

May 20, 2022

To: Richard Matoian

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RE: Emergency Relief Program

Introduction

On May 16, 2022, the U.S. Department of Agriculture announced the Emergency Relief Program (ERP) to provide disaster relief to those farmers who have suffered losses to crops, trees, bushes, and vines due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze, including a polar vortex, smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021. USDA will also be considering crop loss in 2022 under this program if the crop loss is due to events occurring in 2021.

This relief program was funded through the “Extending Government Funding And Delivering Emergency Assistance Act, 2021” (H.R. 5305), signed into law on September 30, 2021. The legislation provided \$10 billion to USDA to provide disaster relief to the U.S. farming community. The announcement made on May 16, 2022, provides \$6 billion of the \$10 billion included in the bill mentioned above; there was a program announced earlier for Emergency Livestock relief funded at \$750 million and additional programs for Milk Loss Program and On-Farm Stored Commodity Loss Program will be announced later. All of these programs are funded by H.R. 5305.

The [program guidelines](#) were published in the *Federal Register*¹ on May 18, 2022. Below is a summary of program provisions from the *Federal Register* notice in order to better understand the program and its objectives and outcomes.

Payment limitations will apply. Read the information at the end of the memo.

Generally, if a grower member receives an application for the Emergency Relief Program, it does not indicate that a relief payment is guaranteed; this signifies that they may apply for relief payments which are based on submission of required forms, listed disaster incidents and calculations below.

As stated below, the ERP will be implemented in two phases. ERP Phase 1 will provide funds to those of whom FSA and RMA have data on file from crop insurance indemnities and NAP payments. Applications for ERP Phase 1 will be rolled out as soon as this month for crop insurance indemnities and later this summer for NAP. If a producer believes that any information that has been pre-filled is incorrect, the producer should contact their crop insurance agent for insured crops or their FSA county office for NAP-covered crops.

¹ 87 FR 30164

ERP Phase 2 will be announced at a later date, and will provide relief funds to specialty crop growers and entities without crop insurance or NAP coverage.

Emergency Relief Program

The ERP will be delivered in two phases, implemented by the Farm Service Agency (FSA) and the Risk Management Agency (RMA) USDA. ERP Phase 1, announced May 16, will provide disaster relief to all eligible crops for which federal crop insurance² or NAP coverage was available, except for crops intended for grazing, with eligible losses from crop years 2020, 2021, or 2022. The 2022 crop year is included because a qualifying disaster event occurring in the 2021 calendar year may have caused a loss of a crop during the 2022 crop year, based on how “crop year” is defined in the applicable crop insurance policy or NAP provisions.

ERP Phase 1 Applications

FSA will send ERP applications to those who already have data on file with FSA or the Risk Management Agency (RMA), as a result of the producer previously receiving a NAP payment or a crop insurance indemnity under certain crop insurance policies. ERP Phase 1 will provide additional relief payments to crop insurance and NAP policy holders for losses sustained by a covered event (wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze, including a polar vortex, smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021).

For drought losses, ERP assistance is available if any area within the county in which the loss occurred was rated by the U.S. Drought Monitor as having a:

- D2 (severe drought) for eight consecutive weeks; or
- D3 (extreme drought) or higher level of drought intensity.

Lists of [2020](#) and [2021](#) drought counties eligible for ERP is available on the emergency relief website.

A separate application form will be generated for each applicable program year. Receipt of an application does not confirm eligibility nor does it indicate relief payments will be awarded; FSA will determine payments based on information provided by the applicant. FSA expects to begin mailing application forms in May to producers who received crop insurance indemnities, and to begin mailing forms to producers who received NAP payments later in the summer.

Payment Calculation

RMA and FSA will calculate ERP Phase 1 payments based on the data on file with the agencies at the time of calculation. The ERP Phase 1 payment calculation for a crop and unit will depend on the type and level of coverage obtained by the producer. Each calculation will use an ERP factor based on the producer’s level of crop insurance or NAP coverage, as shown below.

² Federal Crop Insurance Policies that provided coverage for crop production losses or tree losses related to the qualifying disaster events and received an indemnity (does not include raisin reconditioning payments) for a crop and unit, excluding perennial crops with an intended use of grazing; livestock policies; nursery; forage seeding; and Margin Protection Plan policies purchased without a base policy.

