

# NONINSURED CROP DISASTER ASSISTANCE PROGRAM

United States Department of Agriculture

*CAUTION: This article is intended for educational purposes, only. It does not constitute legal advice. Nor is it a substitute for legal advice. Federal laws, regulations and rules may change with some frequency. It is important to consult with an attorney who is knowledgeable in this area of the law.*

The Noninsured Crop Disaster Assistance Program (“NAP”), administered by the Farm Service Agency (FSA) of the United States Department of Agriculture (USDA) provides financial assistance for primarily catastrophic crop losses to crops that are not insurable. Not insurable means that the crops eligible for NAP are those crops for which crop insurance protection is not available under the Federal Crop Insurance Act.<sup>1</sup>

Losses covered under NAP include low yields, loss of inventory or prevented plantings. The losses must be caused by natural disaster. In general, assistance is available for losses that exceed 50% of the crop or for prevented plantings that exceed 35% of the intended crop acres. The amount paid is 55% of the market price. However, the Agricultural Act of 2014 (2014 Farm Bill) broadened coverage levels for certain crops, so that for a premium, a producer might increase coverage to as much as 65% of the crop (for losses that exceed 35% of the crop) at 100% of the market price. In addition, the 2014 Farm Bill provides for waivers of service fees and premium reductions for certain types of farmers, namely socially disadvantaged, limited resource and beginners.

The 2014 Farm Bill also made changes with respect to organic production and direct marketing to allow for separate pricing mechanisms for such production and marketing. In addition, the 2014 Bill a) introduced changes for crops grown on native sod (clarify the mandatory period of ineligibility for NAP coverage for such crops), b) clarified inclusion of certain feedstock crops for renewable biofuels, electricity or biobased products, c) added *insufficient chill hours* as a covered cause of loss for certain crops and conditions, and d) determined not to penalize producers in calculations of approved yields for failing to report their production in a year for which they did not have NAP coverage.

There are numerous eligibility and procedural criteria for receipt of NAP benefits, which in part are described below. It is important to contact your local FSA office in considering NAP coverage. NAP is not automatically available; it is something a producer must sign up for, i.e. an application for coverage, with payment of the service fee (see below), must be filed before any

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<sup>1</sup> 7 U.S.C 1501 et seq. The Federal Crop Insurance Act is administered by the Risk Management Agency. More than 100 crops are insurable, the most common being corn, soybeans, rice, cotton. Eligibility for crop insurance can vary by state and within a state. You should consult FSA to find out which crops are not insurable in your area to determine whether NAP is available.

coverage can begin. In addition, NAP potentially covers a wide range of “crops” and it therefore requires considerable expertise to navigate the program, an expertise which your local FSA office may provide. The USDA website is a source of thorough information and tools for using NAP.<sup>2</sup>

### **Assistance for losses**

- Loss of production
  - This is generally calculated in loss of yield.
- Loss of value
  - Pertains to what are called “value loss” crops, or crops for which calculating loss by yield is problematic, including aquaculture, floriculture, ornamental nursery, Christmas trees, mushrooms, ginseng, and turfgrass sod.<sup>3</sup>
- Prevented planting
  - Where a natural disaster prevents planting of a crop

### **Coverage available**

- *Basic coverage*: must suffer more than a 50% crop loss or be prevented from planting more than 35% of intended crop acres
  - 50/55 NAP coverage: covers losses in excess of 50% of approved yield at 55% of average market price
  - Basically insures 50% of crop at 55% of market price
- *Buy-up coverage*: from 50 to 65 percent of production, in 5% increments, at 100% of market price
  - Can insure up to 65% of crop at 100% of market price
  - Not available for forage crops, i.e. crops or grasses intended for grazing
- Total payments received under NAP cannot exceed \$125,000 per crop year per individual or entity.

### **Covered crops**

- The crops must be a) commercially produced, b) ineligible for Catastrophic Risk Protection (CAT) through the Risk Management Agency of USDA, and c) any of the following:
  - Crops grown for food
  - Crops planted or grown for livestock consumption, such as grain or forage crops, including native forage

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<sup>2</sup> See: <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/noninsured-crop-disaster-assistance/index> In addition, a useful tool exists to determine crop eligibility, premium payments and payments estimate for losses at: <http://fsa.usapas.com/NAP.aspx>

<sup>3</sup> FSA has authority to determine which crops fall into this category.

