NATURAL DISASTER RECOVERY AND AGRICULTURE: HOW TO KEEP THE CROPS COVERED

Brittany Sievers†

I. INTRODUCTION

Natural disasters have been ravaging the world for centuries. The damage caused by these disasters is often thought of in relation to tangible, personal property. Tornadoes ripping through buildings, flood waters destroying priceless family artifacts, and hail leaving vehicles totaled in a matter of minutes. However, damage to the agricultural system is just as staggering and debilitating. In 2017 alone, natural disasters in the United States caused a devastating $306 billion in damage, a record year.[1] Within this $306 billion, the agricultural system suffered

† J.D., Drake University Law School, 2019, B.S. Speech Communication, 2012, Iowa State University. The author would like to thank her husband, family and friends for all of the support given while writing this note. The author would also like to thank the Editorial Board of the *Drake Journal of Agricultural Law* for all of their hard work put into this edition of the journal.

1. Chris Mooney & Brady Davis, *Extreme hurricanes and wildfires made 2017 the most costly U.S. disaster year on record*, WASH. POST: CLIMATE & ENV'T (Jan. 8, 2018), https://perma.cc/7A36-8QL3.

$5 billion of damage.[2] In response to the catastrophic dollar amount of damage in 2017, the House of Representatives passed a bill, H.R. 4667, to provide disaster assistance for damage caused explicitly by Hurricanes Harvey, Irma, and Maria—as well as wildfires throughout the west.[3] This bill provided $81 billion in disaster relief for these specific events, with only a very small fraction reserved for agriculture.[4] Of the $81 billion reserved, only $2.6 billion of the funding was reserved for "crops, trees, bushes, vines, and livestock losses."[5] The funding passed with this bill for allocation to agriculture does not meet the total impact of damages and only covers a few specific disasters that have occurred.

In addition, flooding, drought, and hail have had significant impacts on the agricultural system. A severe drought in North Dakota, South Dakota, and Montana caused damage to field crops, and a deficiency of feed forced ranchers to sell livestock.[6] Due to severe drought, these states saw a total of $2.6 billion in damage.[7] Also, several midwestern states suffered severe hail, high winds, and saw multiple tornadoes touch down in June of 2017, which cost more than $3.1 billion in damages.[8] In April and May of 2017, Missouri and Arkansas experienced extreme flooding when the states received a period of heavy rainfall that produced up to fifteen inches and left behind $1.8 billion in damage.[9] The southern states, as well as Colorado and the central region, also experienced hail storms and wind damage, with the total damage in the billions.[10] Several states in the southeast even experienced loss due to a severe freeze in March of 2017.[11] While a March freeze is not out of the ordinary, it did cause damage to crops due to an early bloom resulting from unusually warm temperatures the weeks prior.[12] Peaches, blueberries, strawberries, and apples were just some of the crops that were a part of the one billion dollars in damage.[13]

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2. Sam Bloch, *2017's natural disasters cost American agriculture over $5 billion*, COUNTER (Jan. 4, 2018), https://perma.cc/5TXP-XVT2.
3. H.R. 4667, 115th Cong. (2018).
4. *Id.*
5. Bloch, *supra* note 2.
6. *Billion-Dollar Weather and Climate Disasters: Table of Events*, NOAA NAT'L CENTERS FOR ENVTL. INFO., https://perma.cc/XD9Z-STHY (archived Nov. 4, 2019).
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*

With the hefty price tag of rebuilding and recovery from these disasters, the primary question arises: How will the residuary cost be covered? The recovery options currently have only account for damage to the present industry but fail to recognize and plan for the long-term impact of these disasters. The Arkansas flooding in 2017 serves as an example of how calculated damage costs can be misleading; the original damage was estimated to be $64.5 million.[14] However, after including estimated delays—planting, changed input costs, input costs associated with the second round of planting, and expenses associated with processing—the estimated total is now between $140 million to $210 million.[15]

This Note will examine the natural disasters that have occurred over the past several years within the United States, the recovery options available to those who suffered losses, and why it is important for these options to be easily accessible to farmers.

