Organic Farmers in Disasters:

Flooding and Whole Farm Revenue Crop Insurance

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I. Introduction

This booklet is intended to assist organic farmers in time of disaster. It looks at two important issues. First, it discusses the extremely challenging effect of a flood on an organic farm. Second, this booklet discusses a relatively new form of crop insurance – Whole-Farm Revenue -- that could benefit organic producers going forward.

II. Flooding and the Organic Farm

A. Introduction

During a flood or other natural disaster there will be a series of challenges facing every farmer. For an organic farmer, the flood or other natural disaster will have results that can be unique to organic production. One of the merits of organic agriculture is greater resilience in the face of a natural disaster. Soils on organic farms, for example, seem better able to hold moisture during drought years and are more productive during extremely wet years.[1] The organic plan that farmers adopt, and the records that organic farmers are required to keep, may help farmers after a natural disaster strikes.[2] This is especially true for the records kept along with the plan.[3] Successful use of disaster assistance programs often requires detailed records of crop yields and prices, of livestock harmed in the disaster or sold earlier than planned due to feed shortages, and other information. An organic farm is likely to have the records required for disaster programs. Disaster assistance for farmers sometimes comes in the form of programs created or funded by Congress long after the disaster. Well-maintained records can help farmers document losses from previous years and establish eligibility for late-enacted programs.

B. After the Flood: Some Early Steps

In the early stages of flood recovery, several steps may be helpful for organic farmers.

1. Document the Damage

Almost every form of assistance for recovery for a disaster will require documentation of the effects on the farm of the disaster. One of the first steps a farmer should take in recovering from a disaster is to document the damage to the farm. Pictures and descriptions of facilities or land damaged, animals harmed, information on crops lost and plantings prevented, and other records of what happened will be helpful down the road.

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1 See, for example, D.W. Lotter et al, *The Performance of Organic and Conventional Cropping System in an Extreme Climate Year*, 18(3) AMERICAN JOURNAL OF ALTERNATIVE AGRICULTURE 146 (2003).

2 7 C.F.R. § 205.2, "Organic system plan" (2017); 7 C.F.R. § 205.201(a) (2017).

3 See *National Organic Program, Instruction: Recordkeeping*, NOP 2602 (July 22, 2011).

2. Make Important Contacts

Recovery from a farm flood will be slow and hard. Among the first steps in a recovery from the flood is to contact some people about the flood. Those to contact should include the following.

Organic farmers must submit updated information to the certifying agent each year.[4] An organic farmer affected by natural disaster should immediately notify the certifying agent of any change in the farming operation that may affect the farmer's compliance with organic requirements.[5] In particular, organic farmers should notify their certifiers right away if a natural disaster leads to application of a "prohibited substance" to the operation.[6]

Many organic farmers will have crop insurance. If so, farmers should contact that insurance provider right away. There may be important decisions and actions to take to preserve an insurance claim. The same is true for hazard, flood, or other forms of insurance. The sooner insurance companies are notified about claims that the farmer may have the better.

Some organic farmers have significant and longstanding contacts with local USDA offices. For example, some growers will have signed up for Noninsured Crop Assistance Program (NAP). These farmers should contact USDA about NAP benefits right away. Other farmers will not have had much contact with USDA. These producers may still be in position to benefit from USDA disaster programs over the medium and longer term. Farmers should make sure they know about the programs that may help. The various forms of assistance possibly available from USDA -- cost-sharing, loans, livestock disaster benefits, and others – can only be applied for if the producer knows about them.

Whether the grower has had much contact with USDA in the past or not, after a disaster strikes it makes sense for the farmer to contact USDA, let USDA know that the farm has been hit by the disaster, and explain that the farmer is interested in knowing about any program that might be able to help in the disaster recover.

4 7 C.F.R. § 205.406 (2017).
5 7 C.F.R. § 205.400(f)(2) (2017).
6 7 C.F.R. § 205.400(f)(1) (2017).

C. Organic Certification Issues

1. The Organic Plan: Changes May be Needed

Every organic producer has a detailed "Organic System Plan (OSP)."[7] These plans concern almost all aspects of agricultural production, recordkeeping, and management practices. Organic plans are updated every year.[8] Flooding may mean that the farmer needs to change the plan at the annual review.

Organic regulations allow a farmer to change the plan in the middle of the year as long as the plan still meets organic requirements.[9] If there are changes in the operation that are not called for in the organic plan – and the changes may affect the farms compliance with organic regulations -- the farmer must notify the organic certifier. [10] The certifier must agree to changes in the plan. Similarly, if the farmer adds acres or a new facility to the operation, this must be reported to the certifier. Organic rules are written to suggest that even changes that seem small need to be reported. As the rules say, "any changes that may affect compliance with the regulations" should be reported to the certifier.[11]

The farmer can report changes to the certifier either verbally or in writing.[12] It is probably wise, however, for the farmer to do both.

2. Report Prohibited Substances

If a "prohibited substance" is applied to the organic cropland, the farmer must report this to the certifier.[13] This is true even if the application of the prohibited substance was an accident.

3. Temporary Variances

A natural disaster, such as a flood, may make some parts of the organic program impossible to maintain. USDA's Agricultural Marketing Service (AMS) is allowed to grant "temporary variances" from some organic rules during a flood or other

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7 7 C.F.R. § 205.201 (2017). Plans are described in detail in *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615 (December 16, 2013).

8 7 C.F.R. § 205.406 (2017); *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615, section 3.3 (December 16, 2013).

9 7 C.F.R. § 205.201(b) (2017); *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615, section 3.4 (December 16, 2013).

10 *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615, section 3.4 (December 16, 2013).

11 *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615, section 3.4 (December 16, 2013).

12 *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615, section 3.4 (December 16, 2013).

13 *National Organic Program, Instruction: Organic System Plans, Organic System Plan Updates, and Notification of Changes* , NOP 2615, section 3.4 (December 16, 2013).

natural disaster. AMS is allowed to grant what are called "temporary variances" from some organic rules when there is a natural disaster declared by USDA.[14] AMS may also do so for an undeclared disaster if there is damage caused by "drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption." AMS grants temporary variances with some regularity and natural disasters – especially droughts – have been a common trigger for the variances.[15] At times AMS has approved a waiver for broad areas. One variance in 2011, for example, applied to the entire state of Texas. In 2012, AMS granted a variance relating to dry matter pasture requirements for hundreds of counties.

a. Possible Temporary Variance

The following areas of organic requirements CAN be changed in a temporary variance.[16]

Organic rules set out the tillage and cultivation practices that may be used.[17] In general, these rules improve the condition of the soil and prevent erosion, require use of cover crops and rotations, and farming in way that does not contribute to the contamination of crops soil or water by residues of prohibited substances.

Organic rules require farmers to use organically grown seeds, annual seedlings, and planting stock.[18] Organic rules also require producers to use crop rotations in order to benefit soil organic matter, manage pests, manage plant nutrients, and provide erosion control.[19] Organic producers also must use certain practices to manage pests, weeds and disease.[20] These include for example, crop rotation, nutrient management practices, and cultural practices to prevent pest's weeds, and disease.

Organically certified livestock must meet origin and management rules that vary depending on whether the animals are poultry, dairy, breeder stock, and so forth.[21] The rules say that livestock or edible livestock product may not be removed from an organic operation to a nonorganic operation and still be certified as organic. Similarly, breeder or dairy stock that must be been managed under continuous organic management since the last third of gestation.

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14 7 C.F.R. § 205.290(a) (2017).

15 Current and past temporary variances are listed in the USDA website. See https://www.ams.usda.gov/sites/default/files/media/NOP-TemporaryVariances.pdf and https://www.ams.usda.gov/sites/default/files/media/NOP-ExpiredVariances.pdf.

16 7 C.F.R. § 205.290(a) (2017). Temporary variances may be granted for requirements found in 7 C.F.R. §§ 205.203 to 205.207, for §§ 205.236 to 205.240, and for §§ 205.270 to 205.272.

