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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN: 0560-AI39

2017 Wildfires and Hurricanes Indemnity Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The 2017 Wildfires and Hurricanes Indemnity Program (2017 WHIP) will provide payments to eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes and wildfires that occurred in the 2017 calendar year, as authorized by the Bipartisan Budget Act of 2018 (BBA). This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment calculations for 2017 WHIP.

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-AI39, 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>. Follow the instructions for submitting comments.

- Mail: Director, PECD 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: Lisa Berry, telephone: (202) 720-7641. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

BBA (Pub. L. 115-123) provided \$2.36 billion, available until December 31, 2019, for disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of Hurricanes Harvey, Irma, Maria, and other hurricanes and wildfires occurring in calendar year 2017. Of the \$2.36 billion available under BBA, the Secretary directed the Farm Service Agency (FSA), to provide nearly \$2 billion in assistance to eligible producers through the 2017 WHIP¹. Additionally, approximately \$340 million of the available \$2.36 billion is being provided to the State of Florida through a block grant to address the consequences of Hurricane Irma including losses to citrus production expected during the 2018, 2019, and 2020 crop years. This final rule only covers disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of Hurricanes Harvey, Irma, Maria, and

¹The 2017 WHIP is not related to the USDA program administered by the Natural Resources Conservation Service named the Wildlife Habitat Incentives Program (WHIP).

other hurricanes and wildfires occurring in calendar year 2017 and does not discuss the terms and conditions of the block grant to Florida.

As mandated by BBA, the total amount of payments received under 2017 WHIP, crop insurance under the Federal Crop Insurance Act (FCIA; 7 U.S.C. 1501-1524), and the Noninsured Crop Disaster Assistance Program (NAP; 7 U.S.C. 7333) combined will not exceed 85 percent of the total losses for all 2017 WHIP participants with crop insurance or NAP coverage. Also, as required by BBA, the total amount of payments received under 2017 WHIP will not exceed 65 percent of the total losses for all participants without crop insurance or NAP coverage. BBA also requires all participants who receive 2017 WHIP payments to purchase crop insurance or NAP coverage for the next 2 available crop years, regardless of whether they had crop insurance or NAP coverage for 2017. This rule provides the eligibility requirements, application procedures, and payment calculation provisions for administration of 2017 WHIP.

Due to the variety of crops and the timing of the hurricanes and wildfires, 2017 WHIP covers losses resulting from the 2017 hurricanes and wildfires to crops that were intended for harvest in either the 2017 or 2018 crop year.

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 2017 WHIP; the term participant is used for a producer who applied for 2017 WHIP and has been determined eligible.

Available Funding

FSA will make an initial payment of up to 50 percent of an eligible 2017 WHIP participant's calculated 2017 WHIP payment. By issuing initial payments, FSA can

quickly provide disaster assistance to those who have suffered severe losses while ensuring that 2017 WHIP payments do not exceed the available funding and those funds are distributed equitably among eligible producers. If funds remain available after the initial payment, FSA will disburse the remainder of the participant's payment. If eligible losses calculated based upon applications received exceed the amount of funding available, 2017 WHIP payments will be prorated using a national factor.

Eligibility

The 2017 WHIP payments are available 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 wildfires and hurricanes that occurred in the 2017 calendar year, and conditions related to those wildfires and hurricanes, such as excessive rain, high winds, flooding, mudslides, and heavy smoke. The 2017 WHIP payments for crop losses cover only production losses; they do not cover quality losses. Eligible crops include those for which crop insurance or NAP coverage is available, excluding crops intended for grazing. A list of crops covered by crop insurance is available through RMA's Actuarial Information Browser at <https://webapp.rma.usda.gov/apps/ActuarialInformationBrowser2017/CropCriteria.aspx>; this list is provided for reference and includes all commodities for which crop insurance can be obtained including crops intended for grazing, which are ineligible for 2017 WHIP. NAP coverage is available for the following commercial crops when crop insurance under section 508(b) or additional coverage under sections 508(c) or 508(h) of FCIA (7 U.S.C. 1508(b), (c), and (h)) is not available for:

- Crops grown for food, excluding livestock and their by-products;

- Crops planted and grown for livestock consumption, including but not limited to grain and forage crops;
- Crops grown for fiber, excluding trees grown for wood, paper, or pulp products; and
- The production of aquacultural species (including ornamental fish), floricultural crops, ornamental nursery plants, Christmas tree crops, turfgrass sod, sweet sorghum, biomass sorghum, industrial crops, seed crops, sea grass, and sea oats.

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 2017 WHIP, as such would be a duplication of benefits.

The Tree Assistance Program (TAP) provides cost-share for replanting and rehabilitation of eligible trees, while 2017 WHIP provides payments based on the loss of value of the tree, bush, or vine. Therefore, participants who suffered tree, bush, and vine losses may receive both TAP payments and 2017 WHIP payments for the same acreage because 2017 WHIP and TAP pay for different losses.

Assistance for Florida citrus tree losses will be provided through a grant program administered by the State of Florida so tree losses are not eligible for 2017 WHIP. Florida citrus crop losses, however, are eligible for 2017 WHIP. TAP is a cost share program that provides assistance for replanting trees, bushes, and vines. To the extent

that expenses are paid via the block grant program; those expenses will not be eligible for TAP cost-share assistance. 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.

Trees, bushes, and vines that were abandoned or not used for or intended for use for commercial production at the time of the loss are ineligible for 2017 WHIP.

The 2017 WHIP for hurricane losses and related conditions, such as excessive rain and flooding, will be available for eligible farms located in counties that received a qualifying Presidential Emergency Disaster Declaration or Secretarial Disaster Designation. A list of counties that received qualifying hurricane declarations and designations is available at <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/wildfires-and-hurricanes-indemnity-program/index>. Only producers in primary disaster counties qualify for 2017 WHIP based on the declaration or designation. Producers in counties that did not receive a qualifying hurricane declaration or designation, including those in counties contiguous to counties that received a Presidential declaration or Secretarial designation, may still apply for 2017 WHIP, but they must also provide supporting documentation to establish that the crop was directly affected by a hurricane or a related condition. The 2017 WHIP for losses due to wildfires and conditions related to wildfires, such as mudslides and heavy smoke, will be available in any county where a wildfire occurred, as determined by FSA county committees.

