

## § 760.601

basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

(b) The LIP national payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the applicable livestock as computed using nationwide prices for the previous calendar year unless some other price is approved by the Deputy Administrator.

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The LIP payment calculated for eligible livestock contract growers will be reduced by the amount the participant received from the party who contracted with the producer to raise the livestock for the loss of income from the dead livestock.

### Subpart F [Reserved]

## Subpart G—Supplemental Revenue Assistance Payments Program

SOURCE: 74 FR 68490, Dec. 28, 2009, unless otherwise noted.

### § 760.601 Applicability.

(a) This subpart specifies the terms and conditions of the Supplemental Revenue Assistance Payments Program (SURE).

(b) Assistance in the form of SURE payments is available for crop losses occurring in the crop year 2008 through September 30, 2011, caused by disaster as determined by the Secretary.

(c) SURE provides disaster assistance to eligible participants on farms in:

(1) Disaster counties designated by the Secretary, which also includes counties contiguous to such declared disaster counties, if the participant incurred actual production losses of at least 10 percent to at least one crop of economic significance on the farm; and

(2) Any county, if the participant incurred eligible total crop losses of

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greater than or equal to 50 percent of the normal production on the farm, as measured by revenue, including a loss of at least 10 percent to at least one crop of economic significance on the farm.

(d) Subject to the provisions in subpart B of this part, SURE payments will be issued on 60 percent of the difference between the SURE guarantee and total farm revenue, calculated using the National Average Market Price as specified in this subpart.

### § 760.602 Definitions.

(a) The following definitions apply to all determinations made under this subpart.

(b) The terms defined in parts 718, 1400, and 1437 of this title and subpart B of this part will be applicable, except where those definitions conflict with the definitions set forth in this section. In the event that a definition in any of those parts conflicts with the definitions set forth in this subpart, the definitions in this subpart apply. Any additional conflicts will be resolved by the Deputy Administrator.

*Actual crop acreage* means all acreage for each crop planted or intended to be planted on the farm.

*Actual production history yield* means the average of the actual production history yields for each insurable or noninsurable crop as calculated under the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1501–1524) or Noninsured Crop Disaster Assistance Program (NAP) as set forth in part 1437 of this title, respectively. FSA will use the actual production history yield data provided for crop insurance or NAP, if available, in the SURE payment calculation.

*Actual production on the farm* means, unless the Deputy Administrator determines that the context requires otherwise, the sum obtained by adding:

(1) For each insurable crop on the farm, excluding value loss crops, the product obtained by multiplying:

(i) 100 percent of the per unit price for the crop used to calculate a crop insurance indemnity for the applicable crop insurance if a crop insurance indemnity is triggered. If a price is not available, then the price is 100 percent of the NAP established price for the crop, times

(ii) The relevant per unit quantity of the crop produced on the farm, adjusted for quality losses, plus

(2) For each noninsurable crop on the farm, excluding value loss crops, the product obtained by multiplying:

(i) 100 percent of the per unit NAP established price for the crop, times

(ii) The relevant per unit quantity of the crop produced on the farm, adjusted for quality losses, plus

(3) For value loss crops, the value of inventory immediately after the disaster.

*Adjusted actual production history yield* means a yield that will not be less than the participant's actual production history yield for a year and:

(1) In the case of an eligible participant on a farm that has at least 4 years of actual production history for an insurable crop that are established other than pursuant to section 508(g)(4)(B) of FCIA, the average of the production history for the eligible participant without regard to any yields established under that section;

(2) In the case of an eligible participant on a farm that has less than 4 years of actual production history for an insurable crop, of which one or more were established pursuant to section 508(g)(4)(B) of FCIA, the average of the production history for the eligible participant as calculated without including the lowest of the yields established pursuant to section 508(g)(4)(B) of FCIA; or

(3) In all other cases, the actual production history yield of the eligible participant on a farm.

*Adjusted NAP yield* means a yield that will not be less than the participant's actual production history yield for NAP for a year and:

(1) In the case of an eligible participant on a farm that has at least 4 years of actual production history under NAP that are not replacement yields, the average of the production history without regard to any replacement yields;

(2) In the case of an eligible participant on a farm that has less than 4 years of actual production history under NAP that are not replacement yields, the average of the production history without including the lowest of replacement yields; or

(3) In all other cases, the actual production history yield of the eligible participant on the farm under NAP.

*Administrative fee* means a fixed fee payable by a participant for NAP or crop insurance coverage, including buy-in fees, based on the number of covered crops under NAP or insurance under FCIA.

*Appraised production* means production determined by FSA, or an insurance provider approved by FCIC, that was unharvested, but which was determined to reflect the crop's yield potential at the time of appraisal. An appraisal may be provided in terms of a potential value of the crop.

*Aquaculture* means the reproduction and rearing of aquatic species as specified in part 1437 of this title in controlled or selected environments.

*Brownout* means a disruption of electrical or other similar power source for any reason. A brownout, although it may indirectly have an adverse effect on crops, is not a disaster for the purposes of this subpart and losses caused by a brownout will not be considered a qualifying loss.

*Catastrophic risk protection (CAT)* means the minimum level of coverage offered by the Risk Management Agency (RMA) for crop insurance. CAT is further specified in parts 402 and 1437 of this title.

*Counter-cyclical program payment yield* means the weighted average payment yield established under part 1412, subpart C of this title.

