



## DISCLAIMER

This PowerPoint presentation was presented as part of Wine Institute's Wildfire Webinar held on September 16, 2020. Information contained in this PowerPoint is relevant to that date. Please keep in mind that our intent is to offer general subject matter information to the wine industry, and it should be taken as general identification of issues. If you have questions regarding your organization's specific circumstances, we recommend that you contact counsel or subject matter experts directly.



# **WILDFIRE WEBINAR**

*Information & Resources*

*September 16, 2020*



# Program & Speakers

- **Best Practices to Ensure You are Insured** – Liz Bishop and Debra Costa, Heffernan Insurance, Domenic Fino, Golden Pacific Crop Insurance Services
- **Insurance and 2020 Wildfires: What You Need to Know Now** – Steve Severaid, The Greenspan Co./Adjusters International
- **Workplace Health and Safety Guidelines during Wildfires** – Manesh Rath, Keller & Heckman, LLP
- **Regulatory Issues and Relief Resources** – Bobby Koch, Wine Institute



# BEST PRACTICES TO ENSURE YOU ARE INSURED

Liz Bishop and Debra Costa,  
Heffernan Insurance  
Domenic Fino,  
Golden Pacific Crop Insurance Services



# Best Practices to Ensure Insurance

Presented By:

**ELIZABETH BISHOP** | Executive Vice President, Vintner Practice Leader | 707.789.3064 | [lizb@heffins.com](mailto:lizb@heffins.com)

**DEBRA COSTA** | Senior Vice President, Vintner Practice Leader | 707.789.3051 | [debrac@heffins.com](mailto:debrac@heffins.com)

**DOMENIC FINO** | Golden Pacific Crop Insurance Services | 559.679.4141 | [dfino@goldenpacificcrop.com](mailto:dfino@goldenpacificcrop.com)

 **HEFFERNAN**  
INSURANCE BROKERS  
*Because You're Different*

 **GPC**  
GOLDEN PACIFIC CROP  
INSURANCE SERVICES, INC.

# WHAT ARE WE FACING?

- › Continued restricted market – capacity restrictions and higher prices
- › Wildfire is becoming a year over year catastrophic event
- › Property Rates:
  - › Were .10 to .20 per \$100 of values
  - › Now .20 to .45 per \$100 of values & \$1.00 - \$3.00 (for high wildfire exposed properties)
- › Restricted/excluded coverages due to high brush score:
  - › Wine inventory
  - › Trellis and vines
  - › Dwellings/barns
  - › Pump houses & above ground vineyard infrastructure
  - › Outdoor property/trees and shrubs
  - › Associated debris removal



# SOLUTIONS

- › Become your own personal fire department – Invest in your own protection
- › Defense Systems
  - › Defensible Space
  - › Water Tenders
  - › Dedicated Water Tanks to fight fire
  - › Backup Generators
  - › External Fire Suppression systems
  - › Industrial Sprinklers for hillside exposed vineyards
- › Consider pre-hiring private fire fighting defense contractor during wildfire season
- › Train employees for evacuation/fire fighting response



# SOLUTIONS *continued*

- › **Tell Your Story in Insurance Specifications**
  - › Why are you a better risk than other wineries wanting the same or more capacity?
  - › Know your Brush Score – space between your structures must be cleared
  - › Update roofs older than 25 years
  - › Update electrical
  - › Insure your structure to as close to Replacement Cost as possible
  - › Don't forget staff/guest residences/outstructures
  - › Develop and share a formal fire mitigation plan
- › **Change renewal date(s) to outside wildfire season – December to June**





# CROP INSURANCE & SMOKE TAIN

- › Key points to know about your policy & consider when making your harvest decisions

Smoke Taint is NOT a specific named peril, but fire damage is. So on the loss notice, the cause will usually say “fire”

The USDA Risk Management Agency (RMA) dictates the loss adjustment procedures that each Authorized Insurance Provider (AIP) must follow.

USDA’s Risk Management Agency has not established specific threshold levels for the presence of smoke compounds in grapes or wine for purposes of determining smoke damage.

As of today, “elevated” levels of G and 4MG are the only two smoke markers the RMA recognizes. Perhaps with future industry participation and guidance that may be amended.