Payment Limitation

Each person and legal entity who is either a participant or member of a participant will have a single 2017 WHIP payment limitation even though they may be eligible to

receive payment for more than one crop year or type of loss (for example, for both crop production and tree losses). Once the payment limit is reached for any person or legal entity, the person or legal entity is not eligible to receive any additional 2017 WHIP payment. For example, if a person or legal entity reaches the maximum payment based on losses to a 2017 crop, that person or legal entity will not receive any additional 2017 WHIP payment, even though there may have been losses to a 2018 crop, due to hurricanes or wildfires that occurred in calendar year 2017, as well.

The payment limitation is based on the person's or legal entity's average adjusted gross income (AGI) and factors in the person's or legal entity's average adjusted gross farm income. Farm income includes 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 2017 WHIP payments, directly or indirectly, of more than \$125,000, unless at least 75 percent of the person or legal entity's average AGI, as defined in § 760.1502, is derived from farming, ranching, or forestry related activities. 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 2017 WHIP payments, directly or indirectly, up to \$900,000. Average AGI and average adjusted gross farm income are calculated based on the person or legal entity's average income in 2013, 2014, and 2015, which are the relevant years to calculate AGI for 2017 WHIP.

To receive more than \$125,000 in 2017 WHIP payments, applicants must certify that as a person or legal entity they are eligible for the \$900,000 payment limitation (that

is, that at least 75 percent of the person's or legal entity's average AGI is derived from farming, ranching, or forestry related activities). That certification must be submitted on form FSA-892, Request for an Exception to the WHIP Payment Limitation of \$125,000, and accompanied by a certification from a certified public accountant or attorney that confirms the person or legal entity's certification. If an applicant requesting the \$900,000 payment limitation is a legal entity, all members of that entity must also complete FSA-892 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 \$900,000 payment limitation based on the legal entity's average AGI from farming but a member of that legal entity either does not complete a FSA-892 or is not eligible for the \$900,000 payment limitation, the payment to the legal entity will be reduced for the applicable limitation that will apply to the share of the 2017 WHIP payment attributed to that member.

Application Process

Producers must submit 2017 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 2017 WHIP application consists of:

- FSA-890, Wildfires and Hurricanes Indemnity Program (WHIP) Application;
- FSA-891, Crop Insurance and/or NAP Coverage Agreement;
- FSA-892, Request for an Exception to the WHIP Payment Limitation of \$125,000, if more than 75 percent of an applicant's average AGI is from farm income and the applicant wants to be eligible to receive 2017 WHIP

payments of more than \$125,000, up to the \$900,000 payment limitation;
and

- FSA-893, 2018 Citrus Actual Production History and Approved Yield Record, Florida Only, for applicants requesting payments for losses to citrus crops located in Florida.

Persons and legal entities who do not submit FSA-892 and a certification from a CPA or attorney will only be considered 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 (HELIC) and Wetland Conservation 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 2017 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 2017 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 2017 WHIP payments be issued or provided for losses that cannot be determined to have occurred to the satisfaction of FSA.

2017 WHIP Payments

In general, all 2017 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 wildfire or hurricane damage. The value is determined by FSA using crop insurance or NAP prices. For tree, bush, and vine losses, 2017 WHIP payments will be based on the loss of value of the trees, bushes, and vines that were destroyed or damaged due to the wildfire or hurricane. Various factors will be considered to determine the payments, as explained below in detail; however, overall, the payment calculation includes reductions based on any additional payments that the participant received from crop insurance indemnities, NAP payments, and salvage value. Further, as noted above, 2017 WHIP is prohibited from paying for more than 85 percent of the total losses. Therefore, a 2017 WHIP factor will be applied to reduce the participant's payment to ensure that total 2017 WHIP payments are no more than 85 percent of the total losses by all 2017 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.

2017 WHIP Factors

After the eligible loss is determined and quantified, a 2017 WHIP payment 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 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 2017 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. As detailed in the following table, the 2017 WHIP factors will be between 65 percent, for uninsured crops, and 95 percent, for crops for which a producer obtained greater than an 80 percent crop insurance coverage level. Total 2017 WHIP payments issued to all participants will not exceed 85 percent of their collective losses, as authorized by BBA.

| Coverage Level | 2017 WHIP Payment Factor (percent) |
|--|------------------------------------|
| No crop insurance or No NAP coverage..... | 65 |
| Catastrophic coverage..... | 70 |
| More than catastrophic coverage but less than 55 percent | 72.5 |
| At least 55 percent but less than 60 percent..... | 75 |
| At least 60 percent but less than 65 percent..... | 77.5 |
| At least 65 percent but less than 70 percent..... | 80 |
| At least 70 percent but less than 75 percent..... | 85 |
| At least 75 percent but less than 80 percent..... | 90 |
| At least 80 percent | 95 |

More producers obtained coverage at the lower levels than obtained coverage at the higher levels. Therefore, including payments to individual participants at 90 and 95 percent, total 2017 WHIP payments will not exceed 85 percent of the value of total losses.

Payment Calculation for Yield-Based Crop Losses

The 2017 WHIP payments for yield-based crop losses will be calculated based on all acreage of the crop in a unit. The eligible crop acres will be multiplied by the 2017

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 and any salvage value. Additional adjustments will be applied to 2017 WHIP payment calculation based on whether the crop was prevented planted or unharvested to account for expenses that were not incurred.

The 2017 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. Using county expected yields for producers who did not have crop insurance or NAP coverage allows FSA to quickly provide disaster assistance payments to affected producers, by not requiring producers and FSA resources to spend additional time on the burden of computing approved yields, and improves integrity by not allowing producers who do not have adequate records an opportunity to provide production records from prior years. FSA recognizes that due to the severity of hurricanes affecting Puerto Rico, flexibility regarding required documentation is necessary in order to provide needed payments to producers who suffered extreme losses. FSA is using this streamlined determination for yields for all 2017 WHIP applicants in Puerto Rico to provide payments in a timely manner to producers who suffered known severe losses but may be unable to provide required documentation due to the extreme circumstances faced by the agricultural sector. FSA's decision to determine the extent of eligibility differently in Puerto Rico will have no impact on or be a consideration for losses sustained outside of Puerto Rico.

The participant's production for the crop year which suffered the loss (2017 or 2018, 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 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.

Payment Calculation for Value Loss Crops Losses

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, 2017 WHIP payments for value loss crops will be based on inventory and losses before and after the qualifying disaster event.