*County expected yield* means an estimated yield, expressed in a specific unit of measure equal to the average of the most recent five years of official county yields established by FSA, excluding the years with the highest and lowest yields, respectively.

*Crop insurance indemnity* means, for the purpose of this subpart, the net payment to a participant excluding the value of the premium for crop losses covered under crop insurance administered in accordance with FCIA by RMA.

*Crop of economic significance* means any crop, as defined in this subpart that contributed, or, if the crop is not successfully produced, would have contributed or is expected to contribute, 5 percent or more of the total expected

revenue from all of a participant's crops on a farm.

*Crop year* means as determined by the Deputy Administrator for a commodity on a nationwide basis the calendar year in which the crop is normally harvested or, where more than one calendar year is involved, the calendar year in which the majority of the crop would have been harvested. For crops on which catastrophic risk protection, as defined in this section, is available, the crop year will be as defined as in such coverage. Crop year determinations by the Deputy Administrator will be final in all cases and, because these are matters of general applicability, will not be considered by the Farm Service Agency to be subject to administrative appeal.

*Determined acreage or determined production* means the amount of acres or production for a farm established by a representative of FSA by use of appropriate means such as official acreage, digitizing and planimetry areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements. In the case of production, any production established by a representative of FSA through audit, review, measurement, appraisal, or other acceptable means of determining production, as determined by FSA.

*Disaster* means damaging weather, including drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, or any combination thereof and adverse natural occurrences such as earthquakes or volcanic eruptions. Disaster includes a related condition that occurs as a result of the damaging weather or adverse natural occurrence and exacerbates the condition of the crop, such as disease and insect infestation. It does not include brownouts or power failures.

*Disaster county* means a county included in the geographic area covered by a qualifying natural disaster designation under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)) and for SURE, the term "disaster county" also includes a county contiguous to a

county declared a disaster by the Secretary; however, farms not in a disaster county may qualify under SURE where for the relevant period, as determined under this subpart, the actual production on a farm is less than 50 percent of the normal production on the farm.

*Double-cropping* means, as determined by the Deputy Administrator on a regional basis, planting for harvest a crop of a different commodity on the same acres in cycle with another crop in a 12-month period in an area where such double-cropping is considered normal, or could be considered to be normal, for all growers and under normal growing conditions and normal agricultural practices for the region and being able to repeat the same cycle in the following 12-month period.

*Farm* means, for the purposes of determining SURE eligibility, the entirety of all crop acreage in all counties that a producer planted or intended to be planted for harvest for normal commercial sale or on-farm livestock feeding, including native and improved grassland intended for haying. In the case of aquaculture, except for species for which an Aquaculture Grant Program payment was received, the term "farm" includes all acreage used for all aquatic species being produced in all counties that the producer intended to harvest for normal commercial sale. In the case of honey, the term "farm" means all bees and beehives in all counties that the participant intended to be harvested for a honey crop for normal commercial sale.

*FCIC* means the Federal Crop Insurance Corporation, a wholly owned Government Corporation operated and managed by USDA RMA.

*FSA* means the Farm Service Agency.

*Harvested* means:

(1) For insurable crops, harvested is as defined according to the applicable crop insurance policy administered in accordance with FCIA by RMA;

(2) For NAP-covered single harvest crops, a mature crop that has been removed from the field, either by hand or mechanically;

(3) For noninsurable crops with potential multiple harvests in one year or one crop harvested over multiple years,

that the participant has, by hand or mechanically, removed at least one mature crop from the field during the crop year; or

(4) For mechanically harvested non-insurable crops, that the mature crop has been removed from the field and placed in or on a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazing of land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

*Initial crop* means a first crop planted for which assistance is provided under this subpart.

*Insurable crop* means an agricultural commodity (excluding livestock) for which the participant on a farm is eligible to obtain a policy or plan of crop insurance administered in accordance with FCIA by RMA. Such a crop for which the participant purchased insurance from RMA is referred to as an insured crop.

*Insurance is available* means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy or plan of insurance administered in accordance with FCIA by RMA. If the Adjusted Gross Revenue Plan of crop insurance was the only plan of insurance available for the crop in the county in the applicable crop year, insurance is considered not available for that crop. If an AGR plan or a pilot plan was the only plan available, producers are not required to purchase it to meet the risk management purchase requirement, but it will satisfy the risk management purchase requirement. In that case, the other ways to meet the requirement would be, if all the requirements of this subpart are met, a buy-in or NAP.

*Intended use* means the original use for which a crop or a commodity is grown and produced.

*Marketing year* means the 12 months immediately following the established final harvest date of the crop of a commodity, as determined by the Deputy Administrator, and not an individual participant's final harvest date. FSA will use the marketing year determined by NASS, when available.

*Maximum average loss level* means the maximum level of crop loss that will be used in calculating SURE payments for a participant without reliable or verifiable production records as defined in this section. Loss levels are expressed in either a percent of loss or a yield per acre, and reflect the amount of production that a participant should have produced considering the eligible disaster conditions in the area or county, as determined by the FSA county committee in accordance with instructions issued by the Deputy Administrator.

*Multi-use crop* means a crop intended for more than one use during the calendar year such as grass harvested for seed, hay, or grazing.

*Multiple planting* means the planting for harvest of the same crop in more than one planting period in a crop year on the same or different acreage. This is also sometimes referred to in this rule as multiple cropping.

*NAMP* means the national average market price determined in accordance with §§ 760.640 and 760.641.