<u>Crop Insurance Coverage Level</u>	<u>ERP Factor(percent)</u>
Catastrophic coverage	75.0
More than catastrophic coverage but less than 55 percent.....	80.0
At least 55 percent but less than 60 percent.....	82.5
At least 60 percent but less than 65 percent.....	85.0
At least 65 percent but less than 70 percent.....	87.5
At least 70 percent but less than 75 percent.....	90.0
At least 75 percent but less than 80 percent.....	92.5
At least 80 percent.....	95.0

<u>NAP Coverage Level</u>	<u>ERP Factor(percent)</u>
Catastrophic coverage	75.0
50 percent	80.0
55 percent	85.0
60 percent	90.0
65 percent	95.0

For crops receiving crop insurance indemnities, RMA will calculate each producer's loss consistent with the loss procedures for the type of coverage purchased but using the ERP factor. This calculated amount would then be adjusted by subtracting out the net crop insurance indemnity, which is equal to the producer's gross crop insurance indemnity already received for those losses minus service fees and premiums.

For crops covered by NAP, FSA will perform a calculation that is consistent with the NAP payment calculation for the crop and unit but using the ERP factor in the table above applicable to the producer's NAP coverage level as the applicable guarantee in those calculations. For example, the guarantee for a producer that had purchased 60 percent NAP coverage would be adjusted and recalculated based on a 90 percent ERP factor. The calculated amount using the ERP factor would then be adjusted by subtracting the net NAP calculated payment, which is equal to the producer's gross NAP payment already received by the producer minus service fees and premiums. For NAP, actual value equals the dollar value of the crop and unit at the time of loss as determined by USDA.

For example, a producer had a crop that had a value of \$150,000 and a 50 percent loss, resulting in a loss of \$75,000. They had a NAP coverage level of 60 percent, so their NAP guarantee was \$90,000. Their NAP guarantee of \$90,000 minus the \$75,000 value of the crop that was not lost is equal to a net NAP calculated payment of \$15,000. The new ERP guarantee based on the ERP factor of 90 percent is calculated to be \$135,000. The ERP guarantee of \$135,000 minus the \$75,000 value of the crop that was not lost is equal to \$60,000, which is reduced by the net NAP calculated payment amount of \$15,000, resulting in a calculated ERP Phase 1 payment of \$45,000.

Producers who receive an ERP Phase 1 application and disagree with the calculated payment amount or data used in the calculation may apply for ERP Phase 2, which will allow them to provide their data to FSA through a traditional application process.

During ERP Phase 1, FSA USDA will prorate relief payments by 75% to ensure that funding is not exceeded for the ERP Phase 1 and the ERP Phase 2.

ERP Phase 2 Applications

If growers have not received crop insurance indemnities or NAP payments, ERP Phase 2 “will provide payments for other eligible losses through a more traditional application process during which eligible producers will provide all data required to calculate a payment. FSA will announce ERP Phase 2 provisions and application period in a future Federal Register document.”

Payment Limitations³

Payment limitations are based on adjusted gross income. A person or a legal entity, other than a joint venture or general partnership, cannot receive more than \$125,000 in payments for specialty crop losses if their average adjusted gross farm income is less than 75 percent of their average AGI the three taxable years preceding the most immediately preceding complete tax year. 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, then the payment limitation is \$900,000 for specialty crops for each program year and \$250,000 for all other crops for each program year.

Payment Requirements

Those persons or entities who receive an ERP payment must purchase a crop insurance or NAP policy for the next two crop years following the payment of at least catastrophic coverage for NAP crops and at least 60 percent coverage for insurable crops.

³ The Extending Government Funding and Delivering Emergency Assistance Act provides that in the case of specialty crops or high value crops, as determined by the Secretary, the Secretary shall impose payment limitations consistent with [7 CFR 760.1507\(a\)\(2\)](#), which specified that a producer could receive up to \$900,000 if not less than 75 percent of the average adjusted gross income of the person or legal entity was average adjusted gross farm income. USDA is continuing to evaluate how to define “high value crops” and will address those crops during ERP Phase 2.