

(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.

(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.

§ 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 replant to the same crop in a county where it is customary to re-seed or replant after a loss before the final planting date;

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(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 seeding 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.