II. Natural Disasters Within the United States

The year 2017 was a devastating year for the United States in regard to natural disasters. With over $306 billion in damage, many communities took major hits that will take years, if not decades, to recover fully.[16] According to the National Oceanic and Atmospheric Administration, this record-setting damage was caused by sixteen different weather events throughout 2017.[17] The events spanned the entire United States, which included cyclones, severe storms, flooding, freeze, drought, wildfire, and hurricanes.[18]

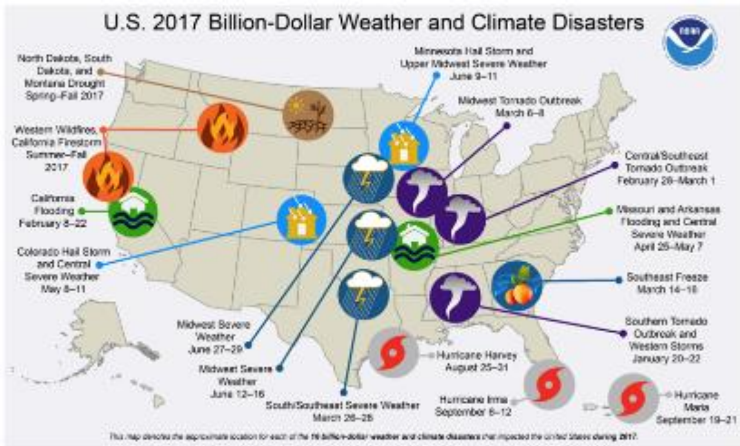
14. Mary Hightower, Univ. of Ark., *Arkansas: Ag Flood Damage Estimate Widens to $175Mln*, AGFAX (May 16, 2017), https://perma.cc/R2QE-8DJT.

15. *Id.*

16. Umair Irfan & Brian Resnick, *Megadisasters devastated America in 2017*, VOX (Mar. 26, 2018, 10:52 AM), https://perma.cc/W662-5QQS.

17. *Id.*

18. Adam B. Smith, *2017 U.S. billion-dollar weather and climate disasters*, NOAA CLIMATE.GOV (Jan. 8, 2018), https://perma.cc/FE9X-3GVG.



[19]

According to the United States Department of Agriculture (USDA), the top ten agricultural producing states are California, Iowa, Texas, Nebraska, Minnesota, Illinois, Kansas, North Carolina, Wisconsin, and Indiana.[20] As shown in the map above, almost every top producing state experienced a major natural disaster in 2017.[21]

Hurricane Harvey powerfully impacted the agriculture of several southern states.[22] Harvey devastated the beef cattle industry in Texas with 1.2 million beef cattle lost because of weight loss or death.[23] This resulted in a twenty-seven percent loss of the state's beef cattle and four percent of the country's total beef cattle.[24] The total loss has been estimated to have a price tag of over $23 million.[25] When considering the added cost for replacement of hay feed, barns, fences, and other infrastructure needed to raise beef cattle, there was a ghastly total damage of nearly $70 million.[26] The cost of destruction suffered by the beef industry across the United States totals roughly $93 million.[27]

19. *Id.*

20. *FAQs*, USDA ECON. RES. SERV., https://perma.cc/E32X-E3WZ (archived Oct. 21, 2019).

21. Smith, *supra* note 18.

22. Bloch, *supra* note 2.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

Louisiana, the nation's third-largest rice producer, experienced a loss of 78,400 acres of rice to Hurricane Harvey.[28] This cost was twenty percent of the state's forecasted rice harvest and three percent of the country's predicted rice harvest.[29] The total value of crops lost, based on 2016 sales, totaled over $59 million.[30]

The wildfires that ravaged California had an effect on avocado fields, cherimoya trees, wine grape acreages, and unharvested Cabernet grapes.[31] The avocado harvest is expected to suffer $10 million in losses, the cherimoya trees are an expected loss of $5 million, and the unharvested Cabernet grapes impacted by smoke will likely see a value decrease of almost $146 million.[32]

Hurricane Irma left a mark on the Florida agricultural system, clearing out 100% of the state's sugarcane production.[33] This tremendous damage was fifty-three percent of the entire country's sugarcane and was worth $382 million.[34] Also, other areas taking a hit were blueberry bushes, aquaculture operations, dairy farms, and beef calves.[35] The total loss in production for these areas in Florida alone totaled over $90 million.[36]

Hurricane Maria, a Category IV hurricane that desolated Puerto Rico, dissipated fifty percent of their dairy industry, seventy percent of their poultry infrastructure, and fifty percent of their coffee production.[37] Puerto Rico lost eighty percent of its overall crop value, and estimated damage to its agricultural system totaled almost $2.8 billion.[38]

With the high costs of damage caused by these natural disasters, it is imperative that the recovery options are adequate to help the agricultural system recover, as well as plan and account for the long-term impacts of this damage.

28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*

III. Recovery Options

Billions of dollars in damage to the agricultural system leaves farmers grasping for ways to recover and rebuild. The question that arises is: How will recovery continue to be funded through the years as the occurrence of natural disasters continue to rise and are producers aware of their options? Crop insurance is a vital risk management tool available to farmers and ranchers to help mitigate declines in crop yields and revenue.[39] In addition, several other options are available, such as the Noninsured Crop Disaster Assistance Program, Emergency Conservation Program, Whole-Farm Revenue Protection, and Emergency Farm Loans.