The 2017 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 2017 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 2017 WHIP for value loss and tropical crops. Nursery stock of trees, bushes, and vines is considered a value loss crop rather than a tree, bush, or vine loss for 2017 WHIP payment calculations.

Payment Calculation for Tree, Bush, and Vine Losses

Payments for trees, bush, and vine losses will be based on federal crop insurance principles and will be determined separately for different growth stages, as determined by the Deputy Administrator of Farm Programs, 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 2017 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. 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 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.

Future Crop Insurance or NAP Coverage

BBA requires all 2017 WHIP payment recipients to obtain coverage under an FCIA plan (crop insurance) or NAP coverage, as may be applicable and if available, for the next 2 crop years. Because sign-up for crop insurance and NAP coverage has already begun for some 2019 crops and due to potential conflicts or short time periods between 2017 WHIP sign-up dates and crop insurance and NAP application closing dates, FSA is requiring 2017 WHIP participants to obtain crop insurance or NAP for the next 2 available consecutive crop years after the crop year for which 2017 WHIP payments are paid, with the latest year for finally meeting compliance with this provision being the 2021 crop year. In other words, if the 2 consecutive years of coverage are not met by 2021 coverage year, the participant is ineligible for payments. Participants must obtain crop insurance or NAP, as may be applicable, at the 60 percent coverage level or higher, if available. If NAP coverage at the 60 percent coverage level is unavailable at the time

of the timely filing of an application for coverage, the participant must obtain NAP catastrophic level of coverage (that is, basic 50/55 NAP coverage).

There will be situations where a 2017 WHIP participant, who does not have to meet any adjusted gross income requirement for the 2017 WHIP payment and for which crop insurance is not available for a specific crop, will have to obtain NAP coverage due to the purchase requirement in BBA. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with adjusted gross income 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 BBA requirement to obtain NAP or crop insurance coverage, 2017 WHIP participants may meet the BBAs purchase requirement by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible, or they may pay the applicable NAP service fee and premium despite their ineligibility for a NAP payment. In other words, the service fee and premium must be paid even though no NAP payment will be made because the adjusted gross income 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 2017 WHIP payments are paid. This means that a producer who receives a 2017 WHIP payment for a crop in a county (physical location county for insurance and administrative county for NAP) is required to purchase crop insurance or NAP coverage for the crop in the county for which the producer was issued a 2017 WHIP payment. Producers who received a 2017 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 2017 WHIP payments for that crop in that county with interest from the date of disbursement. This is a condition of payment eligibility specified by BBA and is therefore not subject to partial payment eligibility or other types of equitable relief. Producers who were paid 2017 WHIP on a crop in a county but do not plant that crop in a subsequent year are not required to purchase crop insurance or NAP coverage for that specific crop and year.

Miscellaneous

Applicable general eligibility requirements, including recordkeeping requirements and required compliance with HELC 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.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except that when the rule involves a matter relating to public property, loans, grants, benefits, or contracts section 553 does not apply. This rule involved matters relating to benefits and is therefore being published as a final rule without the prior opportunity for comments.

Effective Date

The Administrative Procedure Act provides generally that before rules are issued by Government agencies, the rule is required to be published in the *Federal Register*, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, as noted above, the Administrative Procedure Act requirements, including the effective date delay, do not apply to rulemaking that involves a matter relating to benefit. Therefore, to provide benefits in a timely fashion, the 2017 WHIP regulations, are effective when published 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.

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. Although most of this rule’s impacts are income transfers between taxpayers and program beneficiaries, the associated cost-benefit analysis shows a government administrative cost of approximately \$10 million (which is the equivalent of \$0.53 million when annualized over a perpetual time horizon at a 7 percent discount rate). Therefore this rule is considered an Executive Order 13771 regulatory action.

Cost Benefit Analysis Summary

BBA provided up to \$2.36 billion for 2017 WHIP. Early estimates suggest that total 2017 WHIP payments could be lower than the \$2.36 billion. However, in addition to producer payments, WHIP funds will be used for a \$340 million block grant to Florida that will provide further aid to producers with damaged trees. The federal government is expected to expend around \$10 million to manage 2017 WHIP and because of the 2017 WHIP mandate that producers purchase insurance, the government is expected to incur around \$100 million in additional subsidy costs. The required policies will cost producers around \$60 million. USDA estimates that payment limitation savings will be at least \$50 million.

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 FSA 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 2017 WHIP is mandated by BBA. The legislative intent for implementing 2017 WHIP is to provide payments to the producers who suffered eligible crop, tree, bush, and vine losses resulting from 2017 hurricanes and wildfires.

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. The limited discretionary aspects of the program (for example, use of grants, and determining AGI and payment limitations) were designed to be consistent with established FSA disaster programs. As

such, the Categorical Exclusions found at 7 CFR part 799.31 apply, specifically 7 CFR 799.31(b)(6)(iv) and (vi) (that is, § 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. As such, FSA has determined that the implementation of 2017 WHIP and the participation in 2017 WHIP 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.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected 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 for compliance with 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 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided.

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.

SBREFA

This rule is a major rule under SBREFA. SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have suffered extensive damage due to the losses from the hurricanes and wildfires that occurred in 2017. Therefore, FSA finds that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of 2017 WHIP as required by BBA. The regulation needs to be effective to provide adequate time for producers to submit applications to request

payments. Therefore, this rule is effective on the **[Insert date of publication in the Federal Register]**.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is 2017 Wildfires and Hurricanes Indemnity Program and 10.120.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports 2017 WHIP and the block grant to Florida 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 2017 WHIP and the block grant to Florida 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 2017 WHIP.

Title: 2017 WHIP and Block Grant to Florida.

OMB Control Number: 0560-New.

Form number(s) for 2017 WHIP: FSA-890, Wildfires and Hurricanes Indemnity Program (WHIP) Application; FSA-891, Crop Insurance and/or NAP Coverage Agreement; FSA-892, Request for an Exception to the WHIP Payment Limitation of

\$125,000, if applicable; and FSA-893, 2018 Citrus Actual Production History and Approve Yield Records (Florida only).

Type of Request: New Collection.

Abstract: This information collection is required to support both the regulation in 7 CFR part 760, subpart O, for 2017 WHIP that establishes the requirements or eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from 2017 hurricanes and wildfires as specified in BBA and the block grant to Florida. 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 Grant to Florida, the same citrus growers are likely to apply for both 2017 WHIP and the grant because they will pay for different losses. The grant will pay for the tree replacement and 2017 WHIP will pay for citrus crop losses. FSA expects that Florida will use information provided to FSA by Florida applications as part of their documentation for application for tree replacement payments from Florida through the grant. Although we do not know what application Florida will use for the tree replacement payment applications, we estimate that it will take less time to complete than the FSA application.

