

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.

(1) 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 SURE farm will be weighted in such manner as FSA deems fit taking into account a desire for a consistent system and FSA's ability to make timely yield determinations.

(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 65 percent of 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.

[74 FR 68490, Dec. 28, 2009, as amended at 75 FR 19189, Apr. 14, 2010]

§ 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 The Deputy Administrator, to reflect

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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 crop years will be calculated as the

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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—Crop Assistance Program

AUTHORITY: 7 U.S.C. 612c.

SOURCE: 75 FR 65428, Oct. 25, 2010, unless otherwise noted.

§ 760.701 Applicability.

(a) This subpart specifies the eligibility requirements and payment calculations for the Crop Assistance Program (CAP), which will be administered using funds authorized by Section 32 of the Agricultural Adjustment Act of 1935 (7 U.S.C. 612c, as amended).

(b) CAP, within the limits of the funds made available by the Secretary for this program, is intended to help re-establish purchasing power to producers of long grain rice, medium or short grain rice, upland cotton, soybeans, and sweet potatoes who suffered a five percent or greater loss in the 2009 crop year due to disaster.

(c) Only producers who have a share in a farm located in a disaster county (a county that is the primary county that is the subject of a Secretarial disaster designation for 2009 crop year due to excessive moisture and related conditions, as determined by FSA) are eligible for CAP benefits.

§ 760.702 Definitions.

The following definitions apply to CAP. The definitions in parts 718, 760,