A. Crop Insurance

There are two different categories of crop insurance that are available to farmers, federally subsidized multiple-peril crop insurance (MPCI) and state-regulated private crop insurance, commonly known as Crop-Hail policies.[40]

1. Multiple-Peril Crop Insurance

MPCI is crop insurance coverage provided through the Federal Crop Insurance Corporation (FCIC) and covers naturally occurring perils.[41] MPCI must be purchased before planting begins and covers a wide range of perils.[42] These perils include drought, excessive moisture, freeze, disease, and other natural causes.[43] To write a Federal MPCI policy, a company must enter into a contract with the Federal Crop Insurance Corporation establishing what is provided concerning subsidies and reinsurance.[44] For insurance companies to enter into a contract with the FCIC, they must be in good financial standing and in compliance with the state laws where they write business and are domiciled.[45] With these strict guidelines, only seventeen companies have signed the Standard Reinsurance Agreement and have been approved, with two recently signing in 2018.[46]

39. Ctr. for Ins. Policy & Research, *Crop Insurance*, NAT'L ASS'N INS. COMMISSIONERS, https://perma.cc/ZM99-H68D (archived Oct. 21, 2019).

40. *Id.*

41. *MPCI Policies provide coverage for loss of production or a combination of yield and price coverage.*, PROAG, https://perma.cc/D4Y3-4UR6 (archived Oct. 21, 2019).

42. Center for Insurance Policy & Research, *supra* note 39.

43. *Id.*

44. *Id.*

45. *Reinsurance Agreements*, USDA RISK MGMT. AGENCY, https://perma.cc/VKW2-HJCT (archived Oct. 21, 2019).

46. Center for Insurance Policy & Research, *supra* note 39.

In 2017, more than 311 million acres of farmland were insured through the Federal Crop Insurance Program.[47] Only fourteen private-sector companies were authorized to sell and service policies through the Federal Crop Insurance Program, and over 1.1 million policies were issued by these companies in 2017 alone.[48]

Federal Crop Insurance is authorized by 7 U.S.C. § 1508 and is administered by the USDA's Risk Management Agency (RMA).[49] To qualify for the coverage after a catastrophic event under an MPCI policy, the losses incurred must be due to "drought, flood or other natural disasters (as determined by the Secretary)."[50] This coverage serves the purpose of helping producers indemnify their losses suffered because of these natural disasters.[51] The coverage applies to "agricultural commodities" in the field, with the exception of tobacco, potatoes, and hemp.[52] However, there are several other areas that producers experience loss that is not covered under this program.[53] Under "coverage availability," there is an exception stating that coverage is not available for any crops and grasses used for grazing.[54] Grasses and crops used for grazing, animals, equipment, machinery, stock and storage structures, business records, and dwellings are all covered under different insurance policies and disaster recovery programs.[55]

The Code of Federal Regulations enumerates the criteria that would render someone ineligible for a program under the Federal Crop Insurance Act.[56] The first criteria for making someone ineligible is a delinquent debt.[57] The person is given time to contest the debt, and the debt must be verifiable.[58] If the person is determined not to owe the debt, eligibility for the program is reinstated back to the date when eligibility was first determined.[59] Someone is also rendered ineligible if

47. Mechel Paggi et al., Nat'l Crop Ins. Servs., *2017: The Year in Review*, CROP INS. TODAY, June 2018, at 5, 17.

48. *Facts & Figures*, CROP INS., https://perma.cc/Z72R-FEUG (archived Oct. 21, 2019).

49. MEGAN STUBBS, CONG. RESEARCH SERV., AGRICULTURAL DISASTER ASSISTANCE 1 (June 11, 2019), https://perma.cc/JVU4-KMX8.

50. 7 U.S.C. § 1508(a)(1) (2018).

51. *Id.* at (b)(1)(A).

52. *Id.* at (a)(2).

53. *See id.*

54. *Id.* at (b)(1)(B).

55. *See id.*

56. 7 C.F.R. § 400.679 (2020).

57. *Id.* at (a).

58. *Id.* at (a)(2).