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 0.6983 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: 44,124.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 44,124.

Estimated Average Time Per Response: 0.6983 hours.

Estimated Annual Burden on Respondents (WHIP applicants): 28,514.

Estimated Annual Burden on Respondents (Florida Grant): 1,097.

Estimated Total Annual Burden on Respondents: 29,611.

For 2017 WHIP, the per form estimated burden is:

| Form Name | Form Number | Number of Respondents | Total burden hours |
|---|------------------------|-----------------------|--------------------|
| Wildfires and Hurricanes Indemnity Program Notification | FSA-890 | 40,831 | 20,416 |
| Crop Insurance and/or NAP Coverage..... | FSA-891 | 40,831 | 3,401 |
| Request for an Exception to the WHIP Payment Limitation of \$125,000, WHIP only | FSA-892 | 16,332 | 1,360 |
| 2018 Citrus Actual Production History and Approve Yield Records (Florida only) | FSA-893 | 3,293 | 274 |
| Wildfires and Hurricanes Indemnity Program Application (Continuation Sheet) | FSA-890 (continuation) | 12,250 | 3,062 |

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.

E-Government Act Compliance

FSA is 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.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

For the reasons discussed above, FSA amends 7 CFR part 760 as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

1. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 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; and Title I, Pub. L. 115-123.

2. In part 760, add subpart O to read as follows:

Subpart O—2017 Wildfires and Hurricanes Indemnity Program

Sec.

- 760.1500 Applicability.
- 760.1501 Administration.
- 760.1502 Definitions.
- 760.1503 Eligibility.
- 760.1504 Miscellaneous provisions.
- 760.1505 General provisions.
- 760.1506 Availability of funds and timing of payments.
- 760.1507 Payment limitation.
- 760.1508 Qualifying disaster events.
- 760.1509 Eligible and ineligible losses.
- 760.1510 Application for 2017 WHIP payment.
- 760.1511 Calculating payments for yield-based crop losses.
- 760.1512 Production losses; participant responsibility.
- 760.1513 Determination of production.
- 760.1514 Eligible acres.
- 760.1515 Calculating payments for value loss crops.
- 760.1516 Calculating payments for tree, bush, and vine losses.
- 760.1517 Requirement to purchase crop insurance or NAP coverage.

Subpart O—2017 Wildfires and Hurricanes Indemnity Program

§ 760.1500 Applicability.

This subpart specifies the terms and conditions for the 2017 Wildfires and Hurricanes Indemnity Program (2017 WHIP). The 2017 WHIP provides disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of wildfires and hurricanes that occurred in calendar year 2017.

§ 760.1501 Administration.

(a) The 2017 WHIP is administered under the general supervision of the Administrator, Farm Service Agency (FSA), and the Deputy Administrator for Farm Programs, FSA. The 2017 WHIP is carried out by FSA State and county committees with instructions issued by the Deputy Administrator.

(b) FSA State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this subpart or instructions issued by the Deputy Administrator.

(c) The FSA State committee will take any action required by the regulations in this subpart that the FSA county committee has not taken. The FSA State committee will also:

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

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this subpart.

(d) No delegation to an FSA State or county committee precludes the FSA Administrator, the Deputy Administrator, or a designee, from determining any question arising under 2017 WHIP or from reversing or modifying any determination made by an FSA State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify a non-statutory deadline specified in this part.

(f) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to FSA State and county offices, prices, yields, and payment factors established for 2017 WHIP, are not subject to appeal in accordance with part 780 of this chapter.

§ 760.1502 Definitions.

The following definitions apply to this subpart. The definitions in §§ 718.2 and 1400.3 of this title also apply, except where they conflict with the definitions in this section. In the event of conflict, the definitions in this section apply.

2017 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 2017 WHIP participant for a crop for which a payment is being requested; or, as applicable, the factor that applies for a crop of a crop year where the participant had no insurance or NAP coverage.

2017 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 disaster year;
- (2) For a NAP covered crop, excluding crops located in Puerto Rico, the approved yield for the disaster year;
- (3) For a crop located in Puerto Rico or an uninsured crop, excluding citrus crops located in Florida, the county expected yield for the disaster year; and
- (4) For citrus crops located in Florida, the yield based on documentation submitted according to § 760.1511(c)(3), or if documentation is not submitted, the county expected yield.

Actual production means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator.

Administrative county office means the FSA county office designated to make determinations, handle official records, and issue payments for the farm as specified in accordance part 718 of this title.

Appraised production means the amount of production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed as specified in FCIC's Actual Production History (APH) Program in part 400, subpart G of this title or, for crops not included in part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title.

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 for the 2013, 2014, and 2015 tax years. The 2013, 2014, and 2015 tax years are the relevant years to calculate AGI for 2017 WHIP.

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 for the 2013, 2014, and 2015 tax years.

Bush means, a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial market for human consumption, such as a blueberry bush. The definition does not cover nursery stock or plants that produce a bush after the normal crop is harvested.

Buy-up NAP coverage means NAP coverage at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Catastrophic coverage has the meaning as defined in § 1437.3 of this title.

Citrus crops and citrus trees include grapefruit, lemon, lime, Mandarin, Murcott, orange (all types), pummelo (pomelo), tangelo, tangerine, tangor.

County disaster yield means the average yield per acre calculated for a county or part of a county for the current year based on disaster events, and is intended to reflect the amount of production that a participant would have been expected to make based on the eligible disaster conditions in the county or area, as determined by the FSA county committee in accordance with instructions issued by the Deputy Administrator.

County expected yield has the meaning assigned in § 1437.102(b) of this title.

Coverage level means the percentage determined by multiplying the elected yield percentage under a crop insurance policy or NAP coverage by the elected price percentage.

Crop insurance 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 insurance indemnity means, for the purpose of this subpart, the payment to a participant for crop losses covered under crop insurance administered by RMA in accordance with the Federal Crop Insurance Act (7 U.S.C. 1501-1524).

Crop year means:

(1) For insurable crops, trees, bushes, and vines, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP eligible crops, the crop year as defined in § 1437.3 of this title;

(3) For uninsurable trees, bushes, and vines, the 2017 crop year.

