to crops other than livestock that are commercially produced for food and fiber, and to other specific crops (christmas trees, turfgrass sod, aquaculture including ornamental fish, ornamental nursery, etc.) for which catastrophic risk protection plan of insurance under 7 U.S.C. 1508(b) is not available through the Risk Management Agency (RMA). Qualifying losses to eligible NAP crops must be due to an eligible cause of loss as specified in 7 CFR part 1437, which includes damaging weather (drought, hurricane, freeze, etc.) or adverse natural occurrence (volcanic eruption, flood, etc.).

NAP coverage is not automatic; producers must apply for NAP and pay a service fee at their FSA county office to obtain coverage, as well as meet certain other eligibility criteria. Information about the service fee is discussed below in the Service Fee section. Catastrophic level NAP covers the amount of losses due to low yield greater than 50 percent of expected production. As specified in current regulations in 7 CFR part 1437, NAP payments for low yield loss are calculated based on the loss of an eligible NAP crop in excess of 50 percent of expected production (guarantee) times 55 percent of the average market price for the crop. This means that the maximum payment for a total loss under NAP catastrophic coverage is 27.5 percent (50 percent of 55 percent).

The 2014 Farm Bill adds the availability of higher coverage levels for most crops (other than those grown for grazing) and retroactive coverage for 2012 fruit losses, as described in more detail in the following section of this document. The 2014 Farm Bill does not change the basic scope of NAP as a risk management program for crops not otherwise covered by a catastrophic risk protection plan of insurance.

2014 Farm Bill Changes to NAP

The 2014 Farm Bill modifies NAP to permit producers an opportunity to obtain additional risk management coverage ranging from 50 to 65 percent of production, in 5 percent increments, and for 100 percent of the average market price. This "additional assistance" coverage is discussed below in the Additional Assistance Coverage Levels for 2012 Fruit Losses section. As specified in the 2014 Farm Bill, the premium for this additional level of coverage is 5.25 percent times the level of coverage. The premium is discussed below in the Premium Calculation section. The coverage levels and premium calculations are specified in the 2014 Farm Bill and FSA has no discretion to offer different coverage levels or premiums.

As noted earlier, the 2014 Farm Bill authorized NAP assistance retroactively for losses to 2012 fruit crops grown on trees and bushes in counties that had Secretarial disaster designations for frost or freeze for the 2012 crop year. This additional 2012 NAP assistance is being provided under NAPFF. Where the 2014 Farm Bill was silent with respect to NAPFF, FSA made a discretionary decision to make all producers of eligible fruit crops with eligible losses in disaster counties in 2012 eligible for NAPFF, whether or not they purchased 2012 NAP coverage during the original application period for 2012. Any producers of NAP eligible fruit crops intended for harvest as fresh or processed fruit or juice fruit (and not fruit for intended uses of seed or root stock), without regard to whether or not the producer previously obtained 2012 NAP coverage on eligible fruit crops in eligible counties, will be able to apply for NAPFF assistance for eligible causes of loss to these fruit crops in eligible counties.

Definitions

NAPFF will be implemented using the existing regulations for NAP (7 CFR part 1437), including the definitions in those regulations.

The following definitions from similar disaster assistance programs also apply to this NOFA:

- "Beginning farmer" and "socially disadvantaged farmer" as defined in

7 CFR 1416.102, and

- "Bush," "tree," and "vine" as defined in 7 CFR 1416.402.

The following terms are specifically defined for NAPFF. They are similar to the way these terms are defined in the existing NAP and disaster assistance regulations, but are revised to reflect that NAPFF is only available for 2012 losses:

"Limited resource farmer" means a farmer or rancher who is both the following:

(a) A person whose direct or indirect gross farm sales did not exceed $163,200 in each of calendar years 2009 and 2010, and

(b) A person whose total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (a) of this definition.

Limited resource producer status may be determined using the USDA Limited Resource Farmer and Rancher Online Self Determination Tool located on the Limited Resource Farmer and Rancher website at http://www.lrftool.sc.egov.usda.gov/.

For legal entities requesting to be considered Limited Resource Farmer or Rancher, the sum of the gross sales and household income must be considered for all members.

"Crop year" means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For the purpose of NAPFF assistance, the eligible crop year is 2012.