17 7 C.F.R. § 205.203 (2017).

18 7 C.F.R. § 205.204 (2017).

19 7 C.F.R. § 205.205 (2017).

20 7 C.F.R. § 205.206 (2017).

21 7 C.F.R. § 205.236 (2017); LINDA COFFEY and ANN H. BAIER, NATIONAL CENTER FOR APPROPRIATE TECHNOLOGY (NCAT), GUIDE FOR ORGANIC LIVESTOCK PRODUCERS 45-46 (November 2012).

An organic livestock producer must establish and maintain livestock living conditions that accommodate the health and natural behavior of animals. Specific rules govern confinement of animals, access to the outdoors, and other aspects of livestock management.[22] The rules say that animals may be temporarily confined due to "inclement weather."[23] A temporary waiver might allow for animals to be confined in addition to this consideration.

Ruminant livestock -- including sheep, goats, dairy, beef cattle, and some other animals -- are required by organic rules to have a certain level of access to pasture.[24] Organic rules also govern the feed that may be fed to livestock.[25]

b. Prohibited Substances, Methods, and Ingredients CANNOT be the Subject of a Temporary Waiver

As organic farmers know well, organic rules strictly ban the use of a number of "prohibited substances, methods, and ingredients" in organic production.[26] A temporary variance is NOT possible for prohibited substances, methods, and ingredients.[27]

c. Feeding of Livestock --- AMS Says They Will Not Approve

Organic rules require organic feed to be fed to organic livestock.[28] Organic regulations allow this aspect of the organic rules to be waived by a temporary variance.[29] AMS, however, says that it will not approve temporary variances for this purpose.[30]

22 7 C.F.R. § 205.239 (2017).

23 7 C.F.R. § 205.239(b) (1) (2017). Inclement weather is defined as weather that is "violent, or characterized by temperatures (high or low), or characterized by excessive precipitation" that can result in "physical harm to a given species of livestock." If the weather limits yield or growth rates below the maximum that is possible, that does not count as inclement weather for this purpose. 7 C.F.R. § 205.2 (2017).

24 7 C.F.R. § 205.240 (2017); LEE REINHART & ANN H. BAIER, NATIONAL CENTER FOR APPROPRIATE TECHNOLOGY (NCAT), PASTURE FOR ORGANIC RUMINANT LIVESTOCK: UNDERSTANDING AND IMPLEMENTING THE NATIONAL ORGANIC PROGRAM (NOP) PASTURE RULE (May 2011).

25 7 C.F.R. § 205.237 (2017).

26 7 C.F.R. § 205.105 (2017).

27 7 C.F.R. § 205.290(e) (2017).

28 7 C.F.R. § 205.237 (2017).

29 According to 7 C.F.R. § 205.290(a) (2017), temporary variances may be granted for requirements found in 7 C.F.R. §§ 205.203 to 205.207, for §§ 205.236 to 205.240, and for §§ 205.270 to 205.272. Feed rules are at 7 C.F.R. § 205.237 (2017).

30 NATIONAL ORGANIC PROGRAM, INSTRUCTION: TEMPORARY VARIANCE, NOP 2606, Section 3 (November 20, 2015).

d. How a Temporary Variance Application is Created

For a temporary variance to be put in place, the following steps must take place.[31] Farmers can ask for a temporary variance.[32] Farmers should send the request to their certifier. The request must be in writing and must include "supporting documentation" that explains why the variance is needed. The certifier reviews requests for temporary variances from farmers.[33] Certifiers then forward the request on to AMS along with a recommendation of whether the temporary waiver should be granted. At AMS the request is first reviewed by the National Organic Program (NOP).[34] NOP then recommends to the AMS Administrator whether to grant or deny the temporary variance. If the AMS Administrator grants the temporary variance a "Notice of Temporary Variance Approval" will be issued by the National Organic Program. It will include the scope, restrictions, duration of the temporary variance. If the temporary variance is denied, a notice of denial will be issued. It will include the reason for the denial.

e. If Temporary Variance is Granted

If AMS grants a temporary variance, AMS will give written notification to certifying agents and set out the period of time in which the variance will be in effect.[35] AMS has the power to extend the temporary variance period as AMS thinks is necessary.

Once certifiers are notified by AMS of the establishment of a temporary variance, the certifiers must notify the operations that would be affected by the temporary variance.[36]

Other than requirements specifically granted a temporary variance, all other organic certification requirements continue to apply.

If it is granted the variance will only be temporary. Farmers must keep records on the practices or procedures that were affected by the variances.[37]

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31 NATIONAL ORGANIC PROGRAM, INSTRUCTION: TEMPORARY VARIANCE, NOP 2606 (November 20, 2015).

32 NATIONAL ORGANIC PROGRAM, INSTRUCTION: TEMPORARY VARIANCE, NOP 2606, Section 4.1 (November 20, 2015).

33 NATIONAL ORGANIC PROGRAM, INSTRUCTION: TEMPORARY VARIANCE, NOP 2606, Section 4.2 (November 20, 2015).

34 NATIONAL ORGANIC PROGRAM, INSTRUCTION: TEMPORARY VARIANCE, NOP 2606, Section 4.3 (November 20, 2015).

35 7 C.F.R. § 205.290(c) (2017).

36 7 C.F.R. § 205.290(d) (2017).

37 NATIONAL ORGANIC PROGRAM, INSTRUCTION: TEMPORARY VARIANCE, NOP 2606, Section 4.1 (November 20, 2015).

D. Prohibited Substances on an Organic Farm During Flooding

One concern that arises with floods is that contamination is carried by flood water and deposited on farms.

1. Prohibited Substances and Organic Farming

Prohibited substance rules are well known to organic farmers. Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as organic must have had no prohibited substances applied to it for a period of three years immediately preceding harvest of the crop.[38]

2. Notify Certifier of Drift or Unintended Application

Organic farmers must notify the certifier concerning any application of a prohibited substance to an organic operation.[39] Application, for this purpose, includes drift, and drift is defined as the physical movement of prohibited substances from the intended target site onto an organic farm. As a result, farmers must notify certifiers of any possible contamination which occurs as a result of natural disaster.

3. Certifiers Will Inspect and May Test

When there is reason to believe that an organic product has come into contact with a prohibited substance, the certifier or USDA may require testing of a sample of the agricultural product.[40] A natural disaster may provide the basis for a belief that contamination has occurred.

Certifiers are likely to inspect the flooded farm and look for signs of prohibited substances – for example oil residues. They may also collect samples for testing. Certifiers doing testing must follow certain procedures.[41]

4. Possible Exclusion from Sale as Organic

If a prohibited substance is found on an agricultural product at levels that exceed the organic standard limits, the agricultural product must not be sold as organic.[42] It may be sold in conventional markets if it does not violate any other generally applicable laws.

In theory, therefore, a flood could end up causing an organic farm to be unable to sell some products as organic.

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38 7 C.F.R. § 205.202(b) (2017).

39 7 C.F.R. § 205.400(f)(1) (2017). Drift is defined as the physical movement of prohibited substances from the intended target site onto an organic farm or field. 7 C.F.R. § 205.2 (2017).

40 7 C.F.R. § 205.670(b) (2017).

41 7 C.F.R. § 205.670 (2017).

42 7 C.F.R. § 205.671 (2017).

5. Appeal Rights

Producers have the right to appeal adverse decisions under the National Organic Program.[43] If a farmer has goods that are ruled by the certifier to not qualify as organic the farmer has a right to appeal.

E. FDA and Food Safety Issues

Flood water, it is important to remember, can be contaminated by any number of sources – such as overflow from septic systems, animal manure, chemicals, fuel, heavy metals, bacteria, viruses, and parasites.

As a result, the Food and Drug Administration (FDA), which along with a number of other government agencies, regulates food safety, has created a set of rules that apply when a farm has been flooded. The following discussion applies to all farms, not just organic farms.

1. Flood Waters "Adulterate" Food

FDA has strict rules regarding what it calls "adulterated" food. It has concluded that flooded crops should be considered "adulterated." Adulterated crops may not enter the human food chain.

