

and is thus eligible for entry into commercial citrus-producing States, to distinguish such fruit from non-fumigated Unshu oranges. We will discuss this matter with Japan when we meet to prepare the bilateral workplan.

#### Miscellaneous

In a final rule published in the **Federal Register** on April 27, 2001 (see 66 FR 21049–21064), paragraph (a) of § 319.28 was divided into paragraphs (a)(1) through (a)(3). Prior to that final rule, those same provisions ran together in a single, undivided paragraph (a). At the end of what is now paragraph (a)(3) are two sentences that read “Seeds and processed peel of fruits designated in this section are excluded from this prohibition. Such seeds, however, are subject to the requirements of §§ 319.37 through 319.37–27.” Before we divided paragraph (a), it was clear that the exclusion for seeds and processed peel applied to the entire paragraph. However, now that those sentences are located at the end of paragraph (a)(3), it may appear that the exclusion applies only to paragraph (a)(3). Therefore, for the sake of clarity, we are removing those two sentences from paragraph (a)(3) and placing them in a new paragraph (a)(4).

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, this final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 68 FR 9851–9854 on March 3, 2003, is adopted as a final rule with the following changes:

#### PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.28 is amended as follows:

■ a. In paragraph (a)(3), by removing the last two sentences of the paragraph.

■ b. By adding a new paragraph (a)(4) to read as set forth below.

■ c. In paragraph (b)(5), first and third sentences, and paragraphs (b)(7)(i) and (b)(7)(ii), by adding the words “or Shikoku Island” after the words “Honshu Island.”

#### § 319.28 Notice of quarantine.

(a) \* \* \*

(4) Seeds and processed peel of fruits designated in this section are excluded from this prohibition. Such seeds, however, are subject to the requirements of §§ 319.37 through 319.37–27.

\* \* \* \* \*

Done in Washington, DC, this 26th day of February 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–4600 Filed 3–1–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 783

**RIN 0560–AG83**

#### Tree Assistance Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule provides for implementation, subject to the availability of funds, of the Tree Assistance Program (TAP) authorized by the Farm Security and Rural Investment Act of 2002 (2002 Act). TAP provides assistance to eligible orchardists to replant trees, bushes and vines that were grown for the production of an annual crop and were lost due to a natural disaster.

**EFFECTIVE DATE:** March 1, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Eloise Taylor, Production, Emergencies and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517. Telephone: (202) 720–9882; e-mail: [Eloise.Taylor@usda.gov](mailto:Eloise.Taylor@usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 10201–10205 of the 2002 Act (7 U.S.C. 8201 *et seq.*) authorized, but did not fund, a Tree Assistance Program (TAP) to provide payments to eligible tree, bush and vine owners who incurred losses due to natural disasters. The statute authorizes payments only for eligible owners who actually replant eligible trees, bushes and vines and who produce annual crops from trees, bushes or vines for commercial purposes. Nursery tree stock and Christmas trees are not covered under TAP because annual crops are not produced from nursery tree stock and Christmas trees. Instead, nursery tree stock and Christmas trees are the crops themselves. The statute also limits payments by specifying that qualifying acres for a person may not exceed 500 in number for all payments under TAP.

Despite the lack of funding at the time, FSA published a proposed TAP rule on August 11, 2003 (68 FR 47499). The Agency received one timely-filed postcard containing one comment. The respondent was of the opinion that it would be easy for applicants to receive TAP benefits based on fraudulent claims.

TAP must be implemented as authorized by Congress. The final rule sets forth the requirements for, and limitations on, receiving TAP benefits. Only applicants with qualifying losses on claims for which appropriations have been made will be paid. The amount of compensation will be based on actual costs. The agency safeguards are believed to be adequate.

#### Changes From the Proposed Rule

Several revisions were made for greater clarity or effectiveness. The provision in the proposed rule indicating that, in lieu of payments in cash, qualifying losses may be compensated using seedlings sufficient to reestablish a stand, has been removed. FSA does not have seedlings available to be distributed for such a purpose.

Clarifying changes have been made and greater flexibility has been added to the pro-ratio provisions of the rule. In the event the total amount of claims as submitted exceeds the available funds, payments will be prorated. Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions.

A provision relating to a gross revenue test has been removed in the absence of a specific statutory provision for it. TAP is authorized by Title X of the 2002 Act, which does not have such a limit, unlike other farm programs

authorized by Title I of that act, which does have such a limit.

Delaying this rule would serve no purpose. Accordingly, this rule is effective upon publication so that eligible applications may be acted upon.

#### Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any law to publish a notice of proposed rule making for the subject matter of this rule.

#### Environmental Evaluation

The environmental impacts of this final rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent such laws are inconsistent with it. Before judicial action may be brought concerning provisions of this rule, all administrative remedies must be exhausted.

#### Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal

mandates, as defined by title II of UMRA. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted a request to OMB for the approval of the information collections required for the Tree Assistance Program and the application necessary for the proper functioning of the program.

Part 783 is updated accordingly, and changes are made for clarity, structure and readability.

#### List of Subjects in 7 CFR Part 783

Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 783 is added as follows:

#### PART 783—TREE ASSISTANCE PROGRAM

Sec.

- 783.1 Applicability.
- 783.2 Administration.
- 783.3 Definitions.
- 783.4 Eligibility.
- 783.5 Application.
- 783.6 Benefits.
- 783.7 Obligations of a participant.
- 783.8 Multiple benefits.
- 783.9 Miscellaneous.

**Authority:** 7 U.S.C. 8201 *et seq.*

##### § 783.1 Applicability.

This part governs and provides the requirements and authorities for administration of the Tree Assistance Program (TAP) of the Farm Service Agency. This program shall operate only to the extent funds are appropriated for this program. Payments will be limited to lost eligible trees, bushes or vines, and all claims are subject to the availability of funds.

##### § 783.2 Administration.

(a) The program will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA), and the Deputy Administrator for Farm Programs, FSA. In the field, the regulations in this part will be administered by the FSA State and county committees.

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Deputy Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other non-statutory requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in TAP is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

#### § 783.3 Definitions.

(a) The definitions in part 718 of this chapter apply to TAP except when they conflict with paragraph (b) of this section.

(b) The following definitions apply to TAP:

*Cutting* means a vine, which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit or similar fruit as approved by the Deputy Administrator.

*County office* means the FSA or USDA Service Center that is responsible for servicing the farm on which the trees, bushes or vines are located.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or a designee.

*Eligible bush* means, a low, branching, woody plant from which an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush.

*Eligible orchardist* means an individual, or legal entity, including an Indian tribe as defined under the Indian Self-Determination and Education Assistance Act; an Indian organization or entity chartered under the Indian Reorganization Act; a tribal organization as defined under the Indian Self-Determination Education and Assistance Act; or, an economic enterprise as defined under the Indian Financing Act of 1974, which owns a tree, bush or vine as defined in this part.

*Eligible tree* means, a tall, woody plant having comparatively great height, as determined by the Deputy Administrator, and a single trunk from which an annual crop is produced for commercial purposes, such as maple tree for syrup, papaya tree, or orchard tree. Plantain and banana plants are also included. Trees used for pulp or timber are not considered eligible trees under this part.

*Eligible vine* means a plant with a flexible stem supported by climbing, twining, or creeping along a surface and from which an annual fruit or vegetable crop is produced for commercial purposes, such as grape, kiwi fruit, or passion fruit.

*Individual stand* means an area of trees, bushes or vines that are tended by an owner as a single operation, whether or not such trees, bushes or vines are planted in the same field or similar location. Trees, bushes or vines in the same field or similar area may be considered separate individual stands if the county committee determines that the trees, bushes or vines are susceptible to losses at significantly differing levels.

*Lost* means with respect to the extent of damage to a tree or other plant that the damage is such that it would, as determined by FSA, be more economically beneficial to replace the plant rather than to leave it in its deteriorated, low producing state.

*Natural disaster* means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence of such magnitude or severity so as to be considered disastrous, as determined by FSA.

*Normal mortality* means the percentage, as established by the State Committee, of lost trees, bushes or vines in the individual stand that normally occurs in a 12-month period.

*Program year* means a calendar year for which funding is available.

*Seedling* means a tree, bush or vine which was planted in the ground for commercial purposes.

#### § 783.4 Eligibility.

- (a) To be considered an eligible loss:
- (1) Eligible trees, bushes or vines must have been located and lost as a result of natural disasters determined and announced by FSA as set forth in the TAP application.
  - (2) The individual stand must have sustained a loss in excess of 15 percent after adjustment for normal mortality;
  - (3) The loss could not have been prevented through reasonable and available measures; and
  - (4) The tree, bush or vine, in the absence of a qualifying disaster, would not normally have been rehabilitated or

replanted within the 12-month period following the loss.

(b)(1) The damage must be visible and obvious to the county committee except that if the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(2) The county committee may require information from an expert in the case of plant disease or insect infestation.

(c)(1) To be eligible for TAP benefits the eligible orchardist must:

- (i) Own the stand on which the claim for benefits is based;
- (ii) Have owned the stand at the time the natural disaster occurred;
- (iii) Have continuously owned the stand until the TAP application is submitted; and
- (iv) Not exceed or be in violation of any other limitations on payments.

(2) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for benefits under this part.