The 2014 Farm Bill sections on AGI and payment limits refer to "benefits" from FSA and CCC programs. (Most FSA and CCC program benefits are cash payments, but some programs provide non-cash benefits such as technical assistance and subsidized risk management products.) This NOFA uses the terms “assistance,” “coverage,” and “payments” to refer to NAP and NAPFF benefits. For NAP, in general, the period to apply for coverage ends before the crop is planted and coverage begins at least 30 days after application for coverage. Producers who had previously purchased NAP may be eligible to also receive assistance under NAPFF. For NAPFF only, assistance may be obtained retroactively by producers who did not previously apply for 2012 NAP coverage. In the case of NAPFF, assistance will provide payments for known losses.

Eligible Losses

NAPFF assistance is available only for losses that meet specific eligibility criteria and requirements established by the 2014 Farm Bill. All eligibility requirements described below for eligible fruit crops, eligible counties, eligible causes of loss, and eligible coverage period must be met in order to receive payment.

NAPFF assistance is available only for losses to fruit crops grown on a tree or bush. The following fruit crops are eligible: apples, apricots, aronia, atemoya, avocados, bananas, blueberries, breadfruit, caimito, carambola (starfruit), cherimoya, cherries, coconuts, currants, dates, elderberries, figs, gooseberries, grapefruit, guanabana (soursop), guava, guavaberry, huckleberries, jack fruit, jojoba, jujube, kiwifruit, kumquats, lemons, limes, longan, lychee (litchi), mangos, mangosteen, mayhaw berries, mesple, mulberries, nectarines, noni, olives, oranges, papaya, peaches, pears, persimmons, pineapple, plantain, plumcots, plums, pomegranates, prunes, pummelo, quinces, rambutan, sapodilla, sapote, tangelos, tangerines, and wax jamboo fruit.

Fruit crops grown on canes or vines are not eligible. This requirement is statutory and FSA has no discretion to extend NAPFF assistance to crops that do not meet this requirement. To administer NAPFF assistance, FSA is using the definitions of “bush,” “tree,” and “vine” as specified in the regulations for the Tree Assistance Program (TAP) at 7 CFR part 1416, subpart E, for consistency in determining the eligible fruit crops for NAPFF.

Losses must have occurred in an eligible county. Eligible counties for NAPFF are primary counties that received Secretarial disaster designations for the 2012 crop year due to frost or freeze and those counties contiguous to such counties that received Secretarial disaster designations for the 2012 crop year due to frost or freeze. A total of 731 counties, located in the following 37 States, are eligible counties for NAPFF: Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. A map and a list of eligible counties are available on the FSA website and at FSA county offices. If any portion of a producer’s fruit crop unit was physically located in an eligible county, the entire crop unit (as unit is defined in the current NAP regulations at 7 CFR 1437.8) is eligible for assistance under NAPFF.

The requirement to provide NAPFF assistance only in eligible counties is specified in the 2014 Farm Bill. CCC has no discretion to offer additional assistance under this NOFA for crops in other counties that did not have frost or freeze Secretarial disaster designations for the 2012 crop year.

As specified in 7 U.S.C. 7333 and in the current NAP regulations in 7 CFR 1437.4, NAP coverage is available only in counties where RMA does not offer catastrophic crop insurance coverage for those crops. CCC has no discretion to offer 2012 NAP coverage, including NAPFF, in counties for crops where catastrophic risk plan of insurance coverage was available for 2012.

While the county in which the loss occurred must have received a Secretarial disaster designation for the 2012 crop year specifically due to frost or freeze, eligible causes of loss in that county for the eligible fruit crop include all the eligible causes of loss specified in the current NAP regulations, not just frost or freeze. For example, if a fruit producer in a county that had a 2012 Secretarial disaster designation due to frost or freeze had losses due to floods or tornadoes, those losses would be eligible for coverage under this NOFA. Eligible causes of loss as specified in the current NAP regulations at 7 CFR 1437.9 include:

- Damaging weather occurring before or during harvest, including, but not limited to, drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination of those;
- Adverse natural occurrence before or during harvest, such as earthquake, flood, or volcanic eruption; or
- A related condition, including, but not limited to, heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring before or during harvest that directly causes,

accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by FSA.

The regulations in 7 CFR 1437.9(c) and (e), which specify eligible and ineligible causes of loss, respectively, apply to losses under this NOFA. Only losses to quantity are eligible losses under NAPFF. Value loss crops are not eligible for NAPFF. Payment will not be provided based on losses to quality.