FDA has issued formal guidance for the safety of flood-affected food. The following describes that guidance.[44] The guidance can be confusing in the sense that FDA believes some practices are required, and recommends other practices, but does not require them.

2. Farmers Must Discard Crops in Contact With Flood Waters

If the edible portion of a crop was in contact with flood waters, the crop must be discarded, destroyed, or tilled into the soil. It may not be sold as food. It also may not be fed to livestock. FDA also believes there is no practical way to clean crops that have been exposed to flooding.

a. Both Ground Crops and Root Crops

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43 7 C.F.R. § 205.681 (2017). Appeal rights are explained in AGRICULTURAL MARKETING SERVICE, OFFICE OF ADMINISTRATOR, ADVERSE ACTION APPEAL PROCESS FOR THE NATIONAL ORGANIC PROGRAM, NAP 40011 (December 23, 2014).

44 FOOD AND DRUG ADMINISTRATION, GUIDANCE FOR INDUSTRY EVALUATION THE SAFETY OF FLOOD-AFFECTED FOOD CROPS FOR HUMAN CONSUMPTION (October 2011). http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/EmergencyResponse/ucm287808.htm. Another useful summary is University of Vermont Extension, *Frequently Asked Questions About Handling Flooded Produce* (July 10, 2013) at https://www.uvm.edu/vtvegandberry/factsheets/Flooded_Produce_FAQ.pdf and in a slightly updated version released by Missouri Extension and Kansas State Research and Extension, here: https://www.k-state.edu/foodsafety/topics/doc/Flooded_Produce_FAQ%20UVM%20_KSMO.pdf.

This rule applies to both ground crops and, because flood waters are assumed to seep underground, root crops. This means that surface crops, such as green tomatoes, beans, and corn, and underground crops, such as peanuts, potatoes, and carrots are all considered adulterated by FDA if the edible portion of the crop has been in contact with flood water.

This rule applies even if the plant was immature during the flood, and even if the crop has a hard outer shell or skin, such as watermelon.

FDA has concluded that even if the crop is not completely submerged there could still be contamination of the edible part of the crop.

b. If Flood Waters do NOT contact the Edible Portion of the Crop

FDA recommends that crops should be evaluated on a case by case basis for contamination even if the flood water did not contact the edible part of the crop.

c. Penalties Possible

Under FDA's interpretation of the law if a farmer sells food adulterated by flood water that makes people sick, criminal liability is possible.[45]

II. Organic Farmers and Whole-Farm Revenue Protection

A. Introduction

For many years, federal crop insurance and United States Department of Agriculture (USDA) disaster assistance programs have not seemed designed to help farmers that have diversified organic operations. Organic producers seemed left behind by crop insurance.

In recent years, this situation has begun to change. Organic price elections are now possible for crop insurance. In addition, a relatively new program, Whole-Farm Revenue Protection, is designed to provide crop insurance protection to diversified producers. The general principle of Whole-Farm Revenue Protection is that the income covered by the policy is the total revenue a farmer can expect from the farm, and the insurance enjoys roughly the same level of federal financial support as other forms of crop insurance. In very rough terms, therefore, farmers that can participate in Whole-Farm will receive the same sort of benefits and protections that have long been available to farms that just raised a crop or two.

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45 21 U.S.C. §§ 331, 333.

Whole-Farm is not without its problems and odd wrinkles. The reliance on several years of tax and other records to establish a historical record for Whole-Farm is one such issue. There are others.

B. Crop Insurance in General

Whole-Farm Revenue Protection is a form of federally insured crop insurance. That means the farmer buys the insurance from a crop insurance provider, and the federal government reinsures the provider and writes detailed rules that govern the crop insurance policies that are sold. Under federally insured crop insurance, the farmer has a written contract with the crop insurance provider—a company that sells crop insurance—that must be followed if the farmer wants to remain eligible for an indemnity in case of weather or other problems. It is important to follow the policy closely and to understand what it requires of the farmer. Rules about notice to the insurance provider of a loss, what can and cannot be done with crops that are part of a crop insurance claim, reports that must be made by the farmer, and other requirements are essential to follow if the farmer is to receive the benefits of crop insurance.

C. Whole-Farm Revenue Protection: The General Idea

The principle behind Whole-Farm Revenue Protection is that when a farm is diversified it already manages risk to a certain degree. The farm's eggs, one might say, are spread out in a number of different baskets. As a result, it makes sense to offer a crop insurance policy that insures the total farm income for the operation for that year—no matter how many different commodities are raised and sold, or how unusual the mix of things raised and grown on the farm might be. Advocates of diversified and sustainable farming have been calling for something like Whole-Farm for a long time. [46]

Farmers who want to buy Whole-Farm Revenue Protection coverage will need to buy it from someone who sells crop insurance. RMA calls these businesses "approved insurance providers."

Every federally insured crop insurance provider is required to offer Whole-Farm Revenue Protection to farmers.[47] They must administer the program according to the policy and the rules in the RMA Handbook.[48] Crop insurance agents are also required to understand Whole-Farm and be able to explain it to farmers.[49]

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46 See, for example, NATIONAL SUSTAINABLE AGRICULTURE COALITION, WHOLE FARM REVENUE PROTECTION FOR DIVERSIFIED FARMERS (2016), http://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/whole-farm-revenue-protection-for-diversified-farms/. See, as well, BEAU OLEN & JUNJIE WU, TRACKING THE EVOLUTION AND RECENT DEVELOPMENTS IN WHOLE FARM INSURANCE PROGRAMS, 32(3) Choices (3rd quarter 2017).

47 *Whole-Farm Handbook* §§ 1(D), 2(B)(1) (crop years 2017, 2018).

48 *Whole-Farm Handbook* §§ 1(D), 2(B)(3) (crop years 2017, 2018).

49 *Whole-Farm Handbook* § 2(C)(1)-(2) (crop years 2017, 2018).

So far, not many farmers have used Whole-Farm Revenue Protection coverage, and the use of it has varied widely. For example, in the Pacific Northwest quite a number of farms have used it, but in Texas and the southeast very few farmers have done so.[50]

Based on what we at FLAG have heard from farmers and their advocates, not all crop insurance providers seem interested in offering Whole-Farm Revenue Protection Policies. It should be emphasized that if a crop insurance provider sells ANY federally insured crop insurance, that provider must be willing to understand and sell ALL federally insured crop insurance policies—including Whole-Farm Revenue Protection. [51]

Farmers that find insurance providers unwilling to learn and sell Whole-Farm Revenue Protection should feel free to contact FLAG.

D. The Appeal of Whole-Farm Revenue Protection

The basic appeal of Whole-Farm Revenue Protection is essentially three-fold.

First, Whole-Farm Revenue Protection is designed to reward diversified farms. The devil will always be in the details for crop insurance or other farm strategies, but for many diversified farmers Whole-Farm is likely to be a viable tool.

Second, for farms with an established record of production and sales, Whole-Farm Revenue Protection can offer risk protection for a wide variety of farming activities. If a farm has an established history—even if production is unusual or divided up among a number of crops—insurance covering the projected income based on that history is available.

Third, from a financial perspective, Whole-Farm Revenue Protection is now essentially on par with other more familiar forms of crop insurance in terms of the financial support it receives from the federal government. Crop insurance is increasingly replacing federal farm programs as the main way that the federal government creates a safety net for farmers. The federal government spends billions of dollars paying part of the premiums for crop insurance. In general, about 65 percent of the cost of crop insurance is paid by the federal government, and about 35 percent is paid by the insured farmers. For many years in a row, farmers, as a whole, have far more in crop insurance indemnities than they have paid in premiums.[52]

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50 The regional and other aspects of Whole-Farm Revenue Protection usage are discussed in Beau Olen and JunJie Wu, Tracking the Evolution and Recent Developments in Whole Farm Insurance Programs, 32(3) Choices (3rd Quarter).

51 *Whole-Farm Handbook* §§ 1(D), 2(B)(1) (crop years 2017, 2018).