(d)(1) A new owner of an orchard is allowed to receive TAP benefits in an amount not to exceed those approved for the predecessor owner of the orchard and not paid to the predecessor owner, if the predecessor owner of the orchard agrees to the succession in writing and if the new owner:

- (i) Acquires ownership of trees, bushes or vines for which benefits have been approved;
- (ii) Agrees to complete all approved practices which the original owner has not completed; and
- (iii) Otherwise meets and assumes full responsibility for all provisions of this part, including refund of payments made to the previous owner, if applicable.

(2) In the case of death, incompetence or disappearance of an eligible orchardist, successors may be eligible to receive TAP payments as specified in part 707 of this chapter.

#### § 783.5 Application.

(a) A complete application for TAP benefits and related supporting documentation must be submitted to the county office prior to the deadline FSA announces.

(b) A complete application includes all of the following:

- (1) A form provided by FSA;
- (2) A written estimate of the number of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the county committee;
- (3) The number of acres on which the loss was suffered; and
- (4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) Before requests will be approved, the county committee:

(1) Must make recommendations and an eligibility determination based on a complete application on those requests that it wants to refer to a higher approval official.

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and trees, bushes or vines.

(3) May request additional information and may consider all relevant information in making its determination, including its members own knowledge about the applicant's normal operations.

#### § 783.6 Benefits.

(a) Subject to the availability of TAP funds, an approved eligible orchardist shall be reimbursed in an amount not to exceed 75 percent of the eligible costs for the qualifying loss (that loss over and above the calculated 15% mortality). The payment shall be the lesser of the 75% of actual costs for the replanting or the amount calculated using rates established by the State committee (not to exceed the maximum amount the Deputy Administrator establishes). The costs permitted shall only be approved for:

- (1) Seedlings or cuttings, for tree, bush or vine replanting;
- (2) Site preparation and debris handling within normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;
- (3) Chemicals and nutrients necessary for successful establishment;
- (4) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and
- (5) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(b) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, windscreens and other costs as determined by the Deputy Administrator are not eligible for reimbursement benefits.

(c) When lost stands are replanted, the types planted may be different than those originally planted if the new types have the same general end use, as the county committee determines and approves. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the species of plantings, seedlings or cuttings differs significantly from the species lost then, except as the county

committee determines, the costs may not be reimbursed.

(d) Eligible orchardists may elect not to replant the entire eligible stand. If so, the county committee shall calculate payment based on the number of qualifying trees, bushes or vines actually replanted.

(e) The cumulative total quantity of acres planted to trees, bushes or vines for which a person may receive assistance at any time under this part shall not exceed 500 acres.

(f) The cumulative amount of TAP benefits which any person, as defined in accordance with part 1400 of this title, may receive under this part shall not exceed \$75,000.

(g) In the event the total amount of claims submitted under this part during a sign-up period exceeds the applicable funds available for such period, such payments shall be reduced by a uniform national percentage or by such other method deemed appropriate by the Deputy Administrator. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

#### § 783.7 Obligations of a participant.

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

(b) If a person was erroneously determined to be eligible or becomes ineligible for all or part of a TAP benefit, the person and successor shall refund any payment paid under this part together with interest from the date of disbursement at a rate in accordance with part 1403 of this title.

(c) Participants must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

#### § 783.8 Multiple benefits.

Persons may not receive or retain payments for production losses from trees, vines and bushes under this part if they have been compensated under another program for the same loss. However, this restriction does not apply to emergency Federal loans or payments resulting from purchase of the additional coverage insurance, as defined in 7 CFR 400.651. However, in no case shall the total amount received from all sources exceed the amount of the owner's actual loss, unless the Deputy Administrator shall approve an exemption in writing.

#### § 783.9 Miscellaneous.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of

title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

(b) Persons shall be ineligible to receive or retain assistance under this program if they have:

(1) Adopted any scheme or device intended to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) TAP benefits paid to a person as a result of misrepresentation shall be refunded to FSA with interest and costs of collection. The party engaged in acts prohibited by this part and the party receiving payment and their successors shall be jointly and severally liable for any amount due. The remedies provided to FSA in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(d) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(e) A minor who is an owner that has met all other eligibility criteria shall be eligible for TAP assistance if:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(f) The regulations regarding reconsideration's and appeals at part 11 of this title and part 780 of this chapter apply to this part.

Signed in Washington DC on February 13, 2004.

**Michael W. Yost,**

*Acting Administrator, Farm Service Agency.*  
[FR Doc. 04-4524 Filed 3-01-04; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. 01-015-1]

#### Brucellosis in Cattle; State and Area Classifications; Missouri

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Missouri from Class A to Class Free. We have determined that Missouri meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Missouri.

**DATES:** This interim rule was effective February 26, 2004. We will consider all comments that we receive on or before May 3, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 01-015-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-015-1.
- *E-mail:* Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-015-1" on the subject line.

• *Agency Web Site:* Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.