

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 orchard-

ist, 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;

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(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

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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.