52 For the 2015 crop year, about 2.2 million federally insured crop insurance policies were sold. The total premiums—the cost of the policies—was about 9.8 billion dollars. The federal government contributed about 6.1 billion dollars to those premiums. Farmers therefore paid about 3.7 billion dollars in premiums. Farmers then received about 6.3 billion dollars in indemnities. See, *FCIC, Commodity Year Statistics for 2015, Nationwide Summary—By Insurance Plan* (December 18, 2017), which can be found at: https://www3.rma.usda.gov/apps/sob/current_week/insplan2015.pdf. Crop year 2016 data looks similar. As of December 2017, the total premiums for crop year 2016—the cost of the policies—was

Of course, every farm, and every crop year, will have a different result. And one cannot say for sure, but for farmers as a whole it seems likely that Whole-Farm Revenue Protection will pay out more in indemnities to farmers than the farmers will pay in premiums for the insurance.[53]

When these three factors are combined, it means that for diversified farms—that previously found crop insurance or other alternatives, like the Noninsured Assistance Program (NAP), unworkable—there is a crop insurance alternative that allows farmers to more fully account for their actual farm revenue. For diversified farmers, therefore, Whole-Farm Revenue Protection is at least worth a look.

Farmers that raise a number of different crops, and sell them at a premium through organic certification, or through direct marketing channels that offer a price premium, are candidates for Whole-Farm Revenue Protection. This is especially true if the farmer is not able to buy conventional crop insurance with an "organic price election" for the crop.[54]

Whole-Farm Revenue Protection will work best for farms that have a well-recorded financial and production history. In order to establish a baseline of revenue for the entire farm, a history is required. As is discussed below, that will largely mean federal income tax and other records. It will therefore be difficult for farmers just starting out to make good use of Whole-Farm coverage. On the other hand, for farmers with a unique or unusual farm income sources, Whole-Farm can be valuable if there are good records of those varying farm income sources.

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about 9.3 billion dollars. The federal government contributed about 5.9 billion dollars to those premiums. Farmers therefore paid about 3.4 billion dollars in premiums. See, *FCIC, Commodity Year Statistics for 2016, Nationwide Summary—By Insurance Plan* (December 18, 2017), which can be found at: https://www3.rma.usda.gov/apps/sob/current_week/insplan2016.pdf. Currently, (as of December 2017), Farmers have received about 3.5 billion dollars in indemnities. See, *FCIC, Commodity Year Statistics for 2017, Nationwide Summary—By Insurance Plan* (December 18, 2017), which can be found at: https://www3.rma.usda.gov/apps/sob/current_week/insplan2017.pdf. For data showing farmers received more in indemnities than they paid in premiums, see *FCIC, Summary of Business Report for 2005 thru 2014 (December 18, 2017*), https://www3.rma.usda.gov/apps/sob/current_week/sobrpt2005-2014.pdf; and *FCIC, Summary of Business Report for 1995 thru 2004* (December 18, 2017), https://www3.rma.usda.gov/apps/sob/current_week/sobrpt1995-2004.pdf.

53 In 2015, the total premium for Whole-Farm Revenue Protection was about 54 million dollars. The federal contribution to that premium was about 39 million dollars. The policies, therefore, cost farmers about 15 million dollars. The indemnity paid to farmers was about 61 million dollars. See *FCIC, Commodity Year Statistics for 2015, Nationwide Summary—By Insurance Plan* (December 18, 2017), which can be found at: https://www3.rma.usda.gov/apps/sob/current_week/insplan2015.pdf. Whole-Farm was not sold for crop year 2014. Somewhat similar policies, Adjusted Gross Revenue (AGR) and AGR-Lite, were sold previously.

54 Organic price elections allow farmers to insure organic crops at the organic prices rather than the conventional prices.

E. The Commodity Count

A tricky and somewhat confusing part of Whole-Farm Revenue Protection is how the program actually works to answer important and basic questions about the insurance coverage for each farm. For example, one issue will arise with Whole-Farm that does not occur with other types of crop insurance: the commodity count.

1. Defining Diversification and the "Commodity Count"

Whole-Farm Revenue Protection is designed for diversified farms. But what counts as diversification on a farm? We all know the basic idea of diversification, but coming up with an actual definition that can be applied to all farms, and that can reward farms that are highly diversified, has turned out to require a somewhat complicated set of rules. A farm can have several different crops, but unless there is a diversity in the sources of total income, the farm will not count as diversified under Whole-Farm Revenue Protection. The rules are designed to measure a farm's diversification by determining the number of commodities on the farm—a calculation that RMA calls a "commodity count."[55]

The count is complicated, however, because RMA takes into consideration the relative proportion that each commodity contributes to the farm's total production. So, for example, RMA does not want to classify a farm as diversified if it produces five different commodities, but one of the commodities accounts for 90 percent of the value of farm's total production.

2. Why the Commodity Count is Important

The commodity count is important for the individual farmer because it will determine whether a farmer is eligible for Whole Farm Revenue Protection and, perhaps more importantly, the extent to which the federal government will cover the costs of the coverage, and the level of coverage that may be purchased by the farmer. For example, a farmer whose operation has a commodity count of two can buy Whole-Farm coverage, but if the farm has a commodity count of three the government contribution to the premium goes up, and the available level of coverage is higher.

There are several reasons why understanding the commodity count is crucial for any farmer interested in purchasing Whole-Farm Revenue Protection.

First, the commodity count can help a farmer obtain the highest level of coverage for the farm, which can be up to 85 percent of farm revenue. The higher the commodity count, the higher the level of available coverage. The way this works for coverage levels is discussed below.[56]

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55 *Whole-Farm Handbook*, Exhibit 2, "Commodity count" (crop years 2017, 2018); Whole-Farm Policy §1, "Commodity count" (crop years 2017, 2018).

56 *Whole-Farm Handbook* § 41(2)(a) (crop years 2017, 2018).

Second, for some farmers the commodity count will help determine whether their farms are even eligible for Whole-Farm Revenue Protection coverage.[57] For example, if a farmer raises potatoes, the commodity count must be at least two. [58] In addition, if the farmer wants to buy other federal crop insurance, the commodity count will come into play.

Third, the commodity count helps set the amount of subsidy the farmer will receive on the insurance.[59] This is important because the more the federal subsidy, the less the farmer must pay for the same level of crop insurance coverage.

Fourth, the commodity count helps decide what RMA calls the “diversification discount,” a measure of the qualifying discount that a farmer may receive on his or her premium rate.[60] The discount is based upon a farmer’s commodity count—in general, the higher the commodity count, the greater the allowable diversification discount.

3. The Basics of How the Commodity Count is Calculated

The main goal of the commodity count is to get a measure of the extent to which production is spread out among a number of commodities. To obtain this measure, RMA uses a somewhat complicated math formula. A full explanation of the commodity count calculation can be found in the next section, but here, a few examples can offer farmers a general sense of where their farms might fit in.

Here are five simplified examples of how the commodity count calculation works:

> A farm has four commodities, each with a 25 percent share of the farm’s revenue. The farm’s commodity count is four.
>
> A farm has three commodities, each with a 33 percent share of the farm’s revenue. The farm’s commodity count is three.
>
> A farm has five commodities, one with an 80 percent share of the farm’s revenue, and each of the other four commodities with a five percent share. The farm’s commodity count is only three.
>
> A farm has three commodities, with one crop at 90 percent of the farm’s revenue, and each of the other two with five percent of the revenue. The farm’s commodity count totals two.

57 *Whole-Farm Handbook* § 41(crop years 2017, 2018).
58 *Whole-Farm Handbook* § 21(3)(d) (crop years 2017, 2018).
59 *Whole-Farm Handbook* § 41(2)(d)(crop years 2017, 2018).
60 *Whole-Farm Handbook* § 41(2)(b), Exhibit 2, “Diversification discount” (crop years 2017, 2018).

A farm has two commodities, one with a 95 percent share of the farm's revenue, and one with a five percent share. The farm's commodity count is only one.