Damage factor means a percentage of the value lost when a tree, bush, or vine is damaged and requires rehabilitation but is not completely destroyed, as determined by the Deputy Administrator.

Eligible crop means a crop for which coverage was available either from FCIC under part 400 of this title, or through NAP under § 1437.4 of this title, that was affected by a qualifying disaster event.

Eligible disaster event means a disaster event that was:

(1) For insured crops, an eligible cause of loss under the applicable crop insurance policy for the crop year;

(2) For NAP covered crops and uninsured crops, an eligible cause of loss as specified in § 1437.10 of this title.

End use means the purpose for which the harvested crop is used, such as grain, hay, or seed.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented planted acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA, administered by RMA.

Final planting date means the latest date, established by RMA for insurable crops, by which the crop must initially be planted in order to be insured for the full production

guarantee or amount of insurance per acre. For NAP eligible crops, the final planting date is as defined in § 1437.3 of this title.

Growth stage means a classification system for trees, bushes, and vines based on a combination of age and production capability, determined by:

- (1) The applicable insurance policy for insurable trees, bushes, and vines; or
- (2) The Deputy Administrator for trees, bushes, and vines for which RMA does not offer an insurance policy.

Harvested means:

- (1) For insurable crops, harvested as defined according to the applicable crop insurance policy;
- (2) For NAP eligible single harvest crops, that a crop has been removed from the field, either by hand or mechanically;
- (3) For NAP eligible crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;
- (4) For mechanically-harvested NAP eligible crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

Insurable crop means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524).

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

Multiple cropping means the planting of two or more different crops on the same acreage for harvest within the same crop year.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

NASS means the National Agricultural Statistics Service.

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.

NAP covered crop means a crop for which the producer on a farm obtained NAP coverage.

NAP eligible crop means an agricultural crop for which the producer on a farm is eligible to obtain NAP coverage.

NAP service fee means the amount the producer must pay to obtain NAP coverage.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

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

Price means price per unit of the crop or commodity and will be:

(1) For an insured crop under a crop insurance policy that establishes a price to determine liability, that established price;

(2) For an insured crop under a crop insurance policy that does not establish a price to determine crop insurance liability, the county average price, as determined by FSA;

(3) For a NAP covered crop or uninsured crop, the average market price determined in § 1437.12 of this title; or

(4) For a tree, bush, or vine, the price determined by the Deputy Administrator based on the species of tree, bush, or vine and its growth stage.

Production means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds. Production under this subpart includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

Qualifying disaster event means a hurricane or wildfire or related condition that occurred in the 2017 calendar year.

Related condition means damaging weather or an adverse natural occurrence that occurred as a direct result of a hurricane or wildfire, as determined by FSA, such as excessive rain, high winds, flooding, mudslides, and heavy smoke, as determined by the Deputy Administrator.

Repeat crop means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use.

Secondary use value means the value determined by multiplying the quantity of secondary use times the FSA-established price for that use.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial market for human consumption, such as a maple tree for syrup, or papaya or orchard tree for fruit. It includes immature trees that are intended for commercial purposes. Nursery stock, banana and plantain plants, and trees used for pulp or timber are not considered eligible trees under this subpart.

Tropical crops is defined in § 1437.501 of this title.

Tropical region is defined in § 1437.502 of this title.

Unharvested payment factor means a percentage established by FSA for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed.

Uninsured means a crop that was not covered by crop insurance or NAP for the crop year for which a 2017 WHIP payment is being requested.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 or § 1437.9 of this title, for ornamental nursery production, includes all eligible plant species and sizes.

Unit of measure means:

- (1) For insurable crops, the FCIC-established unit of measure; and
- (2) For NAP eligible crops, the established unit of measure used for the NAP

price and yield.

USDA means the U.S. Department of Agriculture.

USDA Plant Hardiness Zone means the 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

Value loss crop has the meaning specified in subpart D, of part 1437 of this title.

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Nursery stock, perennials that are normally propagated as annuals such as tomato plants, biennials such as strawberry plants, and annuals such as pumpkin, squash, cucumber, watermelon, and other melon plants, are excluded from the term vine in this subpart.

Yield means unit of production, measured in bushels, pounds, or other unit of measure, per area of consideration, usually measured in acres.

§ 760.1503 Eligibility.

(a) Participants will be eligible to receive a 2017 WHIP payment under this subpart only if they incurred a loss to an eligible crop, tree, bush, or vine due to a qualifying disaster event, as further specified in this subpart.

(b) To be an eligible participant under this subpart a producer who is a person or legal entity must be a:

- (1) Citizen of the United States;
- (2) Resident alien; for purposes of this subpart, resident alien means “lawful alien;”
- (3) Partnership consisting of citizens of the United States or resident aliens; or
- (4) Corporation, limited liability company, or other organizational structure organized under State law.

(c) If any person who would otherwise be eligible to receive a payment dies before the payment is received, payment may be released as specified in § 707.3 of this title. Similarly, if any person or legal entity who would otherwise been eligible to apply for a payment dies or is dissolved, respectively, before the payment is applied for, payment may be released in accordance with this subpart if a timely application is filed by an authorized representative. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment. Eligibility of such participant will be determined, as it is for other participants, based upon ownership share and risk in producing the crop.

(d) Growers growing eligible crops under contract for crop owners are not eligible unless the grower is also determined to have an ownership share of the crop. Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for payments under this subpart.

(e) A person or legal entity is not eligible to receive disaster assistance under this subpart if it is determined by FSA that the person or legal entity:

(1) Adopted any scheme or other device that tends to defeat the purpose of this subpart or any of the regulations applicable to this subpart;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination under any or all of the following: This subpart and parts 12, 400, 1400, and 1437 of this title.

(g) A person ineligible for crop insurance or NAP under §§ 400.458 or 1437.16 of this title, respectively, for any year is ineligible for payments under this subpart for the same year.

(h) The provisions of § 718.11 of this title, providing for ineligibility for payments for offenses involving controlled substances, apply.

(i) As a condition of eligibility to receive payments under this subpart, the participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the applicable crop year for which the producer is applying for 2017 WHIP benefits, and must not otherwise be precluded from receiving payments under parts 12, 400, 1400, or 1437 of this title or any law.

§ 760.1504 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 parts 11 and 780 of this title apply to determinations under this subpart.

§ 760.1505 General provisions.