Losses must have occurred during the 2012 crop year NAP coverage period as specified in 7 CFR 1437.5, which varies by crop. The 2012 coverage period for NAP, which applies to any eligible fruit crop grown on a tree or bush under NAPFF, began 30 days after the application closing date for the crop and ended on the earliest of:

- 10 months from the application closing date for the crop,
- The date harvest was complete,
- The normal harvest date,
- Abandonment of the crop, or
- Total destruction of the crop.

Producers applying for NAPFF assistance are not required to have previously filed a 2012 NAP application for coverage during the 2012 application period. Normally, NAP coverage begins no earlier than 30 days after the application is filed. However, under the terms of this NOFA, and as authorized by the 2014 Farm Bill, producers may apply for retroactive coverage only for eligible 2012 fruit crops.

NAPFF payments will be calculated based on the coverage period for the crop as it would have been for the producer who filed a timely application for coverage for 2012 NAP coverage. The coverage period for NAPFF is the longest coverage period that could have existed for the fruit crop in the county without regard to the actual date the producer of that crop filed an application for coverage. In other words, the provision that the coverage period cannot begin earlier than 30 days after the filing of the application for coverage is set aside for NAPFF.

Additional Assistance Coverage Levels for 2012 Fruit Losses

Prior to the 2014 Farm Bill, NAP had only one coverage level – a "catastrophic" coverage that covered the amount of loss greater than 50 percent of the expected production based on the approved yield and reported acreage, and calculated payments based on 55 percent of the average market price for the crop established by the FSA state committee. This catastrophic level of coverage was the only type of NAP coverage previously offered in 2012.

The 2014 Farm Bill authorizes the Secretary to provide additional levels of NAP coverage, which requires payment of a premium in addition to the NAP service fee, beginning with the 2015 program year, and also retroactively applies these additional coverage levels to eligible 2012 losses in select counties for select eligible tree or bush fruit crops under this NOFA. FSA will calculate payments for the additional assistance coverage based on 100 percent of the average market price and:

- 50 percent of the approved yield,
- 55 percent of the approved yield,
- 60 percent of the approved yield, or
- 65 percent of the approved yield.

Because FSA is providing this coverage retroactively and losses for the 2012 crop year are known, FSA expects that each applicant would select the additional assistance coverage level that provides the largest payment based on the applicant's known losses and amount of the applicable premium. Therefore, to minimize the burden on the applicants, FSA will calculate which coverage level will provide the maximum payment for a particular producer's 2012 losses, and automatically subtract the premium for that level of coverage from the payment amount. Producers who already received NAP payments for 2012 losses will be eligible to receive additional NAPFF payments up to the additional assistance coverage level (minus the original NAP payment received), unless such additional payment would exceed the payment limit for NAP. For most applicants, unless they have already received payments at or near the NAP payment limit for other 2012 NAP losses, the maximum payment will be at the 65 percent coverage level. (The premium calculation is described in more detail later in this document.)

Service Fee

If a producer did not previously apply for NAP coverage for the 2012 crop year and pay the applicable service fee, the service fee must be paid at the time of NAPFF application. The service fee for the 2012 crop year is the lesser of $250 per crop or $750 per producer per administrative county, not to exceed a total of $1,875 for a producer with farming interests in multiple counties. This fee is specified in the 2008 Farm Bill and is not changed by the 2014 Farm Bill.

Producers who qualify as limited resource farmers may request a waiver of the service fee. Limited resource farmers who do not already have 2012 NAP coverage must request a service fee waiver and provide a certification of their eligibility for the waiver on form CCC-860 at the time of application. (The waiver of service fees for beginning and socially disadvantaged farmers mandated by the 2014 Farm Bill starts with the 2014 NAP program year and does not apply for NAPFF assistance.) Producers who previously applied for 2012 NAP coverage and submitted a certification of their status as limited resource farmers are not required to submit an additional certification for NAPFF.

Producers who previously applied for 2012 NAP coverage for NAPPF eligible crops or who and paid the maximum applicable service fee are not required to pay an additional service fee to apply for NAPFF crops. If producers paid less than the maximum service fee, then they will be required to pay an additional service fee, up to the maximum, for any additional NAPFF crops for which they apply for assistance. For example, a producer with a farm in a single county who bought coverage for any three 2012 NAP crops has already paid the maximum fee of $750, and therefore would not owe any additional service fees for NAPFF. A producer who had only purchased 2012 coverage for one crop in one county and who previously paid a service fee of $250 would need to pay the additional service fee for any additional NAPFF crops.

