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failure to comply with any requirement or condition for payment under this part, must refund the amount of that payment to FSA.

(b) Any refund required will be due from the date of the disbursement by the agency with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this title.

(c) Each producer that has an interest in the agricultural operation will be jointly and severally liable for any refund and related charges found to be due to FSA.

(d) Interest will be applicable to any refunds to FSA required in accordance with parts 792 and 1403 of this title except as otherwise specified in this part. Such interest will be charged at the rate that the U.S. Department of the Treasury charges FSA for funds, and will accrue from the date FSA made the payment to the date the refund is repaid.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous payment was not due to any action of the person or entity, or was beyond the control of the person or entity committing the violation. Any waiver is at the discretion of FSA alone.

§ 755.13 Miscellaneous provisions and appeals.

(a) *Offset.* FSA may offset or withhold any amount due to FSA from any benefit provided under this part in accordance with the provisions of part 1403 of this title.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this title.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the eligible reimbursable costs thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of part 1404 of this title.

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(e) *Violations regarding controlled substances.* The provisions of § 718.6 of this chapter, which generally limit program payment eligibility for persons who have engaged in certain offenses with respect to controlled substances, will apply to this part.

(f) *Appeals.* The appeal regulations specified in parts 11 and 780 of this chapter apply to determinations made under this part.

PART 756—ORIENTAL FRUIT FLY PROGRAM

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AUTHORITY: Sec. 778, Pub. L. 116–6, 133 Stat. 91.

SOURCE: 86 FR 70699, Dec. 13, 2021, unless otherwise noted.

§ 756.1 Applicability.

(a) The Oriental Fruit Fly (OFF) Program will provide payments to eligible producers who suffered losses due to the Oriental fruit fly quarantine in Miami-Dade County, Florida, in accordance with Public Law 116–6 (the Consolidated Appropriations Act, 2019).

(b) The regulations in this part are applicable to crops affected by the Oriental fruit fly quarantine.

(c) In any case in which money must be refunded to the Farm Service Agency (FSA) in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This paragraph (c) will apply,

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unless waived by the Deputy Administrator for Farm Programs, FSA, irrespective of any other regulation in this part.

§ 756.2 Administration.

(a) The OFF Program will be administered under the general supervision of the Administrator, FSA, and the Deputy Administrator for Farm Programs, FSA. The OFF Program is carried out by FSA State committees and FSA county committees with instructions issued by the Deputy Administrator.

(b) FSA State committees and FSA county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any required action not taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; or

(2) Require an FSA county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Deputy Administrator for Farm Programs, FSA, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by an FSA State committee or FSA county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State committees and FSA county committees to waive or modify non-statutory deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the OFF Program.

(f) A representative of FSA may execute applications and related documents only under the terms and conditions determined and announced by FSA. Any document not executed under such terms and conditions, including any purported execution before the date authorized by FSA, will be null and void.

(g) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, and payment factors established by the OFF Program, are not subject to appeal.

§ 756.3 Definitions.

The definitions in this section apply for all purposes of OFF Program administration.

Administrative county office is the FSA county office where a producer's FSA records are maintained.

APHIS means Animal Plant Health and Inspection Service, U.S. Department of Agriculture.

Application period means the dates established by the Deputy Administrator for producers to apply for OFF Program benefits.

Calendar year means January 1st through December 31st.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA.

FSA means the Farm Service Agency, U.S. Department of Agriculture.

NAP means Non-insured Crop Disaster Assistance Program.

OFF Program means the Oriental Fruit Fly Program.

OFF quarantine period means August 28, 2015, through February 13, 2016.

Oriental fruit fly quarantine means the quarantine put in place during the OFF quarantine period in the quarantine area to protect against the entry and spread of the Oriental fruit fly by requiring strict adherence to treatment or destruction of the host crop.

Prevented planting means when producers chose not to plant an annual crop during the 2015 through 2016 season due to the Oriental fruit fly quarantine.

Producer means a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible crop as a landowner, landlord, tenant, or sharecropper.

Program year means the relevant application year. The program year for OFF will be 2015 and include total revenue losses for calendar year 2015 and calendar year 2016.