(a) For loss calculations, the participant's unit structure will be:

(1) For an insured crop, the participant's existing unit structure established in accordance with part 457 of this title;

(2) For a crop with NAP coverage, the participant's existing unit structure established in accordance with part 1437 of this title;

(3) For an uninsured crop, the participant's unit structure established in accordance with part 1437 of this title.

(b) FSA county committees will make the necessary adjustments to assign production or reduce the 2017 WHIP yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss;

(3) The loss is due to practices, soil type, climate, or other environmental factors that cause lower yields than those upon which the historic yield is based;

(4) The participant has a contract providing a guaranteed payment for all or a portion of the crop; or

(5) The crop was planted beyond the normal planting period for the crop.

(c) Assignment of production or reduction in yield will apply for practices that result in lower yields than those for which the historic yield is based.

(d) Eligibility and payments for 2017 WHIP will be determined based on a unit's:

(1) Physical location county for insured crops; and

(2) Administrative county for NAP covered crops and uninsured crops.

(e) FSA may separate or combine types and varieties as a crop for 2017 WHIP eligibility and payment purposes when specific credible information as determined by FSA shows the crop of a specific type or variety has a significantly different or similar value, respectively, when compared to other types or varieties, as determined by the Deputy Administrator.

(f) Unless otherwise specified, all the eligibility provisions of part 1437 of this title apply to value loss crops and tropical crops under this subpart.

(g) The quantity or value of a crop will not be reduced for any quality consideration unless a zero value is established based on a total loss of quality.

(h) FSA will use the best data available to calculate a 2017 WHIP payment at the time 2017 WHIP payments are calculated. If additional data or information is provided or becomes available after a 2017 WHIP payment is issued, FSA will recalculate the payment amount and the producer must return any overpayment amount to FSA. In all

cases, 2017 WHIP payments can only issue based on the payment formula for losses that affirmatively occurred.

§ 760.1506 Availability of funds and timing of payments.

(a) An initial payment will be issued for 50 percent of each 2017 WHIP payment calculated according to this subpart, as determined by the Secretary. The remainder of the calculated 2017 WHIP payment will be paid to a participant only after the application period has ended and any crop insurance indemnity or NAP payment the participant is entitled to receive for the crop has been calculated and reported to FSA, and then only if there are funds available for such payment as discussed in this subpart.

(b) 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 payments by a national factor to reduce the payments to an amount that is less than available funds as determined by the Secretary. FSA will prorate the payments in such manner as it determines equitable.

(c) Applications and claims that are unpaid or prorated for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

§ 760.1507 Payment limitation.

(a) For any 2017 WHIP payments for the 2017 or 2018 crop year combined, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, 2017 WHIP payments of not more than:

(1) \$125,000, if less than 75 percent of the person or legal entity's average adjusted gross income is average adjusted gross farm income; or

(2) \$900,000, if not less than 75 percent of the average adjusted gross income of the person or legal entity is average adjusted gross farm income.

(b) For 2017 WHIP eligibility, a person or legal entity's average adjusted gross income and average adjusted gross farm income are determined based on the 2013, 2014, and 2015 tax years.

(c) To be eligible for more than \$125,000 in 2017 WHIP payments, a person or legal entity must submit FSA-892 and provide a certification in the manner prescribed by FSA from a certified public accountant or attorney that at least 75 percent of the person or legal entity's average adjusted gross income was average adjusted gross farm income. Persons or legal entities who fail to provide FSA-892 and the required certification may not receive a 2017 WHIP payment, directly or indirectly, of more than \$125,000.

(d) The direct attribution provisions in part 1400 of this chapter apply to 2017 WHIP for both payment limitation as well as in determining average AGI as defined and used in this rule.

§ 760.1508 Qualifying disaster events.

(a) A producer will be eligible for 2017 WHIP payments for a crop, tree, bush, or vine loss only if the producer suffered a loss to the crop, tree, bush, or vine on the unit due to a qualifying disaster event.

(b) For a loss due to hurricane and conditions related to hurricanes, 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 hurricane occurring in the 2017 calendar year; or

(2) Secretarial Disaster Designation for a hurricane occurring in the 2017 calendar year.

(c) 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 2017 WHIP 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 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.

(d) For a loss due to wildfires and conditions related to wildfire in the 2017 calendar year, all counties where wildfires occurred, as determined by FSA county committees, are eligible for 2017 WHIP; a Presidential Emergency Disaster Declaration or Secretarial Disaster Designation for wildfire is not required. The loss of the crop, tree, bush, or vine must be reasonably related to wildfire and conditions related to wildfire, as specified in this subpart's definition of qualifying disaster event.

§ 760.1509 Eligible and ineligible losses.

(a) Except as provided in paragraphs (b) through (e) of this section, to be eligible for payments under this subpart the unit must have suffered a loss of the crop, tree, bush, or vine, or prevented planting of a crop, due to a qualifying disaster event.

(b) A loss will not be eligible for 2017 WHIP 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 drifting herbicides;

(2) The cause of loss was due to failure of the participant to re-seed or replant to the same crop in a county where it is customary to re-seed or replant after a loss before the final planting date;

(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;

(4) The cause of loss was due to conditions or events occurring outside of the applicable growing season for the crop, tree, bush, or vine; or

(5) The cause of loss was due to failure of a power supply or brownout.

(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 intended for grazing;

(2) Losses to crops for which FCIC coverage or NAP coverage is unavailable;

(3) Losses to volunteer crops;

(4) Losses to crops not intended for harvest;

(5) Losses of by-products resulting from processing or harvesting a crop, such as, but not limited to, cotton seed, peanut shells, wheat or oat straw, or corn stalks or stovers;

- (6) Losses to home gardens; or
- (7) Losses of first year seeding for forage production, or immature fruit crops.
- (d) The following losses of ornamental nursery stock are not eligible losses:
 - (1) Losses caused by the inability to market nursery stock as a result of lack of compliance with State and local commercial ordinances and laws, quarantine, boycott, or refusal of a buyer to accept production;
 - (2) Losses affecting crops where weeds and other forms of undergrowth in the vicinity of nursery stock have not been controlled; or
 - (3) Losses caused by the collapse or failure of buildings or structures.
- (e) The following losses for honey, as a crop, where the honey production by colonies or bees was diminished, are not eligible losses:
 - (1) Losses caused by the unavailability of equipment or the collapse or failure of equipment or apparatus used in the honey operation;
 - (2) Losses caused by improper storage of honey;
 - (3) Losses caused by bee feeding;
 - (4) Losses caused by the application of chemicals;
 - (5) Losses caused by theft;
 - (6) Losses caused by the movement of bees by or for the participant;
 - (7) Losses caused by disease or pest infestation of the colonies, unless approved by the Deputy Administrator;
 - (8) Losses of income from pollinators; or
 - (9) Losses of equipment or facilities.
- (f) Qualifying losses for trees, bushes, and vines will not include losses:

(1) That could have been prevented through reasonable and available measures;
and

(2) To trees, bushes, or vines that were abandoned or were not in use or intended for commercial operation at the time of the loss.