Premium Calculation

Premiums for NAPFF assistance will be calculated as the product of the producer's share, times the number of eligible acres devoted to the crop, times the approved yield per acre, times the coverage level, times the average market price, times a 5.25 percent premium fee. The maximum premium per producer, as specified in the 2014 Farm Bill, is $6,562.50 (the product of the applicable payment limitation of

$125,000 times a 5.25 percent premium fee for the maximum level of coverage). (This will also be the maximum premium for NAP coverage in 2015 and subsequent years.)

For example, if Farmer Smith has a 100 percent share interest in 20 acres of apple trees intended for the fresh market, and the approved yield per acre for that crop is 500 bushels, and the average fresh market price is $12.75 per bushel, and the coverage level is 65 percent, the premium will be 1.000 (100 percent share) times 20 (acres) times 500 (bushels per acre) times 0.65 (coverage level of 65 percent) times $12.75 (price per bushel) times 0.0525 (premium factor), which equals $4,350.94.

Premiums will be calculated separately for each fruit crop, type, and intended use, (or final use, if different from intended use) but cannot exceed $6,562.50 per producer as explained above. A producer's total premium amount will be the sum of the premiums calculated for each fruit crop and type for which a producer is receiving NAPFF assistance.

The producer will not pay the premium for NAPFF separately; FSA will deduct it from the NAPFF payment. In the example above, if Farmer Smith suffered a 100 percent loss, the payment would be calculated as 1.000 (100 percent share) times 20 (acres) times 500 (bushels per acre) times 0.65 (coverage level) minus 0 bushels (actual production) times $12.75 (price per bushel), minus $4,350.94 (the premium), which equals a NAPFF payment of $78,524.06. (These example calculations do not include any service fees Farmer Smith has paid, because those would have been paid at the time of application for payment.)

Beginning farmers, limited resource farmers, and socially disadvantaged farmers are eligible for a 50 percent reduction of their calculated premium. (If Farmer Smith was a beginning farmer, the premium for apple trees for the fresh market would be $2,175.47.) To be eligible for a premium reduction, producers must request a premium reduction and provide a certification of their eligibility for the premium reduction on form CCC-860 at the time of application. Producers who previously applied for 2012 NAP coverage and submitted a certification of their status as limited resource producers are not required to submit an additional certification for NAPFF.

If a NAPFF payment calculated by FSA as specified in this NOFA is not sufficient to cover the calculated premium, no payment will be issued and no premium is due. (This is unlikely, and would occur only if the producer had relatively small losses, or losses determined after application to be ineligible.)

Application

A producer applying for NAPFF payments is required to file a NAPFF application by **[Insert 60 days from the date of publication in the FEDERAL REGISTER].** As noted above, some producers may not owe a service fee, but all producers must file a NAPFF application to be eligible for NAPFF payment, regardless of whether they previously applied for 2012 NAP coverage, filed notices of loss, or received NAP payments for the 2012 crop year. Producers who did not previously apply for 2012 NAP coverage must pay the service fee as discussed above, or request a service fee waiver and provide a certification of their status as a limited resource farmer, if applicable, by **[Insert 60 days from the date of publication in the FEDERAL REGISTER]** in order for their NAPFF application to be considered complete.

In addition to a NAPFF application, any producer applying for NAPFF assistance must submit the following documents, if not already on file with the FSA county office:

- NAP application for coverage;
- NAP notice of loss;
- NAP application for payment;
- Acreage report, as specified in 7 CFR part 718;
- Farm operating plan for payment limitation review; and
- AGI certification of eligibility based on the $900,000 AGI limitation as specified in the 2014 Farm Bill.

These supporting documents and certifications are required and must be filed by **[Insert 60 days from the date of publication in the FEDERAL REGISTER]**. All other general conservation compliance eligibility provisions of 7 CFR part 12 apply to NAPFF in the same way as those provisions applied to all other 2012 NAP assistance.

Production Records

Producers who had 2012 NAP coverage and who already filed a report of production along with an application for payment that met NAP program requirements specified in 7 CFR part 1437 are not required to file additional production reports to accompany their NAPFF application, if that production report included NAPFF crops. Producers applying for NAPFF must certify the total amount of production of crops on the NAP application for payment and, unless previously submitted as specified in the NAP regulations in 7 CFR part 1437, submit verifiable or reliable production records, if available, to justify the certification of harvested production to the FSA county committee. Because this assistance is being made available retroactively, FSA has decided not to require loss adjustment appraisals, or other similar measures or requirements, because physical evidence of the 2012 loss is unlikely to be available for examination or verification.

