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## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### 7 CFR Part 1580

RIN 0551-AA66

#### Trade Adjustment Assistance for Farmers

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Final rule; Technical amendments.

**SUMMARY:** This final rule makes technical amendments to the regulation implementing the Trade Adjustment Assistance for Farmers (TAA) program.

**DATES:** Effective on November 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jean-Louis Pajot, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, by e-mail at: [trade.adjustment@fas.usda.gov](mailto:trade.adjustment@fas.usda.gov), telephone 202-720-2916, or fax at 202-720-0876.

**SUPPLEMENTARY INFORMATION:** The regulation implementing the TAA program is codified at 7 CFR part 1580. The program is authorized by Chapter 6 of Title II of the Trade Act of 1974, as amended by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107-210) (19 U.S.C. 2551, *et seq.*) (the Trade Act).

This regulation makes the following five technical corrections to 7 CFR Part 1580:

The first correction specifies the documentation required to certify the net farm income of agricultural cooperatives, partnerships and corporations. These entities are eligible to apply for TAA because § 1580.102 defines a “producer” as a person who is either an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for

marketing from the farm, or a qualified fisherman, and the same section defines a “person” to mean an individual, partnership, joint stock owner, corporation, association, trust, estate, or another legal entity as defined in 7 CFR 1400.3. The current regulation, however, only specifies documentation for certifying the net farm income of self-employed farmers, *i.e.*, those filing Internal Revenue Service (IRS) Schedule F (Form 1040): Profit or Loss From Farming, and Form 4835: Farm Rental Income and Expenses. Therefore, to correct this deficiency, all references to IRS forms are removed from § 1580.102. The amended rule sets forth a complete list of acceptable forms and schedules supporting net income certifications under § 1580.502 of the regulation, where record maintenance is addressed.

The second change corrects an inconsistency in identifying the relevant tax year to be used when producers certify to lower net farm or fishing incomes. Producers petition for TAA with respect to the most recent marketing year for which national average prices are available. Section 1580.102 defines net farm and fishing income as income earned during the tax year that most closely corresponds with the marketing year being considered for TAA. To be eligible for payments, producers must certify under § 1580.301(e)(4) that their net farm or fishing income for the most recent tax year was less than that during their pre-adjustment year. Because national average prices take months to be gathered and published by the Department, a producer’s most recent tax year may follow the tax year that most closely corresponds with the marketing year being considered for TAA. Therefore, to correct this deficiency, § 1580.301(e)(4) is amended to delete reference to “the most recent tax year”. Consequently producers are required to certify that net farm or fishing income during the tax year that most closely corresponds with the marketing year under consideration was less than that during their pre-adjustment tax year, in order to receive payments.

The third change authorizes the use of alternative procedures for producers to certify to their adjusted gross income (AGI) authorized by section 296 (a)(2)(A)(ii)(II) of the Trade Act. Section 1580.301(e)(6) describes the

documentation that a producer shall provide to support certification that their AGI, as determined in accordance with 7 CFR 1400.601, for the 3 preceding tax years does not exceed \$2,500,000. Section 1580.301(e) is therefore amended to allow producers to certify their AGI limitation by either providing specified documentation or by providing other information prescribed by the Department. This amendment will permit FAS to conform the TAA procedures to those adopted by the Farm Service Agency (FSA) regarding certification of AGI. Producers will still be obligated to provide specific documents supporting their AGI, when requested by the Department.

The fourth correction concerns the deadline by which applicants must provide certifications to qualify for adjustment assistance payments. Under § 1580.301(c) producers must submit documentation to support the amount of their production when submitting an application for TAA. The purpose of this requirement is twofold. First, it assures that only verifiable producers of the commodity are referred to the Extension Service for free technical assistance and services; and second, it establishes a fiscal obligation for each applicant, upon which the Department builds its estimate of program expenditures and calculates prorated payments, when appropriated funds are insufficient. Section 1580.303(a) requires applicants to satisfy by September 30 all the conditions of § 1580.301 to qualify for TAA payments. This statement could be misinterpreted to mean that producers have until September 30, to provide documentation supporting the amount of their production. Therefore, § 1580.303(a) is amended to clarify that the September 30 deadline applies only to the certifications under § 1580.301(e).

The fifth correction concerns the appeals procedure under § 1580.505. The regulation designated the FSA administrative appeal procedure to resolve disputes involving applications for program benefits. This has led to some confusion that entities applying for TAA benefits could appeal denials to the National Appeals Division (NAD) within USDA. This was not intended, and would not be appropriate, because appeals from NAD go to the United States District Courts, whereas the Trade Act (19 U.S.C. 2395) grants to the

United States Court of International Trade jurisdiction over of all claims arising under the TAA program. Therefore, § 1580.505 is amended to delete the utilization of FSA's administrative appeals process, including oversight by the FSA Deputy Administrator and State committees.