*NASS* is the USDA National Agricultural Statistics Service.

*Noninsurable crop* means a commercially produced crop for which the eligible participants on a farm may obtain coverage under NAP.

*Noninsured Crop Disaster Assistance Program or NAP* means the FSA program carried out under 7 U.S.C. 7333, as specified in part 1437 of this title.

*Normal production on the farm* means, for purposes of the revenue calculations of this subpart, the sum of the expected revenue for all crops on the farm. It is stated in terms of revenue, because different crops may have different units of measure.

*Planted acreage* means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seed bed that has been properly prepared for the planting method and production practice normal to the area, as determined by the FSA county committee.

*Prevented planting* means the inability to plant an eligible crop with proper equipment during the planting period as a result of a disaster, as determined by FSA. All prevented planted

cropland must meet conditions provided in § 718.103 of this chapter. Additionally, all insured crops must satisfy the provisions of prevented planting provided in § 457.8 of this title.

*Price election* means, for an insured crop, the crop insurance price elected by the participant multiplied by the percentage of price elected by the participant.

*Production* means quantity of a crop or commodity produced on the farm expressed in a specific unit of measure including, but not limited to, bushels or pounds and used to determine the normal production on a farm. Normal production for the whole farm is stated in terms of revenue, because different crops may have different units of measure.

*Qualifying loss* means a 10 percent loss of at least one crop of economic significance due to disaster and on a farm that is either:

(1) Located in a disaster county (a county for which a Secretarial disaster designation has been issued or in a county contiguous to a county that has received a Secretarial disaster designation), or

(2) If not located in any disaster county or county contiguous to such a county, but has an overall loss greater than or equal to 50 percent of normal production on the farm (expected revenue for all crops on the farm) due to disaster.

*Qualifying natural disaster designation* means a natural disaster designated by the Secretary for production losses under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)).

*Related condition* means, with respect to a disaster, a condition that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated as a result of damaging weather, as determined by the Deputy Administrator.

*Reliable production records* means evidence provided by the participant to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for cus-

tom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term “acceptable production records” is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

*Reported acreage or production* means information obtained from the participant or the participant’s agent, on a form prescribed by FSA or through insurance records.

*RMA* means the Risk Management Agency.

*Salvage value* means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

*Secretary* means the Secretary of Agriculture.

*State* means a State; the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

*Subsequent crop* means any crop planted after an initial crop, on the same land, during the same crop year.

*SURE* means the Supplemental Revenue Assistance Payments Program.

*Unit of measure* means:

(1) For all insurable crops, the FCIC established unit of measure;

(2) For all noninsurable crops, if available, the established unit of measure used for the NAP price and yield;

(3) For aquatic species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the FSA State committee for all aquatic species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon; and

(6) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy, as determined by the FSA State committee.

*USDA* means United States Department of Agriculture.

*Value loss crop* has the meaning specified in part 1437, subpart D of this title. Unless otherwise announced by FSA, value loss crops for SURE include aquaculture, floriculture, ornamental nursery, Christmas trees, mushrooms, ginseng, and turfgrass sod.

*Verifiable production records* mean evidence that is used to substantiate the

amount of production reported and that can be verified by FSA through an independent source.

*Volunteer stand* means plants that grow from seed residue or are indigenous or are not planted. Volunteer plants may sprout from seeds left behind during a harvest of a previous crop; be unintentionally introduced to land by wind, birds, or fish; or be inadvertently mixed into a crop's growing medium.

**§ 760.610 Participant eligibility.**

(a) In addition to meeting the eligibility requirements of § 760.103, a participant must meet all of the following conditions:

(1) All insurable crops on the participant's farm must be covered by crop insurance administered by RMA in accordance with FCIA, and all non-insured crops must be covered under NAP, as specified in § 760.104, unless the participant meets the requirements in either § 760.105 or § 760.107. At the discretion of FSA, the equitable relief provisions in § 760.106 may apply.

(2) Crop losses must have occurred in crop year 2008 and subsequent crop years through September 30, 2011, as a result of disaster as defined in § 760.602, and must have occurred in the particular crop year for which benefits are sought under this subpart.

(3) A qualifying loss as defined in § 760.602 must have occurred.

(4) The participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title, for 2008 and subsequent crop years through September 30, 2011, as applicable, and must not otherwise be barred from receiving benefits or payments under part 12 of this title or any other law.

(5) The participant must not be ineligible or otherwise barred from the requisite risk management insurance programs or NAP because of past violations where those insurance programs or NAP would otherwise be available absent such violations.

(6) The participant must have an entitlement to an ownership share of the crop and also assume production and market risks associated with the production of the crop. In the event the

crop was planted but not produced, participants must have an ownership share of the crop that would have been produced.

(i) Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for payments under this subpart.

(ii) Growers growing eligible crops under contract are not eligible participants under this subpart unless the grower has an ownership share of the crop.

(b) In the event that a producer is determined not to be an eligible producer of a crop in accordance with this section, such crop will be disregarded in determining the producer's production or eligibility for payments under this subpart. However, any insurance, farm program, or NAP payments received by the producer on such crop will count as farm revenue if that producer is an eligible participant as a producer of other crops.

(c) Participants may not receive payments with respect to volunteer stands of crops. Volunteer stands will not be considered in either the calculation of revenue or of the SURE guarantee.