§ 760.1510 Application for 2017 WHIP payment.

(a) The 2017 WHIP application must be submitted on a completed form FSA-890, Wildfires and Hurricanes Indemnity Program Application, 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 2017 WHIP payment 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 2017 WHIP. 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 of following completed forms and information:

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

(2) Report of all acreage for the crop for the unit for which 2017 WHIP payments are requested, on FSA-578, Report of Acreage, or in another format acceptable to FSA;

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

(4) 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

(5) 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.

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

§ 760.1511 Calculating payments for yield-based crop losses.

(a) Payments made under this subpart to a participant for a loss to yield-based crops, including losses due to prevented planting, are determined for a unit by:

- (1) Multiplying the eligible acres by the 2017 WHIP yield in paragraph (c) of this section by the price;
- (2) Multiplying the result from paragraph (a)(1) of this section by the applicable 2017 WHIP factor in paragraph (b) of this section;
- (3) Multiplying the applicable production in paragraph (d) of this section by the price;
- (4) Subtracting the result from paragraph (a)(3) of this section from the result of paragraph (a)(2) of this section;
- (5) Multiplying the result from paragraph (a)(4) of this section by the participant's share in paragraph (e) of this section;
- (6) Multiplying the result from paragraph (a)(5) of this section by the applicable payment factor in paragraph (f) of this section;
- (7) Subtracting the amount of the gross insurance indemnity or NAP payment from the result from paragraph (a)(6) of this section; and
- (8) Subtracting the secondary use or salvage value of the crop from the result from paragraph (a)(7) of this section.

(b) If the NAP or crop insurance coverage is at the coverage level listed in the first column, then the 2017 WHIP factor is listed in the second column:

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

(c) The 2017 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 citrus crops located in Florida; or

(3) For uninsured citrus crops located in Florida:

(i) Determined based on information provided on FSA-893 and supported by evidence that meets the requirements of § 760.1513(c), or

(ii) If FSA-893 and supporting documentation are not submitted, the county expected yield.

(d) The production used to calculate a 2017 WHIP payment will be determined as specified in § 760.1513.

(e) The eligible participant’s share of a 2017 WHIP payment is based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was

produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for 2017 WHIP.

(f) Payment factors will be used to calculate payments for crops produced with significant and variable production and harvesting expenses that are not incurred because the crop acreage was prevented planted, or planted but not harvested, as determined by FSA. The use of payment factors is based on whether the crop acreage was unharvested or prevented planted, not whether a participant actually incurs or does not incur expenses. Payment factors are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly established payment factors are not appealable under parts 11 and 780 of this title. A crop that is intended for mechanical harvest, but subsequently grazed and not mechanically harvested, will have an unharvested payment factor applied.

(g) Production from all end uses of a multi-use crop will be calculated separately and summarized together.

§ 760.1512 Production losses; participant responsibility.

(a) For any record submitted along with the certification of production, the record must be either a verifiable or reliable record that substantiates the certification to the satisfaction of the FSA county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, a record of that disposition must be provided to FSA with the certification.

(1) Acceptable production records include:

(i) RMA or NAP records, if accurate and complete;

- (ii) Commercial receipts;
- (iii) Settlement sheets;
- (iv) Warehouse ledger sheets or load summaries; or
- (v) Appraisal information from a loss adjuster acceptable to FSA.

(2) If the eligible crop was farm-stored, sold, fed to livestock, or disposed of by means other than verifiable commercial channels, acceptable records for these purposes include:

- (i) Truck scale tickets;
- (ii) Appraisal information from a loss adjuster acceptable to FSA;
- (iii) Contemporaneous reliable diaries; or
- (iv) Other documentary evidence, such as contemporaneous reliable

measurements.

(3) Determinations of reliability with respect to this paragraph will take into account, as appropriate, the ability for FSA to review and verify or compare the evidence against the similarity of the evidence or reports or data received by FSA for the crop or similar crops. Other factors deemed relevant may also be taken into account.

(b) If RMA or NAP records are not available, or if the FSA county committee determines the RMA or NAP records as reported by the insured or covered participant appear to be questionable or incomplete, or if the FSA county committee makes inquiry, the participant is responsible for:

- (1) Retaining and providing, at time of application and whenever required by FSA, the best available verifiable or reliable or other production records for the crop;
- (2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the FSA county committee; and

(5) Providing supporting documentation if the FSA county committee has reason to question the disaster event or that all production has been taken into account.

(c) FSA may 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.

(d) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

§ 760.1513 Determination of production.

(a) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all the harvests in the crop year.

(b) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine payments. FSA will analyze and determine whether a participant's evidence of actual production represents all that could or would have been harvested.

(c) For all crops eligible for loan deficiency payments or marketing assistance loans (see parts 1421 and 1434 of this title) with an intended use of grain but harvested as silage, ensilage, cabbage, hay, cracked, rolled, or crimped, production will be converted to a whole grain equivalent based on conversion factors as previously established by FSA.

(d) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(e) Production that is commingled between crop years, units, ineligible and eligible acres, or different practices before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective year, unit, type of acreage, or practice, respectively. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the FSA county committee; or

(3) Had the current year's production appraised in a manner acceptable to the FSA county committee.

(f) The FSA county committee will assign production for the unit when the FSA county committee determines that:

(1) The participant has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this subpart, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The participant carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(5) A crop was late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(g) The FSA county committee will establish a county disaster yield that reflects the amount of production producers would have produced considering the eligible disaster events in the county or area for the same crop. The county disaster yield for the county or area will be expressed as either a percent of loss or yield per acre. The county disaster yield will apply when:

(1) Unharvested acreage has not been appraised by FSA or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(h) In no case will the production amount of any applicant be less than the producer's certified loss.

§ 760.1514 Eligible acres.