59. *Id.* at (a)(4).

they have been convicted of a controlled substance.[60] A violation occurs when an individual has been "convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year."[61] Also, an individual may be rendered ineligible if the person is "convicted under Federal or State law of possession of or trafficking a controlled substance."[62]

In addition, someone is deemed ineligible if found to be in violation of 7 U.S.C § 1515(h), which references program compliance and integrity.[63] Program compliance and integrity concerns whether someone has given false information, is non-compliant with the program, or has committed insurance fraud.[64] Another instance that can render someone ineligible is if they are not a United States citizen, are a non-citizen national, or are a qualified alien.[65] Also, someone may be found ineligible if they have been suspended or debarred for committing a crime specified within the statute, such as fraud.[66] A person will also be rendered ineligible if they have knowingly done business with a person that has been debarred or suspended.[67] Finally, a person will be deemed ineligible if they requested the administrator of the Risk Management Agency to review their case for reinstatement of their eligibility, and that request was denied.[68]

When looking at the liability coverage of MPCI policies, Iowa's policies are a prime example of the type of protection offered. In 2017, 21.9 million acres in Iowa were protected through MPCI policies, providing $11.8 billion in liability protection.[69] Farmers paid $323.2 million for the coverage, and crop insurers only paid out $165.3 million to cover the crop losses.[70] While Iowa was fortunate in 2017 to have losses under the total amount of premiums paid, the state of Texas was not as fortunate.[71] In 2017, Texas farmers paid a total of $311.1 million for MPCI policies to cover 203 million acres.[72] However, because of the devastating natural disasters within the state, crop insurers paid out $751 million to cover crop

60. *Id.* at (b).
61. 7 C.F.R. 400.680(b) (2020).
62. *Id.* at (c).
63. 7 U.S.C. § 1515(h) (2018); 7 C.F.R. § 400.769(c) (2020).
64. 7 U.S.C. § 1515(h) (2018).
65. § 400.679(d).
66. *Id.* at (e).
67. *Id.* at (f).
68. *Id.* at (g).
69. FED. CROP INS. CORP., COMMODITY YEAR STATISTICS FOR 2017 9 (Nov. 2019), https://perma.cc/XGX6-P4XF.
70. *Id.*
71. *Id*. at 9, 25.
72. *Id.* at 25.

losses.[73] The large deficit of $439.9 million shows the vital role that insurance plays.

When analyzing the remaining states, the following experienced a high payout by insurers in comparison to the amount of premiums paid in during 2017.

2017 CROP INSURANCE PREMIUMS PAID BY STATE[74]			
STATE	FARMERS PAID	CROP INSURERS PAID	DEFICIT
Alabama	$23.5 million	$38.6 million	$15.1 million
Arizona	$43.6 million	$106.8 million	$63.2 million
Arkansas	$40.4 million	$155.7 million	$115.3 million
California	$159.4 million	$336.4 million	$177 million
Colorado	$71.7 million	$113.4 million	$41.7 million
Connecticut	$2 million	$2.4 million	$0.4 million
Florida	$41 million	$100.6 million	$59.6 million
Georgia	$59.2 million	$179.4 million	$120.2 million
Hawaii	$0.4 million	$1 million	$0.6 million
Idaho	$27.4 million	$52.8 million	$25.3 million
Kansas	$234.2 million	$285.1 million	$50.9 million
Kentucky	$56.9 million	$92.7 million	$35.8 million
Louisiana	$24 million	$52.9 million	$29 million
Massachusetts	$1.1 million	$2.6 million	$1.5 million
Michigan	$61.1 million	$99.1 million	$38.1 million
Mississippi	$35.7 million	$81.1 million	$45.4 million
Montana	$61.1 million	$247.1 million	$186 million
New Hampshire	$0.1 million	$0.3 million	$0.2 million
New Mexico	$17.8 million	$39.1 million	$21.4 million

73. *Id.*
74. *Id.* at 1-25.

New York	$18.3 million	$73.1 million	$54.8 million
North Carolina	$68.1 million	$151.3 million	$83.2 million
North Dakota	$292.3 million	$575.2 million	$282.8 million
Oklahoma	$59.9 million	$87.5 million	$27.6 million
Oregon	$15.8 million	$28.4 million	$12.6 million
Rhode Island	$26,420	$182,642	$156,222
South Carolina	$25.5 million	$58 million	$32.5 million
South Dakota	$194.9 million	$354.9 million	$160 million
Tennessee	$34.9 million	$44.2 million	$9.3 million
Texas	$311.1 million	$751 million	$439.9 million
Utah	$1.8 million	$9.7 million	$7.8 million
Vermont	$1 million	$4.6 million	$3.6 million
Virginia	$22.8 million	$33 million	$10.3 million
Washington	$65.2 million	$129.3 million	$64.1 million
Wisconsin	$79.6 million	$100.8 million	$21.3 million
Wyoming	$7.3 million	$10.4 million	$3.1 million

As shown in the chart above, 35 states experienced a greater payout by insurance companies than the premiums paid in.[75] These numbers reflect the importance of crop insurance and how, even with a devastating loss, farmers can still recover. Crop insurance assists farmers and ranchers in making America a world leader in the agricultural sector by offering aid in times of disaster.[76] With MPCI policies, farmers must contribute financially in order to receive crop insurance protection.[77] While these policies are available at somewhat of a discount because of the federal government, the farmers' contributions help cover the taxpayer cost and encourage financial responsibility on the farmers' end.[78] While the numbers above show the impact crop insurance can have, it was projected that

75. *See id.*

76. *What is Crop Insurance?*, NAT'L CROP INS. SERVICES, https://perma.cc/TR46-T6S4 (archived Oct. 21, 2019).