(d) A deceased applicant or an applicant that is a dissolved entity that suffered losses prior to the death or the dissolution that met all eligibility criteria prior to death or dissolution may be eligible for payments for such losses if an authorized representative signs the application for payment. Proof of authority to sign for the deceased participant or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment. Eligibility of such participant will be determined, as it is for other participants, based upon ownership share and risk in producing the crop.

(e) Participants receiving payments under the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP) as specified in subpart C of this part are not eligible to receive payments under SURE for the same loss.

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(f) Participants with a farming interest in multiple counties who apply for SURE payment based on a Secretarial disaster designation must have a 10 percent loss of a crop of economic significance located in at least one disaster county, as defined in this subpart, to be eligible for SURE.

**§760.611 Qualifying losses, eligible causes and types of loss.**

(a) Eligible causes of loss are disasters which cause types of losses where the crop could not be planted or where crop production was adversely affected in quantity, quality, or both. A qualifying loss, as defined in this subpart, must be the result of a disaster.

(b) A loss will not be considered a qualifying loss if any of the following apply:

(1) The cause of the loss was not the result of disaster;

(2) The cause of loss was due to poor management decisions or poor farming practices, as determined by the FSA county committee on a case-by-case basis;

(3) The cause of loss was due to failure of the participant to re-seed or re-plant to the same crop in a county where it is customary to re-seed or re-plant after a loss before the final planting date;

(4) The cause of loss was due to water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected by the containment or release of the water;

(5) The cause of loss was due to conditions or events occurring outside of the applicable crop year growing season; or

(6) The cause of loss was due to a brownout.

(c) The following types of loss, regardless of whether they were the result of a disaster, are not qualifying losses:

(1) Losses to crops not intended for harvest in the applicable crop year;

(2) Losses of by-products resulting from processing or harvesting a crop, such as, but not limited to, cotton seed, peanut shells, wheat or oat straw, or corn stalks or stovers;

(3) Losses to home gardens; or to a crop subject to a de minimis election according to §760.613;

(4) Losses of crops that were grazed or, if prevented from being planted, had the intended use of grazing; or

(5) Losses of first year seeding for forage production, or immature fruit crops.

(d) The following losses of ornamental nursery stock are not a qualifying loss:

(1) Losses caused by a failure of power supply or brownout as defined in §760.602;

(2) Losses caused by the inability to market nursery stock as a result of quarantine, boycott, or refusal of a buyer to accept production;

(3) Losses caused by fires that are not the result of disaster;

(4) Losses affecting crops where weeds and other forms of undergrowth in the vicinity of nursery stock have not been controlled; or

(5) Losses caused by the collapse or failure of buildings or structures.

(e) The following losses for honey, where the honey production by colonies or bees was diminished, are not a qualifying loss:

(1) Losses caused by the unavailability of equipment or the collapse or failure of equipment or apparatus used in the honey operation;

(2) Losses caused by improper storage of honey;

(3) Losses caused by bee feeding;

(4) Losses caused by the application of chemicals;

(5) Losses caused by theft or fire not caused by a natural condition including, but not limited to, arson or vandalism;

(6) Losses caused by the movement of bees by the participant or any other legal entity or person;

(7) Losses caused by disease or pest infestation of the colonies, unless approved by the Secretary;

(8) Losses of income from pollinators; or

(9) Losses of equipment or facilities.

**§760.613 De minimis exception.**

(a) Participants seeking the de minimis exception to the risk management purchase requirements of this subpart, must certify:

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(1) That a specific crop on the farm is not a crop of economic significance on the farm; or

(2) That the administrative fee required for the purchase of NAP coverage for a crop exceeds 10 percent of the value of that coverage.

(b) To be eligible for a de minimis exception to the risk management purchase requirement in § 760.104, the participant must elect such exception at the same time the participant files the application for payment and the certification of interests, as specified in § 760.620, and specify the crop or crops for which the participant is requesting such exception.

(c) FSA will not consider the value of any crop elected under paragraph (b) of this section in calculating both the SURE guarantee and the total farm revenue.

(d) All provisions of this subpart apply in the event a participant does not obtain an exception according to this section.

### § 760.614 Lack of access.

In addition to other provisions for eligibility provided for in this part, the Deputy Administrator may provide assistance to participants who suffered 2008 production losses that meet the lack of access provisions in 19 U.S.C. 2497(g)(7)(F), where deemed appropriate, and consistent with the statutory provision. Such a determination to exercise that authority, and the terms on which to exercise that authority, will be considered to be a determination of general effect, not a "relief" determination, and will not be considered by the Farm Service Agency to be appealable administratively either within FSA or before the National Appeals Division.

### § 760.620 Time and method of application and certification of interests.

(a) Each producer interested in obtaining a SURE payment must file an application for payment and provide an accurate certification of interests. The application will be on a form prescribed by FSA and will require information or certifications from the producer regarding any other assistance, payment, or grant benefit the producer has received for any of the producer's

crops or interests on a farm as defined in this subpart; regardless of whether the crop or interest is covered in the farm's SURE guarantee according to § 760.631. The producer's certification of interests will help FSA establish whether the producer is an eligible participant.

(b) Eligible participants with a qualifying loss as defined in this subpart must submit an application for payment and certification of interests by March 1 of the calendar year that is two years after the relevant corresponding calendar year for the crop year which benefits are sought to be eligible for payment (for example, the final date to submit an application for a SURE payment for the 2009 crop year will be March 1, 2011). Producers who do not submit the application by that date will not be eligible for payment.