# CROP INSURANCE & SMOKE TAINT

## What actions does a grower need to take immediately?

- Notice of potential damage must be filed with the carrier PRIOR to harvest
- The specifics of each insured unit (variety and or location) needs to be discussed individually with the carrier's adjuster.
- At RMA's most recent direction, the carrier can now accept micro fermentation lab results as well. Provided lab results are from an independent lab or other credible sources such as a winery. The adjuster/carrier will need to verify that they are a credible source.
- Production from different optional units must be on separate scale tickets in addition to marketing records. (No commingling)
- Samples must be taken from the field. Each variety/ unit must be tested independently. A test done during fermentation must be from a non-commingled lot of fruit.
- An Actual Production History (APH) appraisal must be completed prior to destroying any crop or putting that crop to a different use.
- Both the criteria of smoke markers from lab sample AND a reduction in crop value in excess of 75% but be sustained for the Quality Adjustment (QA) to be completed.



# CROP INSURANCE & SMOKE TAIN

**After the smoke settles, what actions does the industry need to do for the future?  
My opinion based upon questions I've received:**

**The insurance industry is basing their assessment on the Volatile G and 4MG, which seems truly insufficient?**

The RMA has been following guidance and input from your industry in setting what compounds may be markers for smoke taint. The process of accepting new data is something that will involve more direction from your industry to the RMA. This may not happen this year, with a gov't program change comes slow.

**How to improve a risk management system that is more responsive to growers needs?**

As with any loss event on a macro scale, the policyholder desires answers immediately. Since the RMA is a Gov't agency, it by nature responds at a slower pace. Notwithstanding, RMA is actively assessing the current evolving data, as provided to them by industry experts. Fortunately, the RMA office and UC Davis are only blocks from each other. Since this is a Gov't funded program, political capital can always be invested by the wine industry to see changes enacted.



Thank You

Presented By:

**ELIZABETH BISHOP** | Executive Vice President, Vintner Practice Leader | 707.789.3064 | [lizb@heffins.com](mailto:lizb@heffins.com)

**DEBRA COSTA** | Senior Vice President, Vintner Practice Leader | 707.789.3051 | [debrac@heffins.com](mailto:debrac@heffins.com)

**DOMENIC FINO** | Golden Pacific Crop Insurance Services | 559.679.4141 | [dfino@goldenpacificcrop.com](mailto:dfino@goldenpacificcrop.com)





# INSURANCE AND 2020 WILDFIRES: WHAT YOU NEED TO KNOW NOW

Steve Severaid, The Greenspan Co./  
Adjusters International



Questions?





# WORKPLACE HEALTH & SAFETY GUIDELINES DURING WILDFIRES

Manesh Rath, Keller & Heckman, LLP

# California Wildfires: Outdoor Workplace Safety Issues and Recommended Employer Steps

September 16, 2020

**Manesh Rath**

Keller and Heckman LLP

Washington, DC Office

202.434.4182

rath@khlaw.com





# Manesh K. Rath



Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court including *Staub v. Proctor Hospital* and *Vance v. Ball State University*.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been quoted or interviewed in *The Wall Street Journal*, Bloomberg, *Smart Money* magazine, *Entrepreneur* magazine, on "PBS's Nightly Business Report," and C-SPAN.

Mr. Rath currently serves on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center. He served on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by readers to Smart CEO Magazine's Readers' Choice List of Legal Elite; by fellow members to The Best Lawyers in America 2016, 2017 and 2018; selected by Super Lawyers 2016 – 2017, 2017 – 2018; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



**Manesh Rath**

Partner

[rath@khlaw.com](mailto:rath@khlaw.com)

202-434-4182

# Hazard Assessment



- Cal OSHA's emergency smoke regulations remain in effect
- Employers of outdoor workers: required to monitor air quality index (AQI)
  - For PM2.5
  - At the beginning of each shift
- Cal OSHA Standard applies:
  - If AQI for PM2.5 is 151+
  - If employer "reasonably anticipate[s] that employees may be exposed to wildfire smoke"



# Emergency Wildfire Smoke Regulations

---



- If AQI for PM 2.5 below 150, but employees are complaining:

- Employers are encouraged to provide respirators
- Train employees
- Communicate the air quality data to workers