(a) Eligible acreage will be calculated using the lesser of the reported or determined acres shown to have been planted or prevented from being planted to a crop.

(b) Initial crop acreage will be the payment acreage for 2017 WHIP, unless the provisions for subsequent crops in this section are met. Subsequently planted or prevented planted acreage is considered acreage for 2017 WHIP only if the provisions of this section are met. All plantings of an annual or biennial crop are considered the same as a planting of an initial crop in tropical regions as defined in part 1437, subpart F, of this title.

(c) In cases where there is double cropped acreage, each crop may be included in the acreage for 2017 WHIP only if the specific crops are approved by the FSA State committee as eligible double cropping practices in accordance with procedures approved by the Deputy Administrator.

(d) Except for insured crops, participants with double cropped acreage not meeting the criteria in paragraph (c) of this section may have such acreage included in the acreage for 2017 WHIP on more than one crop only if the participant submits verifiable records establishing a history of carrying out a successful double cropping practice on the specific crops for which payment is requested.

(e) Participants having multiple plantings may receive payments for each planting included only if the planting meets the requirements of part 1437 of this title and all other provisions of this subpart are satisfied.

(f) Losses due to prevented planting are eligible for 2017 WHIP only if the loss was due to a qualifying disaster event. Provisions of parts 718 and 1437 of this title specifying what is considered prevented planting and how it must be documented and reported will apply to 2017 WHIP. Crops located in tropical regions are not eligible for prevented planting.

(g) Subject to the provisions of this subpart, the FSA county committee will:

(1) Use the most accurate data available when determining planted and prevented planted acres; and

(2) Disregard acreage of a crop produced on land that is not eligible for crop insurance or NAP.

(h) If a farm has a crop that has both FSA and RMA acreage for insured crops, eligible acres for 2017 WHIP will be based on the lesser of RMA or FSA acres.

§ 760.1515 Calculating payments for value loss crops.

(a) Payments made under this subpart to a participant for a loss on a unit with respect to value loss crops are determined by:

(1) Multiplying the field market value of the crop immediately before the qualifying disaster event by the 2017 WHIP factor specified in § 760.1511(b);

(2) Subtracting the sum of the field market value of the crop immediately after the qualifying disaster event and the value of the crop lost due to ineligible causes of loss from the result from paragraph (a)(1) of this section;

(3) Multiplying the result from paragraph (a)(2) of this section by the participant's share;

(4) Multiplying the result from paragraph (a)(3) of this section by the applicable payment factor;

(5) Subtracting the gross insurance indemnity or NAP payment from the result from paragraph (a)(4) of this section; and

(7) Subtracting the secondary use or salvage value of the crop from the result from paragraph (a)(5) of this section.

(b) In the case of an insurable value loss crop for which crop insurance provides for an adjustment in the guarantee, liability, or indemnity, such as in the case of inventory exceeding peak inventory value, the adjustment will be used in determining the 2017 WHIP payment for the crop.

(c) In the case of a NAP eligible value loss crop for which NAP provides for an adjustment in the level of assistance, such as in the case of unharvested field grown inventory, the adjustment will be used in determining the 2017 WHIP payment for the crop.

§ 760.1516 Calculating payments for tree, bush, and vine losses.

(a) Payments will be calculated separately based on the growth stage of the trees, bushes, or vines, as determined by the Deputy Administrator.

(b) Payments made under this subpart to a participant for a loss on a unit with respect to tree, bush, and vine losses are determined by:

(1) Multiplying the expected value (see paragraph (c) of this section) of the trees, bushes, or vines immediately before the qualifying disaster event by the 2017 WHIP factor specified in § 760.1511(b);

(2) Subtracting the actual value (see paragraph (d) of this section) of the trees, bushes, or vines immediately after the qualifying disaster event from the result of paragraph (b)(1) of this section;

(3) Multiplying the result of paragraph (b)(2) of this section by the participant's share;

(4) Subtracting the amount of any insurance indemnity received from the result of paragraph (b)(3) of this section; and

(5) Subtracting the value of any secondary use or salvage value from the result of paragraph (b)(4) of this section.

(c) 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.

(d) Actual value is determined by:

(1) Multiplying the number of trees, bushes, or vines damaged by a qualifying disaster event by the damage factor;

(2) Adding the result of paragraph (d)(1) of this section and the number of trees, bushes, or vines destroyed by a qualifying disaster event;

(3) Multiplying the result of paragraph (d)(2) of this section by the price; and

(4) Subtracting the result of paragraph (d)(3) of this section from the expected value from paragraph (c) of this section.

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

(f) Citrus trees located in Florida are ineligible for payment under this section.

§ 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 ends, but no later than the 2021 crop year, a participant who receives 2017 WHIP payments for a crop loss in a county must obtain:

(1) For an insurable crop, crop insurance with at least a 60 percent coverage level for that crop in that county; or

(2) For a NAP eligible crop:

(i) NAP coverage with a coverage level of 60 percent, if available for the applicable crop year, or NAP catastrophic coverage if NAP coverage is not offered at a 60 percent coverage level for that crop year.

(ii) Participants who exceed the average adjusted gross income limitation for NAP payment eligibility¹ for the applicable crop year may meet the purchase requirement specified in paragraph (a)(2)(i) of this section by purchasing Whole-Farm Revenue Protection crop insurance coverage , if eligible, or paying the NAP service fee and premium even though the participant will not be eligible to receive a NAP payment due to the average adjusted gross income limit but will be eligible for the WHIP payment.

(b) For the first 2 consecutive insurance years for which crop insurance is available after the enrollment period for 2017 WHIP ends, but no later than the 2021 crop year, any participant who receives 2017 WHIP payments for a tree, bush, or vine loss must purchase a plan of insurance for the tree, bush, or vine with at least a 60 percent coverage level.

¹See §§1400.500(a) and 1400.1(a)(4) of this title.

(c) If a producer fails to obtain crop insurance or NAP coverage as required in paragraphs (a) and (b) of this section, the producer must reimburse FSA for the full amount of 2017 WHIP payment plus interest that the producer received for that crop, tree, bush, or vine loss. A producer will only be considered to have obtained NAP coverage for the purposes of this section if the participant applied and paid the requisite NAP service fee and paid any applicable premium by the applicable deadline and completed all program requirements, including filing an acreage report as may be required under such coverage agreement.

Richard Fordyce,
Administrator,
Farm Service Agency.

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