

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

(6) Caused by the collapse or failure of buildings or structures.

(d) Qualifying losses under this part for honey, where the honey production by colonies or bees was diminished, will not include losses:

(1) For the 2007 crop, for production from those bees acquired on or after February 28, 2007;

(2) Where the inability to extract was due to the unavailability of equipment, the collapse or failure of equipment, or apparatus used in the honey operation;

(3) Resulting from storage of honey after harvest;

(4) To honey production because of bee feeding;

(5) Caused by the application of chemicals;

(6) Caused by theft, fire, or vandalism;

(7) Caused by the movement of bees by the producer or any other person; or

(8) Due to disease or pest infestation of the colonies.

(e) Qualifying losses for other value loss crops, except nursery, will not include losses for the 2007 crop that were acquired on or after February 28, 2007.

(f) Loss calculations will take into account other conditions and adjustments provided for in this part.

**§ 760.811 Rates and yields; calculating payments.**

(a)(1) Payments made under this part to a participant for a loss of quantity on a unit with respect to yield-based crops are determined by multiplying the average market price times 42 percent, times the loss of production which exceeds 35 percent of the expected production, as determined by FSA, of the unit.

(2) Payments made under this part to a participant for a quantity loss on a unit with respect to value-based crops are determined by multiplying the payment rate established for the crop by FSA times the loss of value that exceeds 35 percent of the expected production value, as determined by FSA, of the unit.

(3) As determined by FSA, additional quality loss payments may be made

using a 25 percent quality loss threshold. The quality loss threshold is determined according to § 760.817.

(b) Payment rates for the 2005, 2006, or 2007 year crop losses will be 42 percent of the average market price.

(c) Separate payment rates and yields for the same crop may be established by the State committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by FSA that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. Despite potential differences in yield or values, separate rates or yields will not be established for crops with different cultural practices, such as those grown organically or hydroponically.

(d) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

(e) Each eligible participant's share of a disaster payment will be based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for assistance under this part.

(f) When calculating a payment for a unit loss:

(1) An unharvested payment factor will be applied to crop acreage planted but not harvested;

(2) A prevented planting factor will be applied to any prevented planted acreage eligible for payment; and

(3) Unharvested payment factors may be adjusted if costs normally associated with growing the crop are not incurred.

**§ 760.812 Production losses; participant responsibility.**

(a) Where available and determined accurate by FSA, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, or if the FSA county committee determines the RMA loss records are inaccurate or incomplete, or if the FSA

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county committee makes inquiry, participants are responsible for:

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

(2) Summarizing all the production evidence;

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

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

(5) Providing supporting documentation if the county committee has reason to question the damaging weather event or question whether all production has been accounted for.

(c) In determining production under this section, the participant must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; 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 in means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

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

**§ 760.813 Determination of production.**

(a) Production under this part includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine benefits. FSA will analyze and determine whether a participant's evidence of actual production represents all that could or would have been harvested.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by FSA.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated by FSA with respect to the intended use or uses for disaster purposes based on historical production and acreage evidence provided by the participant and FSA will determine the eligible acres for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and average market price, 42 percent of the salvage value received will be deducted from the disaster payment.

(g) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(h) Production that is commingled between units before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective unit by FSA. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;