- Crops grown for fiber, such as cotton and flax (excludes trees grown for wood, paper or pulp products)
- Crops grown in a controlled environment, such as mushrooms and floriculture
- Specialty crops, such as honey and maple sap
- Sea oats and sea grass
- Industrial crops, such as feedstock for renewable biofuel, renewable electricity or biobased products
- Value loss crops, such as aquaculture, Christmas trees, ginseng, ornamental nursery and turf grass sod
- Seed crops, produced for sale as seed stock for other eligible NAP crops
- Note that livestock are excluded from coverage

### **Eligible Causes of Loss**

- Damaging weather, such as drought, freeze, hail, excessive moisture, excessive wind, tornado, hurricane, insufficient chill hours (the latter available only for certain crops and locations as determined by FSA)
- Adverse natural occurrences, such as earthquake, flood or volcanic eruption
- Conditions relating to either of these, such as excessive heat, plant disease, insect infestation (these conditions must occur in the context of damaging weather or adverse natural occurrences; they are not stand-alone eligible causes of loss)

### **Cost**

- Basic 50/55 coverage: Service Fee
  - \$250 per crop per county with maximum per county of \$750, and overall maximum fee of \$1875 per producer (for farming in multiple counties)
- Buy-Up Coverage
  - The Basic Service Fee + a premium equal to 5.25% times level of coverage
  - Maximum premium per producer is \$6562.50
  - Example of premium calculation, using apple orchard
    - 100% share in crop = 1
    - 20 acres of crop
    - 450 bushel yield per acre
    - \$10 per bushel price
    - 65% coverage level
    - $1 \times 20 \times 450 \times \$10 \times .65 \times .0525 = \$3071.25$  premium
    - If there is a 100% loss, the payment would equal \$58,500
- NAP is one of several USDA programs that targets benefits to beginning, socially disadvantaged or limited resource farmers and ranchers. In NAP, this benefit takes the

form of a waiver of the basic service fee and a fifty percent reduction of premiums for the buy-up coverage.

- Beginner: a person who has not operated, or who has not operated for more than ten years, a farm or ranch, and who materially and substantially participates in the operation, which means substantial day-to-day labor and management.
- Socially Disadvantaged: a farmer or rancher who is a member of a group that has been subject to racial, ethnic or gender prejudice, including women, Hispanics, American Indians, Alaska Natives, Asians, Asian Americans, or Native Hawaiians.
- Limited Resource Farmer or Rancher: A person whose earnings and income are limited. The earnings threshold is adjusted for inflation and the income threshold is measured against national poverty guidelines. An online tool is available to determine one's eligibility as a limited resource farmer or rancher.<sup>4</sup>
- Entity: There are rules that apply to determine whether or not an entity, such as a limited liability company or corporation, qualifies under any of these categories. In general, all or a majority of the members must individually qualify and sometimes must be related by blood or marriage.

### **Coverage Periods**

Coverage periods may vary according to the type of crop and kind of loss, e.g. annual crops, multiple planting crops, perennials and value loss crops. A producer's individual coverage, which must fall within the general coverage periods for the particular crop or loss, can in no event begin earlier than 30 days after an application for coverage is filed and the fee paid. (There is an exception to the 30-days-from-application for the 2015 crop year.) For further details contact your local FSA office. FSA will also publicize application closing dates, in local media, at the USDA Service centers, and through newsletters.

### **Producer Eligibility**

An eligible producer must have an ownership interest in the covered crop and share in the risk of producing the crop. The producer may be a landowner, operator, landlord, tenant or sharecropper. In order to verify that the producer has the requisite control over the land on which the crop is grown, FSA will require a copy of the lease, rental agreement, or other legal documentation, or a statement from the land owner or landlord attesting to the producer's control of the land.

The 2014 Farm Bill imposed new eligibility requirements based on total income. The producer's average adjusted gross income (AGI) for the applicable benefit year cannot exceed \$900,000. This limit applies to individuals and legal entities. The applicable benefit year is the year for which benefits (or compensation for losses) are sought. The term "average adjusted gross

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<sup>4</sup> <http://lrftool.sc.egov.usda.gov/DeterminationTool.aspx?fyYear=2016>

income” refers to the average AGI over the three taxable years that precede the most immediately preceding complete taxable year. For example, if a producer is applying for benefits for losses that occur in 2016, the three taxable years that count toward determination of average adjusted gross income are 2012-2014.

### **Average Market Prices**

NAP payments are calculated using average market prices. These prices are determined by FSA on a state-by-state basis for each crop. The price is also meant to reflect the intended use of the crop. The price is stated as a dollar value per applicable unit of measure for that crop, e.g. pounds, ounces, plants, flats, etc. To determine average price FSA takes the five years preceding the crop year at issue, drops the high and low years, and averages the remaining three. For those crops which lack five year market data, FSA has the ability to use the best available information. Separate prices may be established within a state for conventional and organic production. A payment factor is used to account for disposition of the crops, i.e. harvested, unharvested, prevented planting, and to account for attendant unincurred expenses.