77. *See* Center for Insurance Policy & Research, *supra* note 39.

78. *Facts & Figures*, *supra* note 48.

in June 2019 the federal government's subsidy will be reduced to forty percent.[79] Reducing these subsidies will result in a decrease in crop insurance of $21 billion between 2020 to 2028, and the change in premium subsidies would, unfortunately, fall to the farmers.[80] Because the cost would fall to the farmer, this could result in the selection of a lower cost coverage option, reduction in the covered amount of acres, or even the end of crop insurance altogether.[81]

2. Crop-Hail

Crop-Hail insurance is a policy that is provided to farmers through private insurance agents and is not part of the Federal Crop Insurance Program.[82] While the name of these policies is "Crop-Hail," they can provide coverage to other calamities besides hail, such as a fire.[83] Some policies also have options that could include perils such as lightning, vandalism, malicious mischief, and certain perils that occur while in transit or storage.[84] Unlike MPCI, which is federally regulated, Crop-Hail insurance is sold on the private market and is regulated by the individual state insurance department.[85] Crop-Hail insurance does not cover the broad scope of perils that MPCI policies cover.[86] The coverage provided is also not reinsured with the FCIC.[87] Even though this coverage is not reinsured by the FCIC, it still has several benefits, such as the ability to be purchased at any time during the growing season and provides the option to purchase from a company of choice.[88]

B. Noninsured Crop Disaster Assistance Program

Another recovery option available is the Noninsured Crop Disaster Assistance Program (NAP). This program is regulated by the USDA Farm Service Agency (FSA), and provides assistance to "producers of non-insurable crops when low yields, loss of inventory or prevented planting occur due to a natural

79. *Reduce Subsidies in the Crop Insurance Program*, CONG. BUDGET OFF. (Dec. 13, 2018), https://perma.cc/Y64G-N9ZR.

80. *Id.*

81. *Id.*

82. *What is Crop Insurance?*, *supra* note 76.

83. *Policy Options*, FARMERS MUTUAL HAIL INS. COMPANY OF IOWA, https://perma.cc/L3LQ-WD2N (archived Oct. 21, 2019).

84. *Id.*

85. Center for Insurance Policy & Research, *supra* note 39.

86. *See id.*

87. *Id.*

88. *Id.*

disaster."[89] The program requires that eligible crops must be commercially produced commodity crops, that catastrophic risk protection crop insurance is unavailable, and must "be any of the following:

- Crops grown for food;
- Crops planted and grown for livestock consumption, including but not limited to grain and forage crops, including native forage;
- Crops grown for fiber, such as cotton and flax (except for trees);
- Crops grown in a controlled environment, such as mushrooms and floriculture;
- Specialty crops, such as honey and maple sap;
- Value loss crops, such as aquaculture, Christmas trees, ginseng, ornamental nursery and turfgrass sod;
- Sea oats and sea grass and;
- Seed crops where the propagation stock is produced for sale as seed stock for other eligible NAP crop production."[90]

Another eligibility requirement is that the natural disaster must occur "during the coverage period, before or during harvest and must directly affect the eligible crop."[91] The program defines an eligible natural disaster as:

- "[d]amaging weather, such as drought, freeze, hail, excessive moisture, excessive wind or hurricanes;
- [a]n adverse natural occurrence, such as earthquake or flood; A condition related to damaging weather or an adverse natural occurrence, such as excessive heat, plant disease, volcanic smog (VOG), insect infestation or;
- any combination of these conditions."[92]

89. *Noninsured Crop Disaster Assistance Program*, BENEFITS.GOV, https://perma.cc/4MRD-CTXX (archived Nov. 13, 2019).
90. *Id.*
91. *Id.*
92. *Id.*

To apply for NAP coverage, a producer must pay a service fee at the FSA office where their farm records are kept and submit an application for coverage.[93] NAP provides coverage that corresponds with the type of catastrophic coverage provided by insurance policies.[94] The protection is based on the "loss amount that exceeds 50% of expected production at 55% of the average market price for the crop."[95] Producers have the option to select an additional coverage amount atop the 50%, but a premium must be paid for this option.[96]