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Quarantine area means the area mapped by The Florida Department of Agriculture and Consumer Services Division, Division of Plant Industry (FDACS–DPI). The map identifies areas where the Oriental Fruit Fly was detected and the associated boundaries of the area quarantined by APHIS. The map is available by contacting FDACS–DPI, The Doyle Conner Building, 1911 SW 34th St., Gainesville, FL 32608–7100 or <https://www.fdacs.gov/Divisions-Of-fices/Plant-Industry>.

Reliable documentation means evidence provided by the participant that is used to substantiate the amount of revenue reported when verifiable documentation is not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements truck scale tickets, and contemporaneous diaries that are determined acceptable by the FSA county committee. To determine whether the records are acceptable, the FSA county committee will consider whether they are consistent with the records of other producers of the crop in that area.

Revenue means the gross income from crop sales received during the applicable calendar years for the crops that suffered a loss due to the Oriental fruit fly quarantine. Revenue does not mean revenue received for crops grown under contract for crop owners unless the grower had an ownership share of the crop.

RMA means Risk Management Agency.

Secretary means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

Verifiable documentation means evidence that can be verified by FSA through an independent source.

§ 756.4 Qualifying disaster event.

The OFF Program will provide assistance to eligible producers who suffered revenue losses due to the State of Florida and APHIS implemented quarantine that took place from August 28, 2015, through February 13, 2016, in Miami-Dade County, Florida.

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§ 756.5 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be an individual person that is a U.S. Citizen or Resident Alien, or a partnership, association, corporation, estate, trust, or other legal entity consisting solely of U.S. Citizens or Resident Aliens that produces an eligible crop as a landowner, landlord, tenant, or sharecropper; and

(2) Comply with all provisions of this part and, as applicable:

- (i) 7 CFR part 3—Debt Management;
- (ii) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;
- (iii) 7 CFR 400.680, Controlled substance;
- (iv) 7 CFR part 1400, adjusted gross income (AGI) provisions:

(A) Program year 2015 will be used to determine AGI for the OFF Program, therefore the AGI will be the average of tax years 2013, 2012, and 2011; and

(B) The OFF Program allows an exception to the \$900,000 average AGI limitation if at least 75 percent of the average AGI was derived from farming, ranching, or forestry operations. CCC–942 is used to collect the producer and certified public accountant (CPA) or attorney certification statements;

(v) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(vi) 7 CFR part 718—Provisions Applicable to Multiple Programs; and

(vii) 7 CFR part 1400—Payment Limitation and Payment Eligibility.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust is considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee is the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. OFF Program documents executed by any such person will be accepted by FSA only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive an OFF Program payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute.

(2) A guardian has been appointed to manage the minor's property and the applicable OFF Program documents are signed by the guardian.

(3) Any OFF Program application signed by the minor is cosigned by a person determined by the FSA county committee to be financially responsible.

(d) Foreign person rules in 7 CFR part 1400, subpart E, are not applicable to the OFF Program.

(e) Producers will not be required to be in the business of producing and marketing agricultural products at the time of OFF Program application.

(f) The producer must have been actively producing and marketing agricultural products during the OFF quarantine period.

§ 756.6 Eligible and ineligible causes of revenue loss.

(a) To be eligible for payments under this part the producer must have suffered a loss of revenue due to the Oriental fruit fly quarantine of one or more of the following types:

(1) Revenue loss on crop(s) planted or prevented from being planted within the Oriental Fruit Fly quarantine area during the OFF quarantine period. Crops that suffered a revenue loss due to prevented planting must have a prior history of being planted or be able to provide verifiable or reliable documentation demonstrating legitimate intent to plant the crop during the OFF quarantine period;

(2) Pre or post-harvest treatment costs;

(3) Transportation costs to a post-harvest treatment facility;

(4) Crop quality loss;

(5) Crop spoilage;

(6) Crop drop; or

(7) Reduced post-harvest shelf life.

(b) An ineligible cause of revenue loss under this part will apply to the following:

(1) Losses determined by FSA to be the result of poor management decisions or poor farming practices, such as using non-optimal chemical application, over-tilling, monoculture (growing of same crop year after year), allowing soil erosion, nonoptimal planting time, or poor quality seed selection.