(c) To the extent available and practicable, FSA will assist participants with information regarding their interests in a farm, as of the date of certification, based on information already available to FSA from various sources. However, the participant is solely responsible for providing an accurate certification from which FSA can determine the participant's farm interests for the purposes of this program. As determined appropriate by FSA, failure of a participant to provide an accurate certification of interests as part of the application may render the participant ineligible for any assistance under SURE.

(d) To elect a de minimis exception to the risk management purchase requirement for a crop or crops, the participant must meet the requirements specified in § 760.613. When electing a de minimis exception, the participant must specify the crops for which the exception is requested and provide the certification and supporting documentation for that exception at the time the application and certification of interests is filed with FSA.

### § 760.621 Requirement to report acreage and production.

(a) As a condition of eligibility for payment under this subpart, participants must submit an accurate and

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timely report of all cropland, non-cropland, prevented planting, and subsequent crop acreage and production for the farm in all counties.

(b) Acreage and production reports that have been submitted to FSA for NAP or to RMA for crop insurance purposes may satisfy the requirement of paragraph (a) of this section provided that the participant's certification of interests submitted as required by §760.620 corresponds to the report requirements in paragraph (a) of this section, as determined by the FSA county committee.

(c) Reports of production submitted for NAP or FCIA purposes must satisfy the requirements of NAP or FCIA, as applicable. In all other cases, in order for production reports or appraisals to be considered acceptable for SURE, production reports and appraisals must meet the requirements set forth in part 1437 of this title.

(d) In any case where production reports or an appraisal is not acceptable, maximum loss provisions apply as specified in §760.637.

**§760.622 Incorrect or false producer production evidence.**

(a) If production evidence, including but not limited to acreage and production reports, provided by a participant is false or incorrect, as determined by the FSA county committee at any time after an application for payment is made, the FSA county committee will determine whether:

(1) The participant submitting the production evidence acted in good faith or took action to defeat the purposes of the program, such that the information provided was intentionally false or incorrect.

(2) The same false, incorrect, or unacceptable production evidence was submitted for payment(s) under crop insurance or NAP, and if so, for NAP covered crops, make any NAP program adjustments according to §1437.15 of this title.

(b) If the FSA county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the participant who submitted the evidence did not act in good faith or took action to defeat the purposes of the program, the provisions of

§760.109, including a denial of future program benefits, will apply. The Deputy Administrator may take further action, including, but not limited to, making further payment reductions or requiring refunds or taking other legal action.

(c) If the FSA county committee determines that the production evidence is false, incorrect, or unacceptable, but the participant who submitted the evidence acted in good faith, payment may be adjusted and a refund may be required.

**§760.631 SURE guarantee calculation.**

(a) Except as otherwise provided in this part, the SURE guarantee for a farm is the sum obtained by adding the dollar amounts calculated in paragraphs (a)(1) through (a)(3) of this section.

(1) For each insurable crop on the farm except for value loss crops, 115 percent of the product obtained by multiplying together:

(i) The price election. If a price election was not made or a participant is eligible as specified in §§760.105, 760.106, or 760.107, then the percentage of price will be 55 percent of the NAP established price;

(ii) The payment acres determined according to §760.632;

(iii) The SURE yield as calculated according to §760.638; and

(iv) The coverage level elected by the participant. If a coverage level was not elected or a participant is eligible as specified in §§760.105, 760.106, or 760.107, a coverage level of 50 percent will be used in the calculation.

(2) For each noninsurable crop on a farm except for value loss crops, 120 percent of the product obtained by multiplying:

(i) 100 percent of the NAP established price for the crop;

(ii) The payment acres determined according to §760.632;

(iii) The SURE yield calculated according to §760.638; and

(iv) 50 percent.

(3) The guarantee for value loss crops as calculated according to §760.634.

(4) In the case of an insurable crop for which crop insurance provides for an adjustment in the guarantee liability, or indemnity, such as in the case

of prevented planting, that adjustment will be used in determining the guarantee for the insurable crop.

(5) In the case of a noninsurable crop for which NAP provides for an adjustment in the level of assistance, such as in the case of unharvested crops, that adjustment will be used for determining the guarantee for the noninsurable crop.

(b) Those participants who are eligible according to §§ 760.105, 760.106, or 760.107 who do not have crop insurance or NAP coverage will have their SURE guarantee calculated based on catastrophic risk protection or NAP coverage available for those crops.

(c) FSA will not include in the SURE guarantee the value of any crop that has a de minimis exception, according to § 760.613.

(d) For crops where coverage may exist under both crop insurance and NAP, such as for pasture, rangeland, and forage, adjustments to the guarantee will be the product obtained by multiplying the county expected yield for that crop times:

- (1) 115 percent;
- (2) 100 percent of the NAP established price;
- (3) The payment acres determined according to § 760.632;
- (4) The SURE yield calculated according to § 760.638; and
- (5) The coverage level elected by the participant.

(e) Participants who do not have a SURE yield as specified in § 760.638 will have a yield determined for them by the Deputy Administrator.

(f) The SURE guarantee may not be greater than 90 percent of the sum of the expected revenue for each of the crops on a farm, as determined by the Deputy Administrator.

**§ 760.632 Payment acres.**

(a) Payment acres as calculated in this section are used in determining both total farm revenue and the SURE guarantee for a farm. Payment acreage will be calculated using the lesser of the reported or determined acres shown to have been planted or prevented from being planted to a crop.