The NAP is funded by the Farm Bill.[97] In 2018, the most recent Farm Bill improved NAP in several ways.[98] The improved coverage allows for a waiver of the service fee for beginning and socially disadvantaged farmers and allows a fifty percent premium discount.[99] The improvements from the most recent Farm Bill also have FSA and RMA working together to help transition crops and counties from NAP to crop insurance and helps beginning farmers use NAP as an "on-ramp" to Federal Crop Insurance.[100]

When comparing the 2014 Farm Bill crop insurance to the 2018 Farm Bill, funding has decreased from $89.9 billion to only $77.9 billion.[101] However, while the funding for crop insurance decreased, funding for commodity programs saw an increase from $44.5 billion to $64.6 billion.[102]

C. Emergency Conservation Program

The Emergency Conservation Program (ECP) is another tool available for producers to help mitigate damages; providing emergency funding focused on rehabilitation of farmland and water conservation efforts during a severe drought.[103] To decide if the land is eligible for this program, on-site inspections are done to determine the type and extent of the damage.[104] Some of the available

93. FARM SERV. AGENCY, NONINSURED CROP DISASTER ASSISTANCE PROGRAM FOR 2015 AND SUBSEQUENT YEARS (Oct. 2017), https://perma.cc/M3Y9-E39A.

94. *Id.*

95. *Id.*

96. *Id.*

97. *2018 Farm Bill Drilldown*, NAT'L SUSTAINABLE AGRIC. COALITION: BLOG (Dec. 14, 2018), https://perma.cc/C533-QT4V.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. FARM SERV. AGENCY, EMERGENCY CONSERVATION PROGRAM (ECP) (Oct. 2017), https://perma.cc/TV3C-BQQJ.

104. *Id.*

conservation practices include: debris removal from farmland, grading, shaping or leveling land, restoring fences and conservation structures, and providing emergency water during periods of severe drought.[105]

The USDA provides funding for the ECP, which varies drastically on a year-to-year basis.[106] In 2017, $103 million was appropriated for major natural disasters, and $28.7 million was appropriated for emergencies that were not declared a major disaster.[107] In 2018 to date, another $400 million had been appropriated for funding relief for the disasters in 2017.[108] The funding provided remains available until it has been exhausted.[109] Congress can elect where funding is to be appropriated based on specific disasters, activities, or locations.[110] Once funding has been allocated, it is funneled down from the national FSA office to the state offices.[111] Once the local FSA offices receive funds, county committees will determine funding on a first-come, first-serve basis.[112]

D. Whole-Farm Revenue Protection

Some producers with a variety of crops may find it difficult and time-consuming to insure each crop, and for some crops, they may struggle to find coverage at all. Whole-Farm Revenue Protection helps farmers who have a variety of crops, have crops that may be difficult to insure elsewhere, or are not covered by government programs.[113] This product is available in every county within the United States, and farmers can insure revenue for several crops all at once.[114]

The Whole-Farm Revenue Protection program is a pilot program administered by the USDA Risk Management Agency, but is not yet codified in the Code of Federal Regulations.[115] This pilot program must be offered by all

105. *Id.*

106. MEGAN STUBBS, CONG. RESEARCH SERV., R42854, EMERGENCY ASSISTANCE FOR AGRICULTURAL LAND REHABILITATION 1 (Feb. 2018).

107. *Id.* at 3.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 4.

112. *Id.*

113. *What you need to know about Whole Farm Revenue Protection*, CTR. FOR RURAL AFFAIRS (Oct. 21, 2019), https://perma.cc/4ENS-6QLU.

114. *Id.*

115. FED. CROP INS. CORP., WHOLE-FARM REVENUE PROTECTION PILOT HANDBOOK 1 (July 2019), https://perma.cc/A94W-4993.

approved insurance providers and must be administered according to certain policy and procedures within the Whole-Farm Revenue Protection handbook.[116]

In order to qualify for this policy, the insured must qualify based on criteria within the policy and be eligible for crop insurance.[117] However, there are several criteria that would render someone ineligible for this policy.[118] Farm operations could be deemed ineligible based on the amount of revenue that is brought in.[119] The revenue determination is based on what type of operation is occurring and the intended commodities value.[120] The revenue that is insured under this policy is the insured's allowable revenue, determined by a lengthy calculation.[121] However, there are still disqualifications from the policy if an operation produces multiple commodities with different commodity codes, the farm operation qualifies for only one commodity using the commodity count calculation, or the commodity listed with the highest expected revenue has another plan of insurance available.[122]