(2) Losses due to conditions or events occurring outside of the applicable growing season for the crop.

(3) Losses due to failure of a power supply or lack of irrigation.

(4) Losses to crops not intended for harvest.

(5) Losses to home gardens for personal use and not intended to market.

(6) Losses to non-fruit bearing ornamental nursery.

(7) Losses caused by theft.

(8) Losses caused by disease or pest infestation other than the Oriental fruit fly.

(9) Losses to purchased crops.

§ 756.7 Time and method of application.

(a) An application for OFF Program payment under this part must be submitted in person, by mail, email, or facsimile to the FSA county office serving as the farm's administrative county office by the close of business 60 calendar days after the signup start date announced by FSA. A National Special Program (SP) Notice will be issued providing OFF program details including signup start date and program requirements.

(b) An application will include only the producer's share of revenue for the crops negatively affected by the Oriental fruit fly quarantine for the applicable calendar years.

(c) Once signed by a producer, the application for payment is considered to contain information and certifications of and pertaining to the producer regardless of who entered the information on the application.

(d) The producer applying for the OFF Program under this part certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application.

(1) All information is subject to verification or spot check by FSA at

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any time, either before or after payment is issued. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility for the OFF Program. FSA may at any time, including before, during, or after processing and paying an application, require the producer to submit any additional information necessary to implement or determine any eligibility provision of this part. Furnishing required information is voluntary; however, without it, FSA is under no obligation to act on the application or approve payment.

(2) Providing a false certification will result in ineligibility and can also be punishable by imprisonment, fines, and other penalties.

(e) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all required documentation by the application deadline date announced by FSA.

(f) Applicants must submit all eligibility forms as listed on the FSA-438 Oriental Fruit Fly Program (OFF) Application within 60 calendar days from the date of submitting the application if not already on file with FSA.

§ 756.8 Calculating OFF Program payments.

(a) A revenue loss calculation and factor will determine the OFF Program payment.

(1) A factor will be applied to reduce the participant's payment to ensure that total OFF Program payments are no more than 70 percent of the total revenue losses by all eligible OFF Program participants.

(2) If necessary, at the close of the OFF Program sign-up period, a national payment factor may be determined by the Secretary and announced if full payment of all approved OFF Program applications would result in payments in excess of available OFF Program funds, less a reserve amount of 3 percent. A Price Support Division SP Notice will be issued to announce

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the issuance of OFF and, if applicable, the factored rate.

(b)(1) The OFF Program payment calculation is:

(Calendar year 2014 producer certified gross revenue
– Calendar year 2015 producer certified gross revenue)
+ (Calendar year 2014 producer certified gross revenue
– Calendar year 2016 producer certified gross revenue)
= Total revenue loss for calendar year 2015 and calendar year 2016
× 70%
= OFF Program payment (subject to proration after sign-up, see paragraph (a)(2) of this section)

(2) If the producer did not have 2014 revenue, then 2019 revenue will be used, and the calculation will be:

(Calendar year 2019 producer certified gross revenue
– Calendar year 2015 producer certified gross revenue)
+ (Calendar year 2019 producer certified gross revenue
– Calendar year 2016 producer certified gross revenue)
= Total revenue loss for calendar year 2015 and calendar year 2016
× 70%
= OFF Program Payment (subject to proration after sign-up, see paragraph (a)(2) of this section)

(c) If there is no gross revenue loss determined for calendar year 2015 or calendar year 2016, the payment will be zero.

§ 756.9 Availability of funds and timing of payments.

The total available program funds are \$9 million as provided by Public Law 116-6 (the Consolidated Appropriations Act, 2019). OFF Program payments will be issued after all applications are received and FSA has approved the application.

§ 756.10 Miscellaneous provisions.

(a) Producers who are approved for OFF Program payment will not be required to purchase future NAP or crop insurance for those crops affected by the quarantine as is often required by other disaster programs, because the Oriental fruit fly quarantine was not an eligible covered loss by NAP, and

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RMA does not offer quarantine as an endorsement in Florida.