# Emergency Wildfire Smoke Regulations

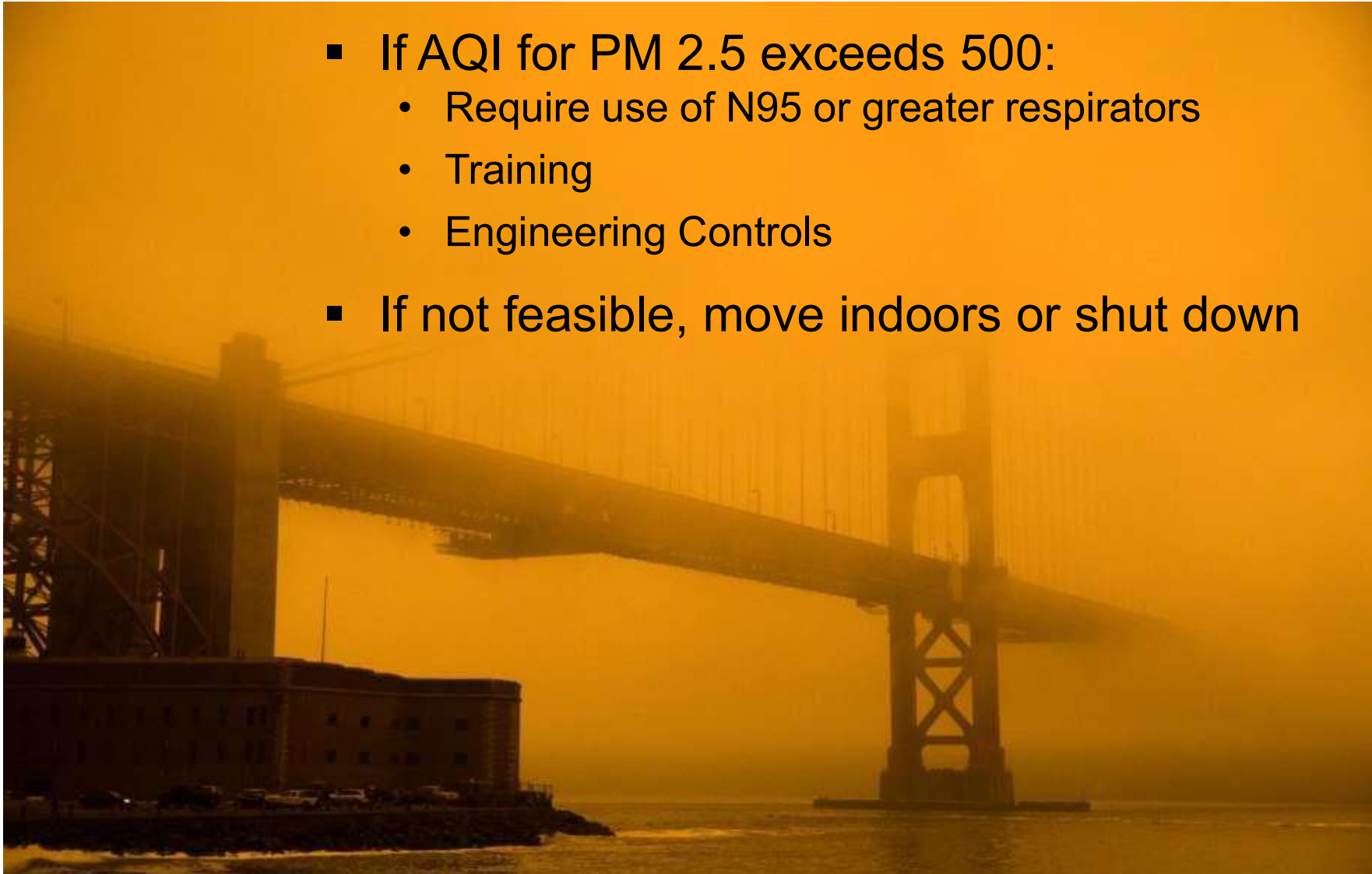


- If AQI for PM 2.5 exceeds 150:
  - Provide N95 (or greater) respirators
  - Encourage use of respirator
  - Provide training
  - Implement engineering controls to reduce exposure to below 151 AQI
    - Ex. Air filtration for indoor work
  - If not feasible, move indoors or shut down

# Emergency Wildfire Smoke Regulations



- If AQI for PM 2.5 exceeds 500:
  - Require use of N95 or greater respirators
  - Training
  - Engineering Controls
- If not feasible, move indoors or shut down



