§ 760.103  Eligible producer.

(a) In general, the term “eligible producer” means, in addition to other requirements as may apply, an individual or entity described in paragraph (b) of this section that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock on a farm either as the owner of the farm, when there is no contract grower, or a contract grower of the livestock when there is a contract grower.

(b) To be eligible for benefits, an individual or entity must be a:

(1) Citizen of the United States;

(2) Resident alien; for purposes of this part, resident alien means “lawful alien” as defined in 7 CFR part 1400;

(3) Partnership of citizens of the United States; or

(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

§ 760.104  Risk management purchase requirements.

(a) To be eligible for program payments under:

(1) ELAP, SURE, and TAP, eligible producers for any commodity at any location for which the producer seeks benefits must have for every commodity on every farm in which the producer has an interest for the relevant program year:

(i) In the case of an “insurable commodity,” (which for this part means a commodity for which the Deputy Administrator determines catastrophic coverage is available from the USDA Risk Management Agency (RMA)) obtained catastrophic coverage or better under a policy or plan of insurance administered by RMA under the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1501–1524), except that this obligation will not include crop insurance pilot programs so designated by RMA or to forage crops intended for grazing, and

(ii) In the case of a “noninsurable commodity,” (which for this part means a commodity for which the Deputy Administrator determines catastrophic coverage is available from the USDA Risk Management Agency (RMA)) obtained catastrophic coverage or better under a policy or plan of insurance administered by RMA under the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1501–1524), except that this obligation will not include crop insurance pilot programs so designated by RMA or to forage crops intended for grazing, and

(b) Producers who did not purchase a policy or plan of insurance for their applicable crops, will not be eligible for assistance under ELAP, LFP, SURE, and TAP, as provided in
§ 760.106 Waiver for certain crop years; buy-in.

(a) For the 2008 crop year, the insurance or NAP purchase requirements of §760.104 (this is referred to as the “purchase” requirement) will be waived for eligible producers for losses during the 2008 crop year if the eligible producer paid a fee (buy-in fee) equal to the applicable NAP service fee or catastrophic risk protection plan fee to the Secretary by September 16, 2008. Payment of a buy-in fee under this section is for the sole purpose of becoming eligible for participation in ELAP, LFP, SURE, and TAP. Payment of a buy-in fee does not provide any actual insurance or NAP coverage or assistance.

(b) For the 2009 crop year, the purchase requirement will be waived for purchases where the closing date for coverage occurred prior to August 14, 2008, so long as the buy-in fee set by the Secretary of Agriculture was paid by January 12, 2009.

(c) Any producer of 2008 commodities who is otherwise ineligible because of the purchase requirement and who did not meet the conditions of paragraph (a) of this section may still be covered for ELAP, SURE, or TAP assistance if the producer paid the applicable fee described in paragraph (d) of this section no later than May 18, 2009, provided that in the case of each:

(1) Insurable commodity, excluding grazing land, the eligible producers on the farm agree to obtain a policy or plan of insurance under FCIA (7 U.S.C. 1501–1524), excluding a crop insurance pilot program under that subtitle, for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, and

(2) Noninsurable commodity, the eligible producers on the farm must agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for NAP for the next year for which a policy is available.

(d) For producers seeking eligibility under paragraph (c) of this section, the applicable buy-in fee for the 2008 crop year was the catastrophic risk protection plan fee or the applicable NAP service fee in effect prior to NAP service fee adjustments specified in the 2008 Farm Bill.

§ 760.106 Equitable relief.

(a) The Secretary may provide equitable relief on a case-by-case basis for the purchase requirement to eligible participants that:

(1) Are otherwise ineligible or provide evidence, satisfactory to FSA,