F. Eligibility Rules: Modestly Sized Farms, and Federal Income Taxes, Other Unusual Requirements

Because Whole-Farm Revenue Protection is a form of crop insurance, it shares many of the same rules with other forms of crop insurance. Certain eligibility rules, however, are unique to Whole-Farm. Some of these are discussed below.

1. Farm Size Limits

At present, at least, Whole-Farm Revenue Protection is targeted to modestly sized operations. RMA rules limit the size of operations that are eligible to use Whole-Farm in several ways.[61] The vast majority of farms will be not be affected by these limits

In each of the restrictions below, the measurement is based on expected revenue. Expected revenue, for this purpose, means the revenue the farmer expects to receive from a commodity as it is found on the Farm Operation Report.[62] A farm must have no more than one million dollars of expected revenue from the farm's intended commodities of animals and animal products.[63] Farms may have no more than one million dollars of expected revenue from intended nursery or greenhouse commodities.[64] The farm's insured revenue must be no more than $8.5 million for the insurance year.[65] Insured revenue is the total amount of insurance provided to the farmer.[66]

Farms may have no more than 50 percent of their total revenue from commodities purchased for resale.[67] A commodity purchased for resale is one that was not produced on the farm, but rather was purchased to be added to the farm operation and then sold.[68] It does not include commodities purchased for further growth, development, or maturity for later sale, or commodities purchased to replace production that the farm operation lost to insurable causes.

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61 *Whole-Farm Handbook* § 21(3) (crop years 2017, 2018).

62 *Whole-Farm Handbook*, Exhibit 2, "Expected revenue" (crop years 2017, 2018).

63 *Whole-Farm Handbook* § 21(3)(b)(i) (crop years 2017, 2018).

64 *Whole-Farm Handbook* § 21(3)(c) (crop years 2017, 2018).

65 *Whole-Farm Handbook* § 21(3)(a) (crop years 2017, 2018).

66 *Whole-Farm Handbook*, Exhibit 2, "Insured revenue" (crop years 2017, 2018); Whole-Farm Policy §1, "Insured revenue" (crop years 2017, 2018).

67 *Whole-Farm Handbook* § 48(4) (crop years 2017, 2018); Whole-Farm Policy § 3(a)(6) (crop years 2017, 2018).

68 *Whole-Farm Handbook*, Exhibit 2, "Commodities purchased for resale" (crop years 2017, 2018); Whole-Farm Policy § 1, "Commodities purchased for resale" (crop years 2017, 2018).

2. Filed Taxes as Farmer for Five Years – With Limited Exceptions

In general, in order to buy Whole-Farm Revenue Protection, a farmer must have filed a United States Federal income tax return, including farm tax forms, for five years.[69] The rules are tricky in that they try to take into account every single possibility that the producer might face.

a. General Rule – Five Years of Taxes Filed

The farmer must have filed a United Sates income tax return, including farm tax form, for each of the five years in their Whole-Farm history period[70] for the same tax entity and farm operation as the insured farmer for the insurance year unless an exception applies.[71]

There are a few partial exceptions to this rule.[72] They are very narrow, however, and seem to be designed to fit into the eligibility farmers that have somehow sifted the legal status of the farm without really changing the farming operation much.

The following sections look at the general rule more closely and the exceptions that might apply.

(1) Whole-Farm History Period

Every farmer that applies for Whole-Farm Revenue Protection will have a "Whole-Farm history period" for which various documents—including tax returns—will be required. The RMA defines the Whole-Farm history period as the five consecutive tax years prior to the tax year that precedes the insurance year.[73]

So, for example, for the 2018 crop year, the whole-farm history period is likely 2012, 2013, 2014, 2015, and 2016. [74] For most farmers, tax year 2017 is the lag year and is not included in the 2018 whole-farm history period. It could be included if the farmer has less than five years of tax records.

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69 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

70 RMA defines the "Whole-Farm history period" as the five consecutive tax years prior to the tax year that precedes the insurance period. *Whole-Farm Handbook*, Exhibit 2, "Whole-farm history period" (crop years 2017, 2018); Whole-Farm Policy § 1 "Whole-farm history period" (crop years 2017, 2018).

71 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

72 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

73 *Whole-Farm Handbook*, Exhibit 2, "Whole-farm history period" (crop years 2017, 2018); Whole-Farm Policy § 1 "Whole-farm history period" (crop years 2017, 2018).

74 *Whole-Farm Handbook*, Exhibit 2, "Whole-farm history period" (crop years 2017, 2018); Whole-Farm Policy § 1 "Whole-farm history period" (crop years 2017, 2018).

(2) Federal Taxes, Including Farm Taxes

The farmer must have filed federal income tax forms for each of the five years in the farmer's Whole-Farm history period.[75] The forms must include a farm tax form.[76] This will usually mean an IRS Schedule F.[77]

(3) Operation Must be the Same

The taxes filed must have been for the same farming operation that is now to be covered by Whole-Farm Revenue Protection.[78] In other words, suppose a farmer has a new farm in Jackson County, and would like to apply for Whole-Farm. If, in past years, the same farmer had a farming operation in Cass County—a farm that is now sold—the tax filings for the Cass County farm cannot be used to apply for Whole-Farm coverage for the farm in Jackson County.

Some farms are organized as an entity—such as a corporation, partnership, or limited liability corporation. If the farm is an entity, the five years of tax forms must be for the same tax entity and farm operation as the farmer will use for the Whole-Farm Revenue Protection insurance. [79] In other words, suppose a farmer is organized right now as corporation and is applying for Whole-Farm as a corporation. That means that in general the tax forms filed for the five years must be for the same corporation that is applying for Whole-Farm now.

b. Exceptions to Five-Year Rule

A few narrow exceptions to the five-year rule apply. The following exceptions allow for some farmers to have fewer than the five years as described above.

(1) Circumstances Beyond Control Exception

An exception of one year is granted if the farmer did not file tax forms or report farm revenue for a tax year due to "circumstances beyond" his or her "control."[80] One example that RMA gives for a circumstance beyond control of the farmer is that illness prevented

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75 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

76 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

77 Farm tax forms are defined as IRS income tax forms used to report farm revenue and expenses. *Whole-Farm Handbook,* Exhibit 2, "Farm tax forms" (crop years 2017, 2018); Whole-Farm Policy § 1, "Farm tax forms" (crop years 2017, 2018).

78 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

79 *Whole-Farm Handbook* § 21(1)(c) (crop years 2017, 2018).

80 *Whole-Farm Handbook* § 21(1)(c)(vi) (crop years 2017, 2018).

that person from farming for the year.[81] The farmer must provide the insurance provider with documents explaining the circumstances for the missing year.[82] The farmer may only use the circumstances beyond control exception for one of the five years. So, only one year of the Whole-Farm history period may be a year in which farm tax forms were not filed.[83]

If the farmer is using the circumstances beyond control exception to the five-year rule, the farmer must have filed farm tax forms in the first year Whole-Farm history period, unless he or she is a "carryover insured."[84] A farmer is a carryover insured if the farmer bought Whole-Farm Revenue Protection insurance in the year right before the current insurance year.[85]

If the farmer is using the circumstances beyond control exception to the five-year rule, the farmer must have earned farm revenue during his or her lag year.[86] A lag year is the tax year right before the insurance period.[87] Put differently, the lag year is the year in between the farmer's insurance period—the tax year that begins in the farmer's insurance year—and the end of the five-year Whole-Farm history period.

(2) Beginning Farmer Exception

If the farmer is a "beginning farmer or rancher" under RMA rules, and the farmer has fewer than five years of farm tax forms in the Whole-Farm history period, an exception to the five-year rule may apply.[88]

(a) Must Be a Beginning Farmer or Rancher

The exception to the five-year rule can apply if the farmer meets the definition of a beginning farmer or rancher.