# Intersection of Wildfires and COVID-19



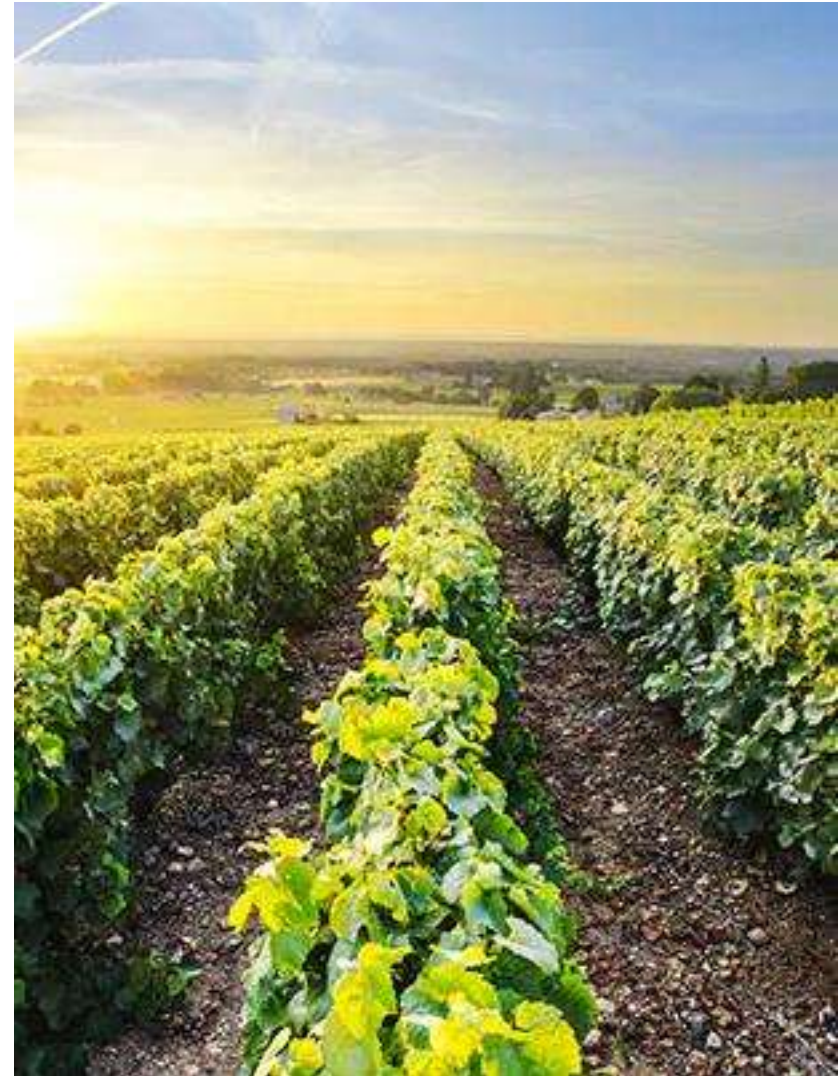
- Cal OSHA has not backed down from N95 mandate, despite shortages due to COVID-19
- California Department of Public Health issued guidance stating N95 respirators are not for personal use
- Cal OSHA issued statement on August 20<sup>th</sup> – working to identify alternatives to respirators to comply with emergency standard



# Intersection of Wildfires and COVID-19 (cont.)



- Cal OES and the California Department of Food and Agriculture are providing one-million N95 respirators to farmworkers
- County Agricultural Commissioners are responsible for distributing N95 respirators
- Caution - EPA has stated N95 masks don't filter out toxic gases, such as carbon monoxide



# What California Employers Can Do



- Employers can monitor AQI using US EPA AirNow website and California Air Resources Board website
  - Employers can also use direct-reading particulate monitor if compliant with Appendix A of the emergency regulations
- Staggered shifts – employees exposed to AQI for PM<sub>2.5</sub> of 151 or greater for a total of one hour or less during a shift are exempt from emergency regulations
- If employers move aspects of operation indoors – must then comply with Cal OSHA guidelines for prevention of COVID-19 in workplace