If a producer applies for NAPFF and the producer has no acceptable verifiable or reliable production records because those records are not available, the FSA county committee will use the higher of the participant's certification of production or a maximum average loss level (MALL) established by the county committee for that crop to determine payment eligibility. This policy applies only to NAPFF assistance. It applies both to producers who have not previously applied for 2012 NAP assistance, and to producers that were previously found ineligible for 2012 NAP payments on an eligible crop for which NAPFF assistance is now being made available because they did not previously submit acceptable production evidence on that fruit crop. MALL will only be used for the purpose of processing the NAPFF application. It will not be used in the producer's approved yield or actual production history (APH) database for other purposes, including for subsequent NAP crop years.

In order for production reports or appraisals to be considered acceptable, production reports and appraisals must meet the requirements specified in 7 CFR part 1437. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: commercial receipts; settlement sheets; warehouse ledger sheets or load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of by means other than commercial channels, acceptable production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous reliable diaries; or other documentary evidence, such as contemporaneous reliable measurements. Determinations of reliability will take into account, as appropriate, FSA's ability to verify the evidence as well as the similarity of the evidence to reports or data received by FSA for the crop or similar crops. Other relevant factors may also be taken into account. FSA may, at any time before or after paying any individual NAPFF application, verify the production evidence submitted with records on file at the warehouse, gin, or other entity that received or may have received the reported production.

Approved Yield

An approved yield is used to calculate NAPFF payments. These yields will be calculated as specified in the current NAP regulations, with the exceptions discussed below. For producers who previously obtained 2012 NAP coverage, the approved yield previously established for their crop for the 2012 crop year as specified in 7 CFR 1437.102(e)(2) will be used to determine the NAPFF payment amount.

The approved yield for NAPFF will be calculated as specified in 7 CFR part 1437 subpart B for producers who did not previously obtain 2012 NAP coverage. Producers who did not previously obtain 2012 NAP coverage will be allowed to submit actual yields for the APH base period for the purposes of NAPFF as long as verifiable or reliable records are available to confirm the actual yield.

If production yields were not certified in the APH base period for the 2012 approved yield currently established for NAPFF, producers may request that FSA replace the missing yields for such years with the missing crop year's actual yield as long as verifiable or reliable records are provided to justify the actual yield. These actual yields updated for the purpose of NAPFF will be termed "exception actual yields."

Any exception actual yields used for calculating NAPFF payments will not be used to calculate any other NAP payments for any other year.

Payment Calculation

The NAPFF payment to the eligible producer will be a net payment, which will be calculated as the maximum payment for which the producer is eligible based on crop losses, minus the premium and any other adjustments required for payment limits, average adjusted gross income (AGI), and other requirements. FSA will calculate NAPFF payments using a calculation similar to the one specified in 7 CFR 1437.105, with changes to address additional assistance coverage, payment limits, and any 2012 NAP assistance previously issued to a producer. Assistance will be calculated separately for each crop and use. FSA will use the following steps to calculate NAPFF payments:

Step 1: Multiply the total eligible acreage planted to the eligible crop by the producer's share.

Step 2: Multiply the result of step 1 by the approved yield per acre for the eligible crop for the producer times the applicable additional assistance coverage level elected by the producer. (For most producers, the coverage level will be 65 percent.)

Step 3: Multiply the applicable production for 2012 by the producer's share. (The applicable production for 2012 will be either the net production of the total eligible acreage based on acceptable production records, or the higher of the producer's certified production or production arrived at by applying MALL.)

Step 4: Subtract the result of step 3 from the result of step 2. (This subtracts actual or estimated production from expected production times the coverage level.) If this result is a negative number, the producer did not have sufficient losses to qualify for a NAPFF payment.

Step 5: Multiply the result of step 4 by the average market price and apply any applicable payment factors for harvested, prevented planted, or unharvested crops as specified in 7 CFR 1437.11.

Step 6: Multiply the value of salvage and secondary use by the producer's share, and subtract the result from the result of step 5.