In addition, if the farmer is what RMA calls a carryover insured who qualified as a beginning farmer or rancher the previous year, the farmer may be eligible for this

81 *Whole-Farm Handbook* § 21(1)(c)(vi) (crop years 2017, 2018).
82 *Whole-Farm Handbook* § 21(1)(c)(vi)(A) (crop years 2017, 2018).
83 *Whole-Farm Handbook* § 21(1)(c)(vi)(B) (crop years 2017, 2018).
84 *Whole-Farm Handbook* § 21(1)(c)(vi)(C) (crop years 2017, 2018). Whole-Farm Policy § 1 "Carryover insured" (crop years 2017, 2018).
85 *Whole-Farm Handbook*, Exhibit 2, "Carryover insured" (crop years 2017, 2018); Whole-Farm Policy § 1 "Carryover insured" (crop years 2017, 2018).
86 *Whole-Farm Handbook* § 21(1)(c)(vi)(D) (crop years 2017, 2018).
87 *Whole-Farm Handbook*, Exhibit 2, "Lag year" (crop year 2018); *Whole-Farm Handbook*, Exhibit 2, "Lag year" (crop year 2017);
88 *Whole-Farm Handbook* § 21(1)(c)(vii)(A) (crop years 2017, 2018).

exception.[89] A farmer is a carryover insured if he or she bought Whole-Farm insurance in the year right before the current insurance year.[90]

(b) Defining Beginning Farmer

RMA has a specific definition of a beginning farmer or rancher. While other organizations and programs use different definitions, those are not relevant to Whole-Farm Revenue Protection.

A beginning farmer or rancher is an individual who has not actively operated and managed a farm or ranch, in any state, for more than five years.[91] Individual, in this case, means an actual person, not a corporation or partnership, etc. A corporation or other entity may be eligible for beginning farmer or rancher benefits only if all of the substantial beneficial interest holders qualify as a beginning farmer or rancher. In other words, if the farm is a partnership, all partners must be beginning farmers. Operating or managing a farm or ranch means the farmer had an insurable crop or livestock interest as an owner-operator, landlord, tenant, or sharecropper.

For this purpose, to have farmed for a year means to have had an insurable interest in a farm or ranch.[92] A year, for this purpose, means a policy year.[93] To have an insurable interest in a crop means that there is a risk of financial loss on that crop.[94]

Some years in which a farmer has an insurable interest may not count toward the five years years. Three such instances

89 *Whole-Farm Handbook* § 21(1)(c)(vii) (crop years 2017, 2018).

90 *Whole-Farm Handbook*, Exhibit 2, "Carryover insured" (crop years 2017, 2018); Whole-Farm Policy § 1 "Carryover insured" (crop years 2017, 2018).

91 *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop years 2017, 2018); Whole-Farm Policy § 1 "Beginning farmer or rancher" (crop years 2017, 2018).

92 *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop years 2017, 2018); Whole-Farm Policy § 1 "Beginning farmer or rancher" (crop years 2017, 2018).

93 *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop year 2018); Whole-Farm Policy § 1 "Beginning farmer or rancher" (crop year 2018). For the 2017 crop year, the Handbook refers to "insurance years" instead of "policy years." *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop year 2017). The change in 2018 appears mainly to be an attempt to add clarity to the definition, and not to substantively change the policy. A policy year is the year that begins after the Contract Change Date. *Whole-Farm Handbook*, Exhibit 2, "Policy year" (crop year 2018). An insurance year, on the other hand, is the calendar year in which the Sales Closing Date occurs. *Whole-Farm Handbook*, Exhibit 2, "Insurance year" (2017).

94 *Whole-Farm Handbook*, Exhibit 2, "Insurable interest" (crop years 2017, 2018); Whole-Farm Revenue Policy § 1 "Insurable interest" (crop years 2017, 2018).

that make it easier to qualify as a beginning farmer apply.

First, if the farmer was under the age of 18 when he or she had an insurable interest in a farming operation, the farmer may elect to exclude these years. [95]

Second, the farmer may choose to exclude any year(s) that the farmer was in full-time military service of the United States[96]

Third, the farmer may elect to exclude any year(s) that the farmer was in post-secondary education.[97]

(c) Beginning Farmers: Three Years of Taxes Required

At minimum, to meet the beginning farmer or rancher exception to the five-year rule, the farmer must have at least three years of farm tax forms in the Whole-Farm history period.[98]

(d) Lag Year Revenue

The qualify for the beginning farmer or rancher exception to the five-year rule, the farmer must have earned farm revenue during what RMA calls the farmer's "lag year." [99] A lag year is the tax year right before the insurance period.[100]

3. Other Crop Insurance and Whole-Farm Eligibility

Other crop insurance policies and availability affect Whole-Farm Revenue Protection eligibility in two ways.

First, the farmer may not combine Catastrophic Risk Protection (CAT) crop insurance coverage with Whole-Farm Revenue Protection.[101] CAT is the minimal level of federal crop insurance offered.[102] This restriction applies to any coverage

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95 *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop years 2017, 2018); Whole-Farm Policy § 1, "Beginning farmer or rancher" (crop years 2017, 2018).

96 *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop years 2017, 2018); Whole-Farm Policy § 1, "Beginning farmer or rancher" (crop years 2017, 2018).

97 *Whole-Farm Handbook*, Exhibit 2, "Beginning farmer or rancher" (crop years 2017, 2018); Whole-Farm Policy § 1, "Beginning farmer or rancher" (crop years 2017, 2018).

98 *Whole-Farm Handbook* § 21(1)(c)(vii)(A) (crop years 2017, 2018).

99 *Whole-Farm Handbook* § 21(1)(c)(vii)(B) (crop years 2017, 2018).

100 For the 2017 crop year, it is the calendar year in which the Sales Closing Date Occurs. For the 2018 crop year, see *Whole-Farm Handbook*, Exhibit 2, "Lag year," "Insurance period" (crop year 2018). For the 2017 crop year, see *Whole-Farm Handbook*, Exhibit 2, "Lag year," "Insurance year" (crop year 2017).

101 *Whole-Farm Handbook* § 21(3)(e) (crop years 2017, 2018).

102 *Whole-Farm Handbook*, Exhibit 2, "Catastrophic Risk Protection (CAT)" (crop years 2017, 2018).

during the insurance period for any insurable commodity whether the acreage is planted or not. [103] "The farmer may, however, combine additional buy-up coverage—just not CAT-- with the Whole-Farm coverage.

Second, if the farm will only produce one commodity—based on the commodity count—and revenue protection crop insurance is available for that crop, the farmer is not eligible for Whole-Farm Revenue Protection.[104]

G. Insurable Losses for Whole-Farm Revenue

Whole-Farm Revenue protects the farmer from losses to revenue that are caused by unavoidable natural causes. As this chapter explains, an unavoidable natural loss is defined broadly. There are, however, a number of important limits on the losses that are covered by Whole-Farm.

Whether or not a loss for the farmer is "insurable" is a crucial question for any farmer buying the Whole-Far, Revenue Protection Policy. In general, Whole-Farm insurance covers revenue losses due to "natural causes," and it uses a fairly broad definition of what constitutes a natural cause. The exact definition used by RMA is that Whole-Farm provides protection against loss of approved revenue due to "unavoidable natural causes that occur during the insurance period."[105]

Insurable losses covered by Whole-Farm Revenue Protection will likely be familiar to people who have used crop insurance in the past. There are, inevitably, wrinkles unique to Whole-Farm in figuring out the loss and collecting the indemnity. For example, no indemnity is paid until after the farmer files federal income taxes for the loss year.

Insurable losses include loss due to natural causes includes "adverse weather conditions"[106] and losses due to insects and plant diseases.[107] Losses also include a decline in market prices because they are assumed to be traceable to unavoidable natural causes, and is therefore covered.[108]

Non-covered losses include those caused by negligence and mismanagement.[109] Losses caused by the acts of a person that affect farm revenue are not covered.[110] These include, for example, chemical drift or a fire that was not caused by a natural occurrence. A loss caused by the farmer's failure to follow recognized "good farming practices" for each

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103 *Whole-Farm Handbook* § 21(3)(e) (crop years 2017, 2018).