# What California Employers Can Do (cont.)



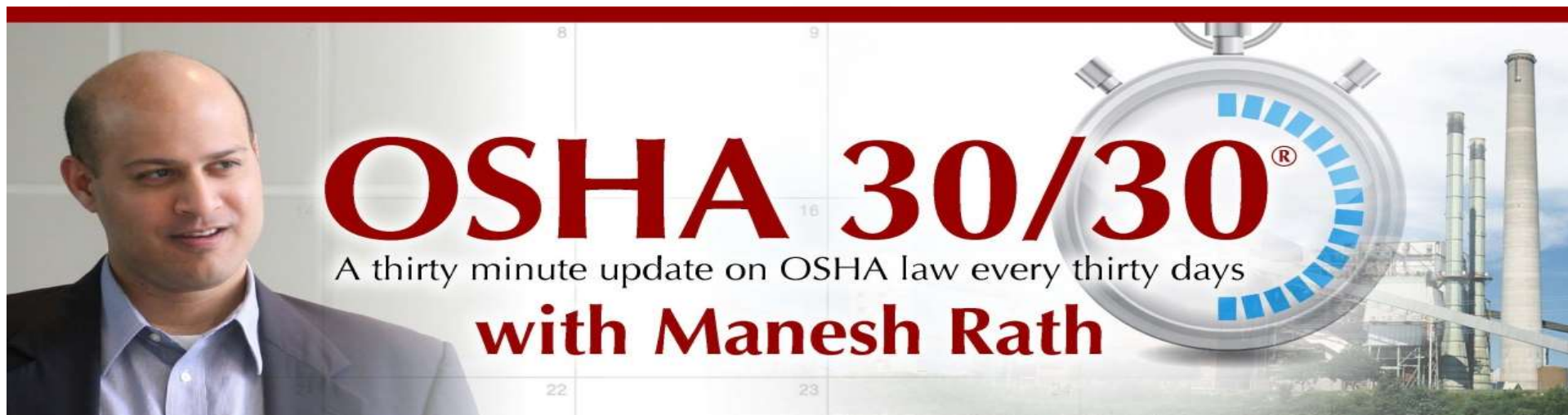
- Communication regarding the hazards of wildfire smoke must be in language “readily understandable by all employees”
- Retain AQI readings to demonstrate exposure and compliance
- Contact county Agriculture Commissioner to inquire about N95 respirators for agricultural workers



# What California Employers Can Do (cont.)



- Develop and conduct training for employees re hazards, respirator use, and fit
- Two-way communication system for air quality updates during shift
- Note: if AQI for PM2.5 is 151 or greater, respirator use by employee is voluntary under the emergency regulations, if greater than 500, use is mandatory
- Train employees how to properly don, doff, and maintain employer-provided respirators
- Face and fit testing



**OSHA 30/30<sup>®</sup>**  
A thirty minute update on OSHA law every thirty days  
**with Manesh Rath**

The banner features a portrait of Manesh Rath on the left, a large stopwatch in the center, and an industrial facility with smokestacks on the right. The background includes a calendar grid with dates 8, 9, 16, 22, and 23 visible.

Please join us  
at 1:00 PM Eastern U.S.  
September 23, 2020  
[www.khlaw.com/OSHA3030](http://www.khlaw.com/OSHA3030)



# THANK YOU

**Manesh K. Rath, Partner**

Keller and Heckman LLP

Washington, DC Office

+1 202.434.4182

rath@khlaw.com



# REGULATORY ISSUES AND RELIEF RESOURCES

Bobby Koch, Wine Institute

# Smoke Exposure Research



- Research is still developing
- Collaboration between UC Davis, Oregon State University and Washington State University
- Federal Grant Funding
  - FY 2020: Secured \$2 Million
  - FY 2021: Seeking \$5 Million

# Federal Assistance – WHIP Program



- Wildfire and Hurricanes Indemnity Program (WHIP)
- Advocating for funding and programmatic changes to cover losses from smoke and ash for growers and wineries

**USDA**  
United States Department of Agriculture

**Farm Service Agency**

## Wildfire and Hurricane Indemnity Program-Plus (WHIP+)

**FACT SHEET**  
August 2020

---

**Overview**

The Additional Supplemental Appropriations for Disaster Relief Act of 2019 authorized the Wildfire and Hurricane Indemnity Program Plus (WHIP+) to help agricultural producers affected by natural disasters in 2018 and 2019. This includes hurricanes Michael, Florence, and Dorian as well as other natural disasters, such as floods, snowstorms, tornadoes, typhoons, volcanic activity and wildfires, and related conditions.

The Further Consolidation Appropriations Act signed December 20, 2019, added drought (for counties designated as D3 or higher drought intensity by the U.S. Drought Monitor) and excessive moisture as additional qualifying disaster events for WHIP+.

**Programs at a Glance**

WHIP+ provides assistance to eligible producers who suffered losses to crops, trees, bushes and vines. Payments are based on several factors, including the expected value of the crop, the crop that was actually harvested, and crop insurance coverage and payments, among others. Learn more on the reverse side of this fact sheet.

Eligible crops must be planted or prevented from being planted and include crops for which federal crop insurance or Noninsured Crop

Disaster Assistance Program (NAP) coverage are available. Perennial trees, bushes, and vines grown for the commercial production of an annual crop and coverable under the Tree Assistance Program (TAP) are also eligible for WHIP+ assistance. WHIP+ also includes coverage for maple tap and honey bees, and other value loss and special provisions apply.