Step 7: Verify that the amount in Step 6 would not exceed the 2014 Farm Bill payment limits

Step 8: Subtract the amount, if any, of 2012 NAP assistance previously paid to the producer for the same crop from the result of step 6. (For example, if the producer previously received payment for 2012 catastrophic level NAP coverage for the same crop, but now qualifies for 65 percent coverage of 100 percent of market price under NAPFF, the previous payment is subtracted from the NAPFF payment.)

Step 9: Subtract the applicable premium amount based on the applicable additional assistance coverage level from the result of step 8.

The result of Step 9 will be the NAPFF payment to the producer.

Payment and Income Limitations

Sections 1603 and 1605 of the 2014 Farm Bill establish payment and income limitations, respectively, that apply to 2014 and subsequent crop, program, or fiscal year benefits, and retroactive 2012 crop year benefits for programs that were authorized by the 2014 Farm Bill. FSA already implemented these payment and income limitations, which are specified in 7 CFR part 1400.

Under the 2008 Farm Bill, NAP assistance for the 2012 crop year was limited to $100,000, directly or indirectly, per person or legal entity. The 2014 Farm Bill increases the payment limitation for NAP benefits to $125,000 per person or legal entity. As under the 2008 Farm Bill, attribution of payments under 7 CFR part 1400 applies in administering the payment limitation of the 2014 Farm Bill. The $125,000 payment limit is retroactive to 2012 for NAPFF only, not for any other 2012 NAP payments.

That means that a person or legal entity may receive up to $125,000 total for NAPFF and other NAP payments for 2012, but the 2008 Farm Bill payment limit of $100,000 for all other 2012 NAP payments still applies. A producer can receive $125,000 total for the 2012 crop year if and only if at least $25,000 of such total 2012 crop year payments is from NAPFF assistance. (A producer could receive up to $125,000 for NAPFF payments alone.) If the producer is not eligible for any NAPFF payments, the total amount of 2012 crop year payments under NAP is still limited to $100,000.

The 2014 Farm Bill establishes an average AGI limit for most FSA and CCC programs of $900,000. The applicable years for determining average AGI for 2012 are

2008, 2009, and 2010. Under the 2008 Farm Bill, NAP payments were subject to a limit of $500,000 nonfarm average AGI. The $900,000 limit under the 2014 Farm Bill is for total average AGI, and this single AGI limit replaces the multiple limits for farm and non-farm income, and the separate limit for conservation programs, that were required by the 2008 Farm Bill. The $500,000 average AGI limitation from the 2008 Farm Bill does not apply to NAPFF under the 2014 Farm Bill, but remains in effect for any other 2012 NAP. This means that a producer who was not eligible for 2012 NAP due to exceeding the 2008 Farm Bill AGI limits may be eligible for NAPFF (but not any other 2012 NAP payments) if they are under the higher 2014 Farm Bill AGI limit.

All persons or legal entities, directly or indirectly applying for NAPFF assistance under this NOFA, must certify by the application deadline that the person or legal entity does not exceed the $900,000 average AGI limit. This includes members of legal entities, who must provide a certification by the application deadline in accordance with the regulations in 7 CFR 1400.502. The certification is in addition to any previous AGI certifications that the person or entity may have previously made regarding average AGI limits as required by the 2008 Farm Bill.

Multiple Benefit Exclusion

The provisions regarding multiple benefits in 7 CFR 1437.13 apply. Producers are prohibited from receiving benefits under both NAP, including NAPFF, and any other program administered by the Secretary for the same crop loss. If a producer is eligible to receive payments under NAP, including NAPFF, and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under NAP, including NAPFF, but not both.

Funding Authority and Sequestration

The NAPFF assistance announced in this NOFA is authorized by section 12305 of the 2014 Farm Bill. CCC funding for NAP, including NAPFF, is authorized by 7 U.S.C. 7333, as amended. The amount of available funding is not limited. However, the payments in FY 2015 will be subject to sequestration as required by the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, which mandates that federal agencies implement automatic, annual reductions to discretionary and mandatory spending limits. Payments made in FY 2014 are not sequestered.

Miscellaneous Provisions

The miscellaneous provisions in 7 CFR 1437.15 apply to NAPFF assistance.

The MALL value for a crop in a county will be established by the county committee and is not based on information from any individual program participant or applicant. MALLs established for NAPFF will be determined by county committees in accordance with instructions issued by the FSA's Deputy Administrator for Farm Programs. MALLs are matters of general applicability; they are not individual producer decisions or extent of eligibility decisions and are not subject to individual appeal or administrative review. The only issues that can be appealed with regard to MALLs are whether or not a particular MALL is being correctly applied (that is, that the producer either has or does not have acceptable production records accompanying their application and certification of production, or that the producer's certification of production is higher or lower than the level of production that would be arrived at using the county committee's established MALL).