104 *Whole-Farm Handbook* § 21(3)(d) (crop years 2017, 2018).

105 *Whole-Farm Handbook* § 91 (crop years 2017, 2018). In some cases, damage occurring before the insurance period can be included.

106 Whole-Farm Policy § 21(a)(1) (crop years 2017, 2018).

107 Whole-Farm Policy § 21(a)(3)-(4) (crop years 2017, 2018). Damage means injury, deterioration, or loss of production. *Whole-Farm Revenue Handbook*, Exhibit 2, "Damage" (crop years 2017, 2018); Whole-Farm Policy § 1, "Damage" (crop years 2017, 2018).

108 Whole-Farm Policy § 21(a)(9), (d)-(e) (crop years 2017, 2018).

109 *Whole-Farm Handbook* § 92(1) (crop years 2017, 2018); Policy § 21(c)(1) (crop years 2017, 2018).

110 *Whole-Farm Handbook* § 92(2) (crop years 2017, 2018); Whole Farm Policy § 21(c)(2) (crop years 2017, 2018).

insured commodity is not a covered loss.[111] So, if a farmer is ruled not to have followed good farming practices for a corn crop, but followed them for beans, no loss is covered even though the losses to the bean crop were completely due to weather.

Good farming practices are defined by RMA. They mean production methods used to produce the insured commodities that allow each commodity to "make normal progress toward maturing resulting in at least approved revenue."[112] For conventional and sustainable operations, good farming practices are practices that are "generally recognized by agricultural experts for the area." For organic farming, good farming practices are those generally recognize by organic agricultural experts or contained in the organic plan. "Generally recognized" is also defined by RMA. It means when agricultural experts or organic agricultural experts are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the commodity to make normal progress toward maturity.[113]

H. Allowable Revenue and the Allowable Revenue Worksheet

RMA requires that a calculation of what it calls "allowable revenue."[114] The calculation of allowable revenue is one of the most important aspects of the Whole-Farm Revenue Protection program. If these numbers do not capture all of the farmer's revenue that the RMA rules allow, the farm's coverage will be reduced. Some farmers will be increasing the revenue of the operation over time, and a pure average over the last five years of records will distort the actual expected revenue of the farmer. In some cases, RMA rules allow the farmer to use what is called an "indexed" average. [115] This is a somewhat complicated formula that is worth pursuing if revenue has been increasing recently.

I. Post-Production, Market Readiness and Allowable Revenue

A number of revenue sources that might seem like farm income are not counted by RMA as allowable revenue. This includes what RMA calls income from "post production operations."[116] The contribution of "market readiness operations," on the other hand, counts toward allowable revenue. [117]

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111 *Whole-Farm Handbook* § 92(3) (crop years 2017, 2018); Whole Farm Policy § 21(c)(3) (crop years 2017, 2018).

112 *Whole-Farm Handbook*, Exhibit 2, "Good farming practices" (crop years 2017, 2018); Whole-Farm Policy § 1 "Good farming practices" (crop years 2017, 2018).

113 *Whole-Farm Handbook*, Exhibit 2, "Generally recognized" (crop years 2017, 2018); Whole-Farm Policy § 1, "Generally recognized" (crop years 2017, 2018).

114 *Whole-Farm Handbook* § 46(2)(a), Exhibit 2, "Allowable revenue" (crop year 2017); Whole-Farm Policy § 1, "Allowable revenue" (crop years 2017, 2018).

115 *Whole-Farm Handbook* § 71(2) (crop years 2017, 2018).

116 *Whole-Farm Handbook* § 44(8)(a) (crop year 2017), § 44(7)(a) (crop year 2018).

117 *Whole-Farm Handbook* § 44(8)(b) (crop year 2017), § 44(7)(b) (crop year 2018).

1. Importance of Difference

Whole-Farm Revenue makes draws an important line between post-production operations and market readiness operations.[118] The difference between market readiness and post-production important because market readiness operations are included in the allowable revenue and allowable expenses calculation.[119] Added value from post-production operations is not insurable under the Whole-Farm, and is also are removed from allowable revenue and allowable expenses. The value of the commodity before post-production is insurable.

2. Market Readiness Operations

A market readiness operation is defined by RMA as an on-farm activity that is the minimum needed to remove the commodity from the field and make the commodity market ready.[120]
Market readiness activities must: (1) be the minimum required to remove the commodity from the field and make it market ready; (2) be performed in the field or on land near the field; and (3) not add value to the commodity. This can include, for example, washing and packing. They do not include, therefore, things like canning, freezing, and processing that alters the physical nature of the commodity. Further examples of things that are not market readiness activities are, for example, slicing applies, putting commodities in gift baskets, jams, jellies, wine, and cider.

3. Post-Production Operations

They are performed after producing and harvesting an insured commodity in order to prepare it for sale. [121] These include, for example, any activities, whether on for or of-farm, to prepare the commodity for sale or any to increase the value of the crop. Post-production activities include canning, freezing, and processing activities that alter the physical nature of insurable commodities. This includes, for example, slicing apples, putting commodities into gift baskets, jellies, wine, or cider, or costs for cold storage.

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118 RMA's definitions of the two can be confusing. At some points, market readiness operations seem to be a part of post-production activities. See *Whole-Farm Handbook* § 142(2) (crop years 2017, 2018). At other times market readiness operations are not considered a part of prost production. *Whole-Farm Handbook*, Exhibit 2, "Market readiness operations," "Post-prodcuiton operations" (crop years 2017, 2018). This does not change the way the two are treated when calculating revenue and expenses. This Guide assumes they are two entirely different activities.

119 *Whole-Farm Handbook*, Exhibit 2, "Market readiness operations," §§ 45, 142(2) (crop years 2017, 2018); Whole-Farm Policy § 1, "Market readiness operations" (crop years 2017, 2018).

120 *Whole-Farm Handbook*, Exhibit 2, "Market readiness operations," §§ 45, 142 (crop years 2017, 2018); Whole-Farm Policy § 1, "Market readiness" (crop years 2017, 2018).

121 *Whole-Farm Handbook* Exhibit 2, "Post-production operations," § 142 (crop years 2017, 2018); Whole-Farm Policy § 1, "Post-production operations" (crop years 2017, 2018).

Post-production activities tend to either involve expenses associated with them that arise after harvest, or add value to the crop due to additional activities that the farmer or someone else does.

RMA gives a number of examples of the sorts of things it thinks are post-production activities.

J. Choosing Coverage, Premiums

A crucial aspect of Whole-Farm Revenue, or any insurance, is the final numbers for cost to the farmer, and the coverage provided. This Chapter describes how farmers can figure out the cost for them for a Whole-Farm Revenue at various coverage levels, and discusses the application that must be submitted.

A range of possibilities of coverage levels are possible with Whole-Farm Revenue. For an operation with a Commodity Count of at least three, up to 85 percent of the farms expected farm revenue is covered. At the lower end, it is possible to insure 50 percent of expected farm revenue.

Farmers may select any amount of cover they are eligible to receive.[122] A farmer may only have one coverage level per policy.[123] The policy must match those available for the Commodity Count of the farm.[124] In general, farmers may change the coverage level if they so in writing on or before Sales Closing Date. [125] Sales Closing Dates vary by county. [126] They may not increase their coverage level, however, if a cause of loss that would reduce the farm revenue that year is evident before to the farmer asks to change coverage levels.[127]

The RMA website gives a farmer an estimate of the cost of the Whole-Farm premium. It will vary based on the information from the farm. RMA calls it a Cost Estimator. It can be found here:
https://ewebapp.rma.usda.gov/apps/costestimator/Estimates/QuickEstimate.aspx.