This recovery option may seem like coverage is finally available for crops that are not as readily insurable; however, as demonstrated, the handbook includes a vast list of items that would disqualify someone from coverage.[123] The insurable losses under the policy are losses that have occurred to approved revenue due to unavoidable natural causes during the insurance period.[124] Uninsurable losses are those that result from negligence, mismanagement, or wrongdoing by the insured.[125] Also, a fire that is not naturally caused, chemical drift, or any act by a person that has an impact on the revenue will be deemed uninsurable losses.[126] These are only a few of a long list of items that will deem the crops uninsurable.[127]

Within this policy, insureds have several responsibilities in order to maintain the policy.[128] The insured must provide tax records in a five-year whole-farm

116. *Id.*
117. *Id.* at 9-10.
118. *Id.* at 10-12.
119. *Id.* at 11.
120. *Id.*
121. *Id.*
122. *Id.* at 17-19.
123. *Id.* at 58-60.
124. *Id.* at 58.
125. *Id.*
126. *Id.*
127. *Id.* at 58-60.
128. *Id.* at 4-5.

history period, production reports, as well as information regarding insurance that has been obtained from another insurance agent.[129]

E. When the Government Responds to Disasters

When insurance and recovery options are not enough or not an option to help cover the damage, it becomes a question of if or when the government will respond and fund recovery for these natural disasters. "States and U.S. territories, as well as tribes, typically respond to small-scale disasters and emergencies on their own or with assistance from nearby jurisdictions and volunteer groups. But in cases where the scale of a disaster exceeds local capacity, these authorities can appeal for help from Washington."[130] When the government responds, there are different levels of response that are taken: preemptive action, short-term response, and long-term recovery.[131] In the next 30 to 90 days after a natural disaster, agencies work with state and local governments to begin removing debris and rebuilding basic infrastructure.[132] The government is viewed as an "insurer of last resort" to those that are not covered by private insurers.[133]

IV. KEEPING FARMERS MOTIVATED

With the rise of debilitating natural disasters, rebuilding and recovery can become overwhelming. Every year natural disasters strike the agricultural community.[134] Whether a Category IV hurricane or a severe drought, the livelihood of producers may rest on their ability to receive aid to help mitigate the damage. When discussing the flooding that Arkansas has experienced within the past several years, Mary Hightower of the University of Arkansas stated, "[f]armers have wrestled with razor-thin profit margins for years. However, the cumulative effects of a third weather-related blow in a six-year span are adding up to staggering financial difficulties for some growers."[135] The recovery process can be a long and tedious process with many hoops to jump through in order to get the appropriate funding. If a farmer suffers a loss that is too debilitating, this may lead the farmer to sell land or the farm altogether.[136] It will be vital to make sure the

129. *Id.* at 4.

130. *U.S. Disaster Relief at Home and Abroad*, COUNCIL ON FOREIGN REL. (Aug. 15, 2018), https://perma.cc/MS6X-5FRX.

131. *Id.*

132. *Id.*

133. *Id.*

134. Stewart Truelsen, *Rampaging Natural Disasters* (Sept. 27, 2017), https://perma.cc/6AV8-J8CS.

135. Hightower, *supra* note 14.

136. *See* Truelsen, *supra* note 134.

process of receiving aid to recover does not lead to a decline in farmers. Stewart Truelsen stated it best when he said, "American agriculture cannot afford to lose these farms. Farmers and ranchers need immediate disaster assistance to get on their feet again. Much of the agriculture affected is not transferrable to other parts of the country and is too important to the economy to let farmers call it quits."[137]

It is important that producers plan ahead in preparation for these natural disasters. With the many available options to help mitigate damages, there are also more deadlines that must be met before a natural disaster even occurs, and some options may require an application be filed within seventy-two hours of the disaster occurring.[138] While recovery options are often the first thought after a disaster, for some, it may be a difficult task to meet these deadlines if other resources are unavailable to help fulfill the application process. This may prove difficult at times, as aside from the damages a producer's operation may have suffered, they may also be experiencing the loss of their home, vehicles, and possibly the loss of family or friends.

With damage well in the billions of dollars, the reoccurring question should be: Where will the funds be coming from to help these recovery options? Ben Noble, the executive director of the Arkansas Rice Foundation, speaking about the severe flooding that Arkansas experienced in 2017, stated "[c]rop insurance alone won't be sufficient for many of the impacted Arkansas farmers . . . Congress and USDA need to seriously consider disaster grants to address this immediate need, and pursue significant crop insurance reform for the long term."[139]

The fate of private crop insurance companies also becomes a concern. Private insurance companies that provide Crop-Hail insurance may have a hard time staying in business if the areas they insure experience several debilitating natural disasters in close secession. The funds reserved for payments could potentially be extinguished after one season with drastic losses, rendering the company unable to continue to offer policies in the future.

