

## §760.611

## 7 CFR Ch. VII (1–1–14 Edition)

(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.

(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.

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

### §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 seedling 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:

(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.