(b) All persons with a financial interest in a legal entity receiving payments under this part are jointly and severally liable for any refund, including related charges, that is determined to be due to FSA for any reason.

(c) In the event that any application under this part resulted from erroneous information or a miscalculation, the payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of disbursement.

(d) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholding in part 3 of this title apply to payments under this part.

(e) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payment in part 3 of this title.

(f) The regulations in part 11 of this title and part 780 of this chapter apply to determinations under this part.

§ 756.12 Payment limitation.

(a) For the program year 2015, direct or indirect payments made to an eligible person or legal entity, other than a joint venture or general partnership, will not exceed \$125,000.

(b) The attribution of payment provisions in 7 CFR 1400.105 will be used to attribute payments to persons and legal entities for payment limitation determinations.

§ 756.13 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate will, for the purpose of this part, be considered to represent the insolvent affected producer or manufacturer and the beneficiaries of the trust, respectively.

(1) The production of the receiver or trustee will be considered to be the production of the represented person.

(2) Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) [Reserved]

§ 756.14 Misrepresentation, scheme, or device.

(a) A producer will be ineligible to receive assistance under the OFF Program if the producer is determined by the FSA State committee or FSA county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the OFF Program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under the OFF Program, then FSA will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the Government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, will be refunded to FSA. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

§ 756.15 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected producer who would otherwise receive an OFF Program payment, such payment may be made to the person or persons specified in the regulations in part 707 of this chapter. The person requesting such payment must file Form FSA-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in part 707.

§ 756.16 Maintenance and inspection of records.

(a) Producers randomly selected for compliance spot checks by FSA must, in accordance with program notice instructions issued by the Deputy Administrator, provide adequate reports of revenue as applicable. The producer must report documentary evidence of

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crop revenue to FSA together with any supporting documentation to verify information entered on the application. Verifiable documentation is preferred. If verifiable documentation is not available, FSA will accept reliable documentation, if determined to be acceptable by the FSA county committee.

(b) If supporting documentation is not presented to the county FSA office requesting the information within 30 calendar days of the request, producers will be determined ineligible for OFF Program benefits.

(c) The producer must maintain any existing books, records, and accounts supporting any information furnished in an approved OFF Program application for 3 years following the end of the year during which the application for payment was filed.

(d) The producer must permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented.

(c) The Administrator will take any action required by the regulations of this part that the Administrator determines has not already been taken. The Administrator will also:

(1) Correct or require correction of any action taken that is not in accordance with the regulations of this part; or

(2) Require withholding taking any action that is not in accordance with this part.

(d) No provision or delegation in these regulations will preclude the Administrator or a designee or other such person, from determining any question arising under this part, or from reversing or modifying any determination made under this part.

(e) Absent a delegation to the contrary, this part will be administered by the Deputy Administrator for Farm Programs of FSA on behalf of the Administrator of FSA or the Secretary, but nothing in this part will inhibit the ability of the Administrator of FSA or the person holding the equivalent position in the event of a reorganization to delegate the functions of DAFFP under these regulations to another person. Likewise, nothing shall inhibit the ability of the Secretary to reassign any duties with respect to the designations of disasters under this part.

§ 756.17 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations in 7 CFR parts 11 and 780.

§ 759.2 Purpose.

(a) This part specifies the types of incidents that can result in an area being determined a disaster area, which under other regulations makes qualified farmers in such areas eligible for Emergency loans (EM) or eligible for such other assistance that may be available, based on Secretarial disaster designations. Nothing in this part overrides provision of those regulations that govern the actual administration and availability of the disaster assistance regulations.

(b) This part specifies the responsibility of the County Emergency Board (CEB), State Emergency Board (SEB), and the State Executive Director (SED) in regard to Secretarial Designations with regards to disasters. It also

PART 759—DISASTER DESIGNATIONS AND NOTIFICATIONS

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- 759.1 Administration.
- 759.2 Purpose.
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- 759.5 Secretarial disaster area determination and notification process.
- 759.6 EM to be made available.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1961 and 1989.

SOURCE: 77 FR 41254, July 13, 2012, unless otherwise noted.

§ 759.1 Administration.

(a) This part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).