(b) Initial crop acreage will be the payment acreage for SURE, unless the provisions for subsequent crops in this

section are met. Subsequently planted or prevented planted acre acreage is considered acreage for SURE only if the provisions of this section are met. All plantings of an annual or biennial crop are considered the same as a planting of an initial crop in tropical regions as defined in part 1437, subpart F, of this title.

(c) In cases where there is double cropped acreage, each crop may be included in the acreage for SURE only if the specific crops are either insured crops eligible for double cropping according to RMA or approved by the FSA State committee as eligible double cropping practices in accordance with procedures approved by the Deputy Administrator.

(d) Except for insured crops, participants with double cropped acreage not meeting the criteria in paragraph (c) of this section may have such acreage included in the acreage for SURE on more than one crop only if the participant submits verifiable records establishing a history of carrying out a successful double cropping practice on the specific crops for which payment is requested.

(e) Participants having multiple plantings may have each planting included in the SURE guarantee only if the planting meets the requirements of part 1437 of this title and all other provisions of this subpart are satisfied.

(f) Provisions of part 718 of this title specifying what is considered prevented planting and how it must be documented and reported will apply to this payment acreage for SURE.

(g) Subject to the provisions of this subpart, the FSA county committee will:

(1) Use the most accurate data available when determining planted and prevented planted acres; and

(2) Disregard acreage of a crop produced on land that is not eligible for crop insurance or NAP.

(h) For any crop acreage for which crop insurance or NAP coverage is canceled, those acres will no longer be considered the initial crop and will, therefore, no longer be eligible for SURE.

(i) Notwithstanding any other provisions of these or other applicable regulations that relate to tolerance in part 718 of this title, if a farm has a crop

### § 760.633

that has both FSA and RMA acreage for insured crops, payment acres for the SURE guarantee calculation will be based on acres for which an indemnity was received if RMA acres do not differ from FSA acres by more than the larger of 5 percent or 10 acres not to exceed 50 acres. If the difference between FSA and RMA acres is more than the larger of 5 percent or 10 acres not to exceed 50 acres, then the payment acres for the SURE guarantee will be calculated using RMA acres. In that case, the participant will be notified of the discrepancy and that refunds of unearned payments may be required after FSA and RMA reconcile acreage data.

#### § 760.633 2008 SURE guarantee calculation.

(a) For a participant who is eligible due to the 2008 buy-in waiver for risk management purchase under the provisions of § 760.105(c), the SURE guarantee for their farm for the 2008 crop will be calculated according to § 760.631, or according to § 760.634 for value loss crops, with the exception that the:

(1) Price election in § 760.631(a)(1)(i) is 100 percent of the NAP established price for the crop;

(2) Coverage level in § 760.631(a)(1)(iv) is 70 percent; and

(3) The percent specified in § 760.631(a)(2)(iv) is 70 percent instead of 50 percent; and

(4) Coverage level used in § 760.634(a)(1)(ii) is 70 percent; and

(5) The percent specified in § 760.634(a)(2)(ii) is 70 percent instead of 50 percent.

(b) For those 2008 crops that meet the requirements of §§ 760.104, 760.105(a), 760.106, or 760.107, the SURE guarantee will be the higher of:

(1) The guarantee calculated according to § 760.631, or according to § 760.634 for value loss crops, with the exception that the percent specified in §§ 760.631(a)(1) and 760.634(a)(1) will be 120 percent instead of 115 percent;

(2) The guarantee calculated according to § 760.631, or according to § 760.634 for value loss crops, will be used with the exception that the:

(i) Price election in § 760.631(a)(1)(i) is 100 percent of the NAP established price for the crop; and

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(ii) Coverage level in §§ 760.631(a)(1)(iv) and 760.634(a)(1)(ii) will be 70 percent; and

(iii) The percent specified in §§ 760.631(a)(2)(iv) and 760.634(a)(2)(ii) will be 70 percent instead of 50 percent.

#### § 760.634 SURE guarantee for value loss crops.

(a) The SURE guarantee for value loss crops will be the sum of the amounts calculated in paragraphs (a)(1) and (a)(2) of this section, except as otherwise specified.

(1) For each insurable crop on the farm, 115 percent of the product obtained by multiplying:

(i) The value of inventory immediately prior to disaster, and

(ii) The coverage level elected by the participant. If a coverage level was not elected or a participant is eligible as specified in §§ 760.106 or 760.107, a coverage level of 27.5 percent will be used in the calculation.

(2) For each noninsurable crop on the farm, 120 percent of the product obtained by multiplying:

(i) The value of inventory immediately prior to a disaster, and

(ii) 50 percent.

(b) Aquaculture participants who received assistance under the Aquaculture Grant Program (Pub. L. 111–5) will not be eligible for SURE assistance on those species for which a grant benefit was received under the Aquaculture Grant Program for feed losses associated with that species.

(c) In the case of an insurable value loss crop for which crop insurance provides for an adjustment in the guarantee, liability, or indemnity, such as in the case of inventory exceeding peak inventory value, the adjustment will be used in determining the SURE guarantee for the insurable crop.

(d) In the case of a noninsurable value loss crop for which NAP provides for an adjustment in the level of assistance, such as in the case of unharvested field grown inventory, the adjustment will be used in determining the SURE guarantee for the noninsurable crop.