All certifications of acreage and production are subject to verification and spot check. CCC may at any time request information or review the accuracy of any certification or report made by producers or applicants and if a review is performed that reveals unearned payments were issued, unearned payments must be refunded to FSA with interest from the date of disbursement.

Consistent with regulations in 7 CFR part 1437 and NAP's basic contract provisions, if a crop is subject to an arrangement, agreement, or contract for guaranteed payment, documentation of the arrangement, agreement, or contract for guaranteed payment must be provided in addition to acceptable verifiable or reliable records. Concealing the existence or failure to divulge or report the existence of any guaranteed payment contract or similar arrangement or agreement constitutes a misrepresentation of production information to FSA and renders the applicant ineligible for assistance under the application and possibly additional remedies as prescribed for the person or legal entity in 7 CFR part 1437 and NAP's basic provisions.

Rulemaking

FSA does not consider this NOFA to be subject to rulemaking requirements because NAPFF is a limited program for 2012 losses only, is not of general application and future effect, and the existing NAP regulation applies as discussed above. NAPFF is subject to specific requirements of the 2014 Farm Bill for which FSA has little discretion. If this NOFA is considered to be a rule, then the rulemaking exceptions of the Administrative Procedure Act would apply. Specifically, if this notice is considered a rule, then it would be contrary to the public interest to delay its effectiveness to allow for public comment. This NOFA provides payments for producers for 2012 losses, and it would be contrary to public interest to delay the effective date for public comments on payments that are already at least 2 years after the eligible losses have occurred and for which FSA has no discretion.

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FSA submitted an emergency information collection request on NAPFF so FSA can begin the application period upon publication of this NOFA. FSA is also requesting comments from all interested individuals and organizations on a new information collection request. This information collection is one-time activity. If FSA needs to continue this request, the information collection request will be merged with 0560-0175, Noninsured Crop Disaster Assistance Program information collection request upon the expiration date. Additionally, NAP is authorized by 7 CFR 7 U.S.C 7333 and implemented under regulations in 7 CFR 1437. In NAP, the information FSA collects allows FSA to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C. 1508(b) is not available, and that are not produced for food or fiber.

In the emergency request, NAPFF will only apply to 2012 annual fruit crops grown on bushes and trees. Therefore, FSA is making payments for losses to 2012 annual fruit crops grown on bushes or trees and located in counties that received Secretarial disaster designations, including counties contiguous to such counties, due to frost or freeze for the 2012 crop year.

Title: 2012 Noninsured Crop Assistance Program (NAP) Frost Freeze Program (NAPFF).

OMB Number: 0560–NEW.

Type of Request: New information collection.

Abstract: This information collection is needed for FSA to identify eligible producers of 2012 annual fruit crops grown on bushes or trees located in eligible counties and to make payments to those producers through NAPFF. FSA requires each producer to submit an application on a form specified by FSA to the FSA county office to apply for payments for losses to their eligible crops in eligible counties. The majority of producers will only need to submit the new application form (CCC-473) because the rest of their information will already be on-file from their 2012 NAP application and will be up to date in the FSA county office. However, some producers will also need to complete forms CCC-473, CCC-452, CCC-471, CCC-576, Part B and Part G, FSA-578, CCC-860, CCC-941, CCC-902, AD-1026, and other required documentation if FSA does not have them on file as discussed above in the Application section.

The formula used to calculate the total burden hours is the estimated average time per response (including travel time) times the total estimated annual responses.

Respondents: Producers.

Estimated Number of Respondents: 3,191.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Response: 3,191.

Estimated Average Time per Response (The average travel time, which is included in the average annual burden, is estimated to be 1 hour per respondent.): 5.2572 hours.

Estimated Total Annual Burden on Response: 16,776 hours.

We are requesting comments on this information collection to help us:

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

(2) Evaluate the accuracy of the agency'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; or

(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 responses to this notice, including names and addresses, when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Catalog of Federal Domestic Assistance

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.451, Noninsured Assistance.

Signed on July 16, 2014.

Juan M. Garcia,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation

[FR Doc. 2014-17237 Filed 07/21/2014 at 8:45 am; Publication Date: 07/22/2014]