Farmers who wish to choose organic pricing must do so in their application for coverage. They must report acreage as organic and provide a copy of their organic system plan. The farm must be organically certified, or, with respect to transitional acres, there must be written documentation from a certifying agency that the acres are under organic production. A separate APH (actual production history) database must also be established for organic production. NAP coverage for organic crops is available both at basic and buy-up levels.

FSA may establish an average market price that reflects prices received through direct marketing. To be eligible for this price a producer must elect the direct-market option on the application and must choose buy-up coverage for the crop. The producer must also submit actual marketing records for the previous one to three years.

### **Units**

In NAP, everything is understood and calculated according to the *unit*. How many acres are in the unit? What production was in the unit? What losses were suffered in the unit? What is the payment for those unit losses? County FSA offices establish the units in a county. The unit is the foundation for determinations and calculations under NAP. This is true for all of the crops covered under NAP, from honeybees to cucumbers. A unit is a way of identifying a producer’s interests in production of covered crops. There can be two kinds of interests – 100% interests and less than 100% interests. All of a producer’s 100% interests in a crop in a county will be part of a single unit. So, for example, a producer who is both owner and operator of land in the county makes up a single unit. If that same producer also rents land for cash from another land owner in the county, production on that rented land becomes part of the same single unit of the producer. Why? Because a cash lease is a 100% interest, similar to the interest of a person who

owns and operates their own ground. If that producer also rents ground from separate landowners on a share basis, there will be a separate unit for each of those crop-share leases, because they are less than 100% interests and because each unit involves a different land owner.

### **Approved Yields**

The approved yield is the expected crop production for the crop year for the unit. It is based on an average of a unit's actual production history (APH) for a minimum of four to a maximum of 10 crop years. APH is determined by dividing the total production by the crop acreage. The possible yields that may be used include actual yield, county expected yield, assigned yield or a zero-credited yield. (The latter is in effect a penalty for failure to report production for a year in which NAP coverage was in place but no loss was suffered; as distinguished from a by-pass year, a year in which no NAP coverage was obtained, in which case, with the passage of the 2014 Farm Bill, the producer will no longer be given a zero-credited yield.) The keeping of production records is an important way to ensure that actual production history may be used to determine approved yields.

### **Calculating Payments**

In general, payments are calculated per unit based on the crop acreage, approved yield, net production, coverage level (basic or buy-up), average market price for the commodity as established by FSA and a payment factor to account for the decrease in costs for crops that were not harvested or for which planting was prevented.

Calculations of payments can be very detailed efforts. FSA has provided a useful online tool to estimate payments.<sup>5</sup>

### **Procedure**

How does it work?

- Apply for coverage by the relevant deadline
  - Form CCC-471: application for coverage.
    - File by the application closing date. Closing dates vary by crop. To obtain precise information on closing dates, contact your local FSA office.
  - Applying for coverage and paying the fee does not guarantee eligibility
- Determine and Understand the coverage period
  - It is important to know the coverage period for, among other things, meeting the deadlines for filing a Notice of Loss and Application for payment
- Remain eligible by providing necessary information
  - Acreage reporting: unit acreage certifications are filed on Form FSA-578. The information in general includes the name, type and variety of the crop, location

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<sup>5</sup> See: <http://fsa.usapas.com/NAP.aspx>

and acreage (field, sub-field), share of the crop (and names of other interest-holders), type of practice used (i.e. irrigated, non-irrigated), date of planting and intended use of the crop. FSA encourages reporting crop acreages shortly after planting in order avoid missing deadlines and forfeiting coverage.

- Production reporting: It is the producer's responsibility to provide the best available evidence of the quantity of harvested production and disposition of the crop. It is important to work with FSA to understand the deadlines for reporting such information and the kind of production records that FSA expects with respect to any particular crop. Records may include commercial receipts, settlement sheets, warehouse ledger sheets, pick records, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels; documentary evidence, such as contemporaneous measurements, truck scale tickets, pick records, and contemporaneous diaries, as necessary, to verify information provided by the producer if the eligible crop was stored, sold, fed to livestock, or otherwise disposed of other than through commercial channels.

Acreage and production reportings are used not only to verify the existence of a crop and record the number of covered acres, but to calculate approved yields, i.e. the expected production for a crop year.

- Notice of Loss and Application for payment – Form CCC-576
  - Filed within 60 days of last day of coverage
  - Provide acceptable appraisal information
  - Provide evidence of production
  - Note disposition of crop: marketable, unmarketable, salvaged, or used differently than intended

#### Legal Aid of Nebraska

- *For additional information, contact your local FSA office.*
- *Information may also be available through the Nebraska Rural Response Hotline (1-800-464-0258).*
- *This is a document prepared by Legal Aid of Nebraska. It is not a USDA document.*