

## § 760.507

September 30, 2011, will not exceed 500 acres.

### § 760.507 Obligations of a participant.

(a) Eligible orchardists and nursery tree growers must execute all required documents and complete the TAP-funded practice within 12 months of application approval.

(b) Eligible orchardist or nursery tree growers must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

(c) Producers who do not meet all applicable requirements and obligations will not be eligible for payment.

## 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. Crop losses must have occurred in crop year 2008 or subsequent crop years due to an eligible disaster event that occurs on or before September 30, 2011.

(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 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

## 7 CFR Ch. VII (1–1–14 Edition)

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.

[74 FR 68490, Dec. 28, 2009, as amended at 76 FR 54075, Aug. 31, 2011]

### § 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 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 custom 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 or subsequent crop years due to an eligible disaster event that occurred on or before September 30, 2011.

(i) For insured crops, the coverage period, as defined in the insurance policy, must have begun on or before September 30, 2011;

(ii) For NAP crops, the coverage period must have begun on or before September 30, 2011; and

(iii) The final planting date for that crop according to the Federal crop insurance or NAP policy must have been on or before September 30, 2011.

(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.