**Corrections to the Final Rule**

■ Accordingly, for the reasons set forth in the preamble, FAS amends 7 CFR part 1580 to read as follows:

**PART 1580—[CORRECTED]**

■ 1. The authority citation for 7 CFR part 1580 continues to read as follows:

Authority: 19 U.S.C. 2401.

**§ 1580.102 [Corrected]**

■ 2. In § 1580.102, the definition of "Deputy Administrator" is deleted, and the definitions for "net farm income", "net fishing income," and "qualified fisherman" are revised to read as follows:

**§ 1580.102 Definitions.**

\* \* \* \* \*

Net farm income means net farm profit or loss, excluding payments under this part, reported to the Internal Revenue Service for the tax year that most closely corresponds with the marketing year under consideration.

Net fishing income means net profit or loss, excluding payments under this part, reported to the Internal Revenue Service for the tax year that most closely corresponds with the marketing year under consideration.

\* \* \* \* \*

Qualified fisherman means a person whose catch competes in the marketplace with like or directly competitive aquaculture products and report net fishing income to the Internal Revenue Service.

\* \* \* \* \*

**§ 1580.301 [Corrected]**

■ 3. Section 1580.301 is amended by revising paragraphs (e)(4) and (e)(6) and by adding paragraph (e)(7) to read as follows:

**§ 1580.301 Application for trade adjustment assistance.**

\* \* \* \* \*

(e) \* \* \*

(4) Certification that net farm or fishing income was less than that during the producer's pre-adjustment year.

\* \* \* \* \*

(6) To comply with certifications in paragraph (e)(4) of this section, an applicant shall provide either—

\* \* \* \* \*

(7) To comply with certifications in paragraph (e)(5) of this section, an applicant shall provide either—

(i) Supporting documentation from a certified public accountant or attorney,

(ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency, or

(iii) Information prescribed by the Department.

\* \* \* \* \*

**§ 1580.303 [Corrected]**

■ 4. Section 1580.303(a) is revised to read as follows:

**§ 1580.303 Adjustment assistance payments.**

(a) Applicants shall satisfy by September 30 all certifications of § 1580.301(e) to qualify for adjustment assistance payments.

\* \* \* \* \*

■ 5. Section 1580.501 is revised as follows:

**§ 1580.501 Administration.**

(a) The application process shall be carried out in the field by FSA county committees.

(b) FSA county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The Administrator, may, by timely and appropriate public notification, modify non-statutory opening dates and deadlines for submitting petitions.

(d) The Administrator may authorize the FSA county committees to waive or modify non-statutory application deadlines or other program requirements in cases where lateness or failure to meet such other requirements by applicants does not adversely affect the operation of the program.

**§ 1580.502 [Corrected]**

■ 6. Section 1580.502 is amended by adding paragraphs (a)(1) and (a)(2) and by revising paragraph (d) to read as follows:

**§ 1580.502 Maintenance of records, audits and compliance.**

(a) \* \* \*

(1) Acceptable production documentation may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable by the county committee.

(2) Acceptable income documentation shall include, as appropriate, copies of Internal Revenue Service Form 990-C, Farmers' Cooperative Association Income Tax Return; Form 1040, U.S. Individual Income Tax Return; Schedule C (Form 1040), Profit or Loss From Business; Schedule F (Form 1040), Profit or Loss From Farming; Form 1065, U.S. Return of Partnership Income; Form 1120, U.S. Corporation Income Tax Return; or Form 4835, Farm Rental Income and Expenses.

\* \* \* \* \*

(d) If requested in writing by the United States Department of Agriculture or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c), within 30 days. Documentation may be submitted by facsimile, in person, or by mail. Failure to provide necessary and accurate information to verify compliance, or failure to comply with the subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

■ 7. Section 1580.505 is revised to read as follows:

**§ 1580.505 Appeals**

Any person aggrieved by a final determination made with respect to an application for program benefits under this part may appeal to the United States Court of International Trade for a review of such determination, in accordance with its rules and procedures.

Signed at Washington, DC, on October 14, 2004.

A. Ellen Terpstra,  
Administrator, Foreign Agricultural Service.

[FR Doc. 04-24352 Filed 10-29-04; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

[Docket No. 30428; Amdt. No. 3108]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.