#### § 760.635 Total farm revenue.

(a) For the purpose of SURE payment calculation, total farm revenue will

equal the sum obtained by adding the amounts calculated in paragraphs (a)(1) through (a)(12) of this section.

(1) The estimated actual value for each crop produced on a farm, except for value loss crops, which equals the product obtained by multiplying:

(i) The actual production of the payment acres for each crop on a farm for purposes of determining losses under FCIA or NAP; and

(ii) NAMP, as calculated for the marketing year as specified in §760.640 and as adjusted if required as specified in §760.641.

(2) The estimated actual value for each value loss crop produced on a farm that equals the value of inventory immediately after disaster.

(3) 15 percent of the amount of any direct payments made to the participant under part 1412 of this title.

(4) The total amount of any counter-cyclical and average crop revenue election payments made to the participant under part 1412 of this title.

(5) The total amount of any loan deficiency payments, marketing loan gains, and marketing certificate gains made to the participant under parts 1421 and 1434 of this title.

(6) The amount of payments for prevented planting.

(7) The amount of crop insurance indemnities.

(8) The amount of NAP payments received.

(9) The value of any guaranteed payments made to a participant in lieu of production pursuant to an agreement or contract, if the crop is included in the SURE guarantee.

(10) Salvage value for any crops salvaged.

(11) The value of any other disaster assistance payments provided by the Federal Government for the same loss for which the eligible participant applied for SURE.

(12) For crops for which the eligible participant received a waiver under the provisions of §760.105(c) or obtained relief according to §760.106, the value determined by FSA based on what the participant would have received, irrespective of any other provision, if NAP or crop insurance coverage had been obtained.

(b) Sale of plant parts or by-products, such as straw, will not be counted as farm revenue.

(c) For value loss crops:

(1) Other inventory on hand or marketed at some time other than immediately prior to and immediately after the disaster event are irrelevant for revenue purposes and will not be counted as revenue for SURE.

(2) Revenue will not be adjusted for market loss.

(3) Quality losses will not be considered in determining revenue.

(4) In no case will market price declines in value loss crops, due to any cause, be considered in the calculation of payments for those crops.

#### § 760.636 Expected revenue.

The expected revenue for each crop on a farm is:

(a) For each insurable crop, except value loss crops, the product obtained by multiplying:

(1) The SURE yield as specified in §760.638;

(2) The payment acres as specified in §760.632; and

(3) 100 percent of the price for the crop used to calculate a crop insurance indemnity for an applicable policy of insurance if a crop insurance indemnity is triggered. If a price is not available, then the price is 100 percent of the NAP established price for the crop, and

(b) For each noninsurable crop, except value loss crops, the product obtained by multiplying

(1) The SURE yield as specified in §760.638;

(2) The payment acres as specified in §760.632; and

(3) 100 percent of the NAP price.

(c) For each value loss crop, the value of inventory immediately prior to the disaster.

#### § 760.637 Determination of production.

(a) Except for value loss crops, production for the purposes of this part includes all harvested, appraised, and assigned production for the payment acres determined according to §760.632.

(b) The FSA county committee will use the best available data to determine production, including RMA and

NAP loss records and yields for insured and noninsured crops.

(c) The production of any eligible crop harvested more than once in a crop year will include the total harvested production from all harvests.

(d) Crop production losses occurring in tropical regions, as defined in part 1437, subpart F of this chapter, will be based on a crop year beginning on January 1 and ending on December 31 of the same calendar year. All crop harvests in tropical regions that take place between those dates will be considered a single crop.

(e) Any record of an appraisal of crop production conducted by RMA or FSA through a certified loss adjuster will be used if available. Unharvested appraised production will be included in the calculation of revenue under SURE. If the unharvested appraised crop is subsequently harvested for the original intended use, the larger of the actual or appraised production will be used to determine payment.

(1) If no appraisal is available, the participant is required to submit verifiable or reliable production evidence.

(2) If the participant does not have verifiable or reliable production evidence, the FSA county committee will use the higher of the participant's crop certification or the maximum average loss level to determine the participant's crop production losses.

(f) Production will be adjusted based on a whole grain equivalent, as established by FSA, for all crops with an intended use of grain, but harvested as silage, cobbage, or hay, cracked, rolled, or crimped.

(g) For crops sold in a market that is not a recognized market for that crop and has no established county expected yield and NAMP, the quantity of such crops will not be considered production; rather, 100 percent of the salvage value will be included in the revenue calculation.

(h) Production from different counties that is commingled on the farm before it was a matter of record and cannot be separated by using records or other means acceptable to FSA will have the NAMP prorated to each respective county by FSA. Commingled production may be attributed to the

applicable county, if the participant made the location of production of a crop a matter of record before commingling, if the participant does either of the following:

(1) Provides copies of verifiable documents showing that production of the crop was purchased, acquired, or otherwise obtained from the farm in that county; or

(2) Had the farm's production in that county measured in a manner acceptable to the FSA county committee.

(i) The FSA county committee will assign production for the purpose of NAMP for the farm if the FSA county committee determines that the participant failed to provide verifiable or reliable production records.

(j) If RMA loss records are not available, or if the FSA county committee determines that the RMA loss records as reported by the insured participant appear to be questionable or incomplete, or if the FSA county committee makes inquiry, then participants are responsible for:

(1) Retaining and providing, when required, the best available verifiable and reliable production records available for the crops;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of production for the crop on a farm, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the FSA county committee; and

(5) Providing supporting documentation if the FSA county committee has reason to question the disaster event or that all production has been taken into account.