V. GAPS WITHIN COVERAGE

While there are many options within the United States to help recover from natural disasters, there are many gaps that leave farmers high and dry. For example, Hurricanes Irma and Harvey hit some of the nation's least-insured crops in

137. *Id.*
138. *See, e.g.*, FED. CROP INS. CORP., *supra* note 115, at 60.
139. Hightower, *supra* note 14.

Florida.[140] Peppers and strawberries make up some of these crops, with only sixteen percent of peppers and two percent of strawberries insured nationwide.[141] While some products are 100% covered by both private and governmental insurance, some products are not covered at all.[142] Products like cotton are 100% covered by insurance; however, only thirty-four percent of produce acres are being covered.[143]

While some farmers may not have their crops covered, the USDA provides an option to help recover with an "Emergency Farm Loan."[144] The program is triggered when "a natural disaster is designated by the Secretary of Agriculture or a natural disaster or emergency is declared by the President under the Stafford Act."[145] The program funds can be used to help restore and replace property, assist towards costs associated with the disaster, living expenses, reorganizing the family farming operation, as well as refinancing certain non-real estate operating debts.[146] However, this option is only available to producers whose loss is a direct result of the declared or designated primary disaster.[147] While this may seem to be an option to help fill the gap when insurance coverage is not available, requiring a natural disaster or emergency declared, as well as the credit requirements, could serve as yet another hurdle farmers would have to overcome to help begin recovery.

VI. CONTINUING TO RECOVER

When hearing the phrases "crop insurance" or "natural disaster," there is often an overwhelming feeling. Both of these terms bring about confusion and frustration. Both insurance and natural disasters leave people relying on hope and others to protect them. Insureds are relying on those processing and administering their policies, hoping the agents will make the correct decisions and act in a way that allows the crop coverage to be extended. We also rely on the government to keep the programs funded to allow farmers to continue practicing their profession after disaster strikes. During natural disasters, we rely on the foundation of our homes and other structures to keep us safe from strong winds and heavy rains. We

140. Alan Bjerga, *Washed-out Florida farms show limits of crop insurance reach*, CHI. TRIB.: NATION & WORLD (Sept. 20, 2017), https://perma.cc/X9AN-4LRD.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Emergency Farm Loans*, FARM SERV. AGENCY, https://perma.cc/XD5V-8G92 (archived Nov. 4, 2019).

145. *Id.*

146. *Id.*

147. *Id.*

rely on the comfort and support of friends and family after the disaster has hit to help us recover. We rely on the government to help support and bring us back to normalcy after the storm has passed.

Both insurance and natural disasters leave us at the feet of the government. Producers are relying on the government's organization, budget, and fast action to help us rebuild. But what happens if and when this assistance has a cap? There are a number of different programs that have been established to help farmers recover after a natural disaster. But, with natural disasters on the rise and government programs that receive caps or decline in funding to be distributed, it leaves a lingering question of what happens next? What happens when the budgets are capped, and the natural disasters keep washing away what has only recently been replaced?

As shown throughout this Note, there are a variety of options for farmers to keep their crops covered, ranging from private insurance to the Whole-Farm Revenue Protection program. The options listed above are not all-encompassing, as there are a variety of other options that can help provide specialized coverage as the next few years progress. It is going to be vital to keep farmers informed of the options they have available. There also needs to be a push to keep disaster relief outside of insurance coming from government sources. Natural disasters with billions of dollars in damage are becoming a growing trend, and the government needs to plan out sufficient funding to mitigate the costs, whether through easily accessible crop insurance programs or grants to different states to help with relief.

We need to simplify our procedures and processes to allow farmers easier access to the coverage they need after these natural disasters strike. As seen in 2018, this type of destruction is only a growing trend. Unfortunately, while writing this Note on catastrophic damage of natural disasters in 2017, the United States only continued to see devastation throughout 2018. The United States experienced fourteen different billion-dollar disasters in 2018, with the cost sitting at $91 billion.[148]

With the natural disasters on the rise, farmers should be provided an easily navigated avenue to finding available options of coverage. Insurance policies and government funding are options to help keep crops and livestock covered; however, the qualifications and waiting periods seem overburdensome when facing recovery after a natural disaster. Easily accessible options need to be streamlined to help the farmer keep peace of mind, if disaster strikes, that their way of life will not come to a complete halt.

148. Adam B. Smith, *2018's Billion Dollar Disasters in Context*, USDA CLIMATE.GOV (Feb. 7, 2019), https://perma.cc/W284-4M7D.