Sign-up opened September 11, 2019 and continues into 2020.

Sign-up for drought and excessive moisture began March 23, 2020 and continues into 2020.

**Who Is Eligible?**

An individual or legal entity that assumes ownership share and risk of the crop, production and market risk associated with the agricultural production of the eligible crops, trees, bushes or vines on the farm.

Producers must be able to show, with verifiable evidence, that the producer had a valid ownership share and risk in the crop as well as control of the crop acreage on which the commodity was grown at the time of the disaster. A copy of the contract or agreement is required for contract growers.

**How to Apply**

To apply, producers must file a:

- WHIP+ application (form FSA-894)

Notice of loss on all crops, trees, bushes and vines

Acreage report (form FSA-578).

The acreage report should cover total acreage, including tree count and prevented planted acres. FSA County Committees will review prevented planting acres for program benefits. Average adjusted gross income provisions do not apply to WHIP+ payments, however conservation compliance provisions do.

**Payment Limitation**

The payment limitation is \$125,000 per person or legal entity for all three crop years: 2018, 2019 and 2020.

However, if 75 percent of income is derived from farming, ranching or forestry the per person or legal entity per crop year limitation is \$250,000 for each of the crop years: 2018, 2019 and 2020; with an overall payment limitation of \$500,000 for all three crop years.

**OCTOBER 2019**

state and commodity  
seed costs incurred  
not harvested or is

WHIP+ Factor
70%
75%
77.5%
80%
2.5%
5%
5%
5%
5%
5%
5%

producers must  
eligible, on the  
or NAP must  
consecutive crop  
but no later  
NAP policy  
00  
trees insured

recover.  
farmers.gov/

only;  
may apply;

# Lab Testing, Training and Equipment



Lab and testing capacity is strained  
- working to find long-term and  
short-term solutions

- Identifying accredited labs domestically and internationally
- Working with government agencies and academic institutions to conduct testing
- Pursuing federal assistance for universities and state agriculture departments for equipment and training





# Generator Regulatory Requirements



Generators used during Public Safety Power Shutoff events may be subject to regulatory requirements

- Implemented at the local air district level
  - Check with local air districts
- Statewide regulations govern use of emergency standby diesel-fueled generators over 50 bhp



# Fire Recovery Guide



\*\*\* A NOTE FROM CONGRESSMAN MIKE THOMPSON \*\*\*

Dear Friends,

The LNU Lightning Complex fires started on August 17, 2020, has burned more than 341,000 acres. The fire has destroyed more than 800 structures, many of which are homes. Thousands of people have been displaced.

Funds from the Federal Emergency Management Agency (FEMA) may be available to help individuals rebuild, repair and replace housing and other personal property not covered by insurance.

**Individuals who were impacted by the fires should apply for FEMA assistance. You can apply in the following ways:**

- Online at [www.DisasterAssistance.gov](http://www.DisasterAssistance.gov); [www.disasterassistance.gov/es](http://www.disasterassistance.gov/es) (Spanish)
- Via smartphone at [m.fema.gov](http://m.fema.gov)
- Constituents may call the registration or hearing loss and use TTY, call 1-(VRS), call 1-800-621-3362.

Small Business Administration (SBA) will replace disaster-damaged property, issue SBA loans to repair or replace disaster-

After registering with FEMA, business so online at: <http://www.sba.gov/catastrophes/loans/disaster-loans>.

You can also call my office if you have assistance.

Our recovery is only just beginning. Please officials to ensure that the federal government time of recovery. And, I stand ready to rebuild and repair our homes, businesses

Our district pulls together in tough times do so again. Should you need anything,

Sincerely,

MIKE THOMPSON  
Member of Congress

## Fire Recovery Guide



The Office of Congressman Mike Thompson  
California's 5<sup>th</sup> Congressional District



[www.facebook.com/RepMikeThompson](http://www.facebook.com/RepMikeThompson)

@RepThompson  
@RepMikeThompson

## Congressman Mike Thompson's Office issued a Fire Recovery Guide for federal resources

- FEMA funds to help individuals rebuild, repair and replace housing and other personal property not covered by insurance
- SBA loans to repair or replace disaster-damaged property, inventory, and supplies (business or home)
- Unemployment assistance, replacement of lost documents, legal sources



**THE VOICE FOR WINE  
IN PUBLIC POLICY**

Please don't hesitate  
to contact us at  
[communications@wineinstitute.org](mailto:communications@wineinstitute.org)