(k) The participant must supply verifiable or reliable production records to substantiate production to the FSA county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: Commercial receipts; settlement sheets; warehouse ledger sheets or load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of by

means other than commercial channels, acceptable production records for these purposes include: Truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous reliable diaries; or other documentary evidence, such as contemporaneous reliable measurements. Determinations of reliability with respect to this paragraph will take into account, as appropriate, the ability of the agency to verify the evidence as well as the similarity of the evidence to reports or data received by FSA for the crop or similar crops. Other factors deemed relevant may also be taken into account.

(l) If no verifiable or reliable production records are available, the FSA county committee will use the higher of the participant's certification or the maximum average loss level to determine production.

(m) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

(n) FSA may verify the production evidence submitted with records on file at the warehouse, gin, or other entity that received or may have received the reported production.

**§ 760.638 Determination of SURE yield.**

(a) Except for value loss crops as specified in § 760.634, a SURE yield will be determined for each crop, type, and intended use on a farm, using the higher of the participant's weighted:

(1) Adjusted actual production history yield as determined in paragraph (b) of this section; or

(2) Counter-cyclical yield as determined in paragraph (c) of this section.

(b) The adjusted actual production history yield, as defined in § 760.602, will be weighted by the applicable crop year total planted and prevented planted acres, by crop, type, and intended use for each county. RMA data will be used for calculating the SURE yield for insured crops.

(c) The counter-cyclical yield for a crop on a farm will be weighted based on total planted and prevented planted acres in the county for the current crop year.

(d) Participants who do not purchase crop insurance or NAP coverage, but who are otherwise eligible for payment, will have a SURE yield determined by the FSA county committee as follows:

(1) A weighted yield, based on planted and prevented planted acres, the location county, crop type, and intended use, will be determined at 65 percent of the county expected yield for each crop.

(2) The SURE yield will be the higher of the yield calculated using the method in paragraph (d)(1) of this section or the weighted counter-cyclical yield as determined in paragraph (c) of this section.

(e) For those participants with crop insurance but without an adjusted actual production history yield, a SURE yield will be determined by the applicable FSA county committee. This paragraph will apply in the case where the insurance policy does not require an actual production history yield, or where a participant has no production history.

**§ 760.640 National average market price.**

(a) The Deputy Administrator will establish the National Average Market Price (NAMP) using the best sources available, as determined by the Deputy Administrator, which may include, but are not limited to, data from NASS, Cooperative Extension Service, Agricultural Marketing Service, crop insurance, and NAP.

(b) NAMP may be adjusted by the FSA State committee, in accordance with instructions issued by the Deputy Administrator and as specified in § 760.641, to recognize average quality loss factors that are reflected in the market by county or part of a county.

(c) With respect to a crop for which an eligible participant on a farm receives assistance under NAP, the NAMP will not exceed the price of the crop established under NAP.

(d) To the extent practicable, the NAMP will be established on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by FSA.

(e) NAMP may be adjusted by the FSA State committee, as authorized by

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The Deputy Administrator, to reflect regional variations in price consistent with those prices established under the FCIA or NAP.

### § 760.641 Adjustments made to NAMP to reflect loss of quality.

(a) The Deputy Administrator will authorize FSA county committees, with FSA State committee concurrence, to adjust NAMP for a county or part of a county:

(1) To reflect the average quality discounts applied to the local or regional market price of a crop due to a reduction in the intrinsic characteristics of the production resulting from adverse weather, as determined annually by the State office of the FSA; or

(2) To account for a crop for which the value is reduced due to excess moisture resulting from a disaster related condition.

(3) For adjustments specified in paragraphs (a)(1) and (a)(2) of this section, an adjustment factor that represents the regional or local price received for the crop in the county will be calculated by the FSA State committee. The adjustment factor will be based on the average actual market price compared to NAMP.

(b) For adjustments made under paragraph (a) of this section, participants must provide verifiable evidence of actual or appraised production, clearly indicating an average loss of value caused by poor quality or excessive moisture that meets or exceeds the quality adjustment for the county or part of a county established in paragraph (a)(3) of this section to be eligible to receive the quality-adjusted NAMP as part of their SURE payment calculation. In order to be considered at all for the purpose of quality adjustments, the verifiable evidence of production must itself detail the extent of the quality loss for a specific quantity. With regard to test evidence, in addition to meeting all the requirements of this section, tests must have been completed by January 1 of the year following harvest.

### § 760.650 Calculating SURE.

(a) Subject to the provision of this subpart, SURE payments for crop losses in crop year 2008 and subsequent

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crop years will be calculated as the amount equal to 60 percent of the difference between:

(1) The SURE guarantee, as specified in § 760.631, 760.633 or 760.634 of this subpart, and

(2) The total farm revenue, as specified in § 760.635.

(b) In addition to the other provisions of this subpart and subpart B of this part, SURE payments may be adjusted downward as necessary to insure compliance with the payment limitations in subpart B and to insure that payments do not exceed the maximum amount specified in § 760.108(a)(1) or (b)(1) or otherwise exceed the perceived intent of 19 U.S.C. 2497(j). Such adjustments can include, but are not limited to, adjustments to insure that there is no duplication of benefits as specified in § 760.108(c).

## Subpart H [Reserved]

## Subpart I—2005–2007 Crop Disaster Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

### § 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

### § 760.801 Administration.

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the