The actual calculation of the premium is extremely complicated, so the Cost Estimator is essential for getting a sense of how much the coverage will cost the farmer..[128]

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122 *Whole-Farm Handbook* § 42(1)(a) (crop years 2017, 2018).
123 *Whole-Farm Handbook* § 42(1)(b) crop years 2017, 2018.
124 *Whole-Farm Handbook* § 42(1)(c) (crop years 2017, 2018).
125 *Whole-Farm Handbook* § 42(1)(d) (crop years 2017, 2018).
126 Whole-Farm Policy § 1, "Sales closing date" (crop years 2017, 2018).
127 *Whole-Farm Handbook* § 42(1)(d) (crop years 2017, 2018).
128 Whole-Farm Policy § 14(b)-(n) (crop years 2017, 2018).

K. Expected Values for Farmer Commodities

Given that Whole-Farm insures the revenue the farmer expected to receive, the price the farmer is expected to receive from the commodity – what RMA calls the expected value for the commodity -- will be extremely important for the calculation of that expected revenue to be accurate. [129] If the farmer's full expected value for a crop is not recognized, Whole-Farm becomes much less useful for the farmer.

In general, expected values mean the price a farmer "can reasonably be expected" to receive for a commodity. [130] Post-production expenses should be used to reduce the dollar amount of expected value.

L. If There is Damage or Loss

If there is damage or loss to the commodity, the farmer must follow a number of rules.[131] The insurance provider should tell the farmer about these rules as well. In general, the farmer must provide a "notice of loss" to the insurance provider if there is a loss.

Once there is a loss the farmer will need to give the insurance provider a "notice of loss."[132] The notice of loss is a written notice that must be filed with the insurance agent' s office whenever the farmer "initially discovers" that the allowable revenue for the year may be less than the insured revenue. The farm must provide a notice of loss within seventy-two hours of the "initial discovery" that the allowable revenue on the farm may be less than the insured revenue. [133] The notice is given to the insurance provider. It must describe the damaged commodity and document the cause of the loss.

M. Special Rules for Organic Commodities

Organic production has special rules for under Whole-Farm.[134]

1. Organic Commodities are Covered

Whole-Farm Revenue Protection coverage can include commodities that are certified organic.[135] The crucial question for organic producers is when and how organic prices can be used for calculating the farmer's expected revenue.

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[129] *Whole-Farm Handbook,* Exhibit 18 (crop years 2017, 2018).

[130] *Whole-Farm Handbook,* Exhibit 2, "Expected value" (crop years 2017, 2018); Whole-Farm Policy § 1, "Expected value" (crop years 2017, 2018).

[131] *Whole-Farm Handbook* § 94(A) (Crop years 2017, 2018).

[132] *Whole-Farm Handbook,* Exhibit 2, "Notice of loss" (crop years 2017, 2018).

[133] *Whole-Farm Handbook* § 94(A)(1) (crop years 2017, 2018).

[134] *Whole-Farm Handbook* §§ 21(3)(c), 144(A) (crop years 2017, 2018); Whole-Farm Policy § 3(c)(3) (crop years 2017, 2018).

[135] *Whole-Farm Handbook* § 141(A) (crop years 2017, 2018).

2. Certified Only

Organic prices can be used for calculating the expected revenue for the farm only for certified organic animals and animal products, and certified organic acreage. [136] Organic prices do not apply to transitional or buffer zone acreages that are not certified organic.

3. Need Organic Certificate

The farmer must have an organic certificate from an organic certifier[137] by the time the Revised Operation Repot is due. [138] If the farm was certified organic previously, but the farm has not received the updated certification at the time the Revised Farm Operating Report is due, the farmer's previous certification can be used. The farmer must have a current organic certification at the time any potential loss claim is filed. If the farmer does not have an organic certificate at the time a claim is filed, the expected values of the farmer's revenue will be reduced to non-organic levels.[139]

4. Crop Changes Since Time of Organic Certification

The National Organic Program does not always issue organic certificates every year. It is possible, therefore, that the farmer may change the types of organic crops he or she is producing, but the organic certificate may not immediately reflect those changes. In such a situation, so long as the crops are grown on certified organic acreage, as identified in the farmer's organic plan, the farmer may still use organic prices when calculating expected revenue. [140]

5. Organic Certificate and Plan

The farmer needs to have a current organic plan and an organic certification.[141] This must include: (1) the name, address, and phone number of the certified farm; (2) the effective date of the certification and the certification number; (3) the types or categories of commodities; (3) the name and address of the certifying agent; and (4) the location and number of certified organic acres.

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136 *Whole-Farm Handbook* § 141(B) (crop years 2017, 2018). Organic prices cannot be used for transitional or buffer zone acreage that is not certified organic.

137 The organic certifying agent must be listed on the National Organic Program Website, https://organic.ams.usda.gov/Integrity/. *Whole-Farm Handbook* § 141(B)(1) (crop years 2017, 2018).

138 *Whole-Farm Handbook* § 141(B)(1) (crop years 2017, 2018).

139 *Whole-Farm Handbook* § 141(G) (crop years 2017, 2018); Whole-Farm Policy § 44(b)(1) (crop years 2017, 2018).

140 *Whole-Farm Handbook* § 141(B) (crop years 2017, 2018).

141 *Whole-Farm Handbook* § 141(C) (crop years 2017, 2018). If the insurance provider "questions" or "has reason" to request a copy of the farmer's organic plan, the farmer must be willing to provide the organic plan. This should only be done if the provider has "specific concerns." Whole-Farm Revenue Handbook §§ 141(B), (G) (crop years 2017, 2018).

6. Exempt Smaller Operations—$5,000 or Less

National Organic Program rules allow a farmer with annual gross farm revenue of $5,000 or less from organic sales an exemption from organic certification.[142]

If a farmer can show that he or she has an organic farm plan in place to grow organic crops, and the expected revenue will be $5,000 or less, the farm can use organic prices for Whole-Farm Revenue Protection and be considered certified organic by the Whole-Farm Policy.[143]

7. Change in Organic Certification

If acres that qualify for organic certification at the time the farmer submits the Revised Farm Operation Report later have their certification surrendered, suspended, or revoked, the acres or animals or animal products will remain insured under Whole-Farm Revenue Protection for the rest of the year, but the expected values for that production would be changed to non-organic values.[144]

8. Drift and other Contamination—Not an Insurable Loss

Contamination by application or drift of prohibited substances onto land on which commodities are grown using organic practices is considered to be an uninsured cause of loss on certified organic acreage. [145]

9. Good Farming Practices Still Applies

Whole-Farm Revenue Protection does not cover losses due to the farmer's failure to follow "good farming practices" for each insured commodity.[146] For a farmer of organic commodities, this means that the farmer uses production methods that allow the organic commodities to make normal progress toward maturity and that are recognized by organic agricultural experts for the area within the farmer's organic plan.[147] Organic agricultural experts means people who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas; Sustainable Agriculture Research and Education or the Cooperative Extension System; and the agricultural departments of universities, or other persons

142 *Whole-Farm Handbook* § 141(D) (crop years 2017, 2018); Whole-Farm Policy § 44(a)(2) (crop years 2017, 2018). For a full description of the rules, see 7 C.F.R. 205, the National Organic Program.

143 *Whole-Farm Handbook* § 141(D) (crop years 2017, 2018); Whole-Farm Policy § 44(a)(2) (crop years 2017, 2018).

144 *Whole-Farm Handbook* § 141(E) (crop years 2017, 2018); Whole-Farm Policy § 44(c) (crop years 2017, 2018).

145 *Whole-Farm Handbook* § 141(F) (crop years 2017, 2018); Whole-Farm Policy § 44(d) (crop years 2017, 2018).

146 *Whole-Farm Handbook* § 92(3) (crop years 2017, 2018); Whole-Farm Policy § 21(c)(3) (crop years 2017, 2018).

147 *Whole-Farm Handbook*, Exhibit 2, "Good farming practices" (crop years 2017, 2018); Whole-Farm Policy § 1, "Good farming practices" (crop years 2017, 2018).

approved by FCIC, whose research or occupation is related to the specific organic crop practices for which such expertise is sought.[148]

[148] *Whole-Farm Handbook*, Exhibit 2, "Organic agricultural experts" (crop years 2017, 2018); Whole-Farm Policy § 1, "Organic agricultural experts" (crop years 2017, 2018).