

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 783

RIN 0560-AG83

#### Tree Assistance Program

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This rule provides for implementation, subject to the availability of funds, of the Farm Service Agency (FSA) Tree Assistance Program (TAP) recently authorized by the Farm Security and Rural Investment Act of 2002. The TAP program provides assistance to tree, bush and vine owners who have trees, bushes or vines lost by a natural disaster. As of this time, no funds have been appropriated for the program.

**DATES:** Submit comments on this proposed rule and the information collection requirements of this rule on or before October 10, 2003 in order to be assured of consideration.

**ADDRESSES:** Comments should be mailed to Dan McGlynn, Deputy Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517, telephone (202) 720-7641, or hand delivered to room 5754 South, at the address above during normal business hours. All comments and supporting documents on this rule may be viewed by contacting the information contact listed below. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD). Comments may be inspected in the Office of the Director, PECD, (FSA), USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through

Friday, except holidays. All comments received, including names and addresses, will become a matter of public record. Comments on the information collection requirements of this proposed rule must be sent to the addresses listed in the Paperwork Reduction Act section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Dan McGlynn, (202) 720-7641.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule has been determined to be not significant under Executive Order 12866.

##### 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 in accordance 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.

*Title:* Tree Assistance Program.

*OMB Control Number:* 0560-NEW.

*Type of Request:* Request for a reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* The Tree Assistance Program provides assistance to owners of trees, bushes and vines that were lost as a result of a natural disaster. The information is collected to document a producer's eligibility to receive such payments. Producers must certify to the requirements contained in this rule and at 7 CFR part 783. The information will be used by FSA to determine the program eligibility of tree, bush and vine owners. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. Without accurate information, payments could be made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour and 20 minutes per response.

*Respondents:* Farms.

*Estimated Number of Respondents:* 333.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 111 hours.

Comment is invited on: (a) Whether the collection of information is

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Dan McGlynn, Deputy Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517, or via electronic mail to: [Dan\\_McGlynn@wdc.usda.gov](mailto:Dan_McGlynn@wdc.usda.gov).

### Background and Discussion

Sections 10201-10205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107B171) authorize the appropriation of funds to carry out 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 or rehabilitate eligible trees, bushes and vines and who produce annual crops from trees for commercial purposes. The statute defines "trees" to include vines and bushes.

Generally, TAP will be made available under the same or similar terms as the TAP program outlined in the 1997 TAP program codified in rules initially published on January 27, 1998, (63 FR 3791), based on funds provided in Public Law 105-18. However, there are certain notable differences. So far, Congress has left the time frame for damages to trees, bushes and vines open. The rule reflects that lack of precision. In the 1997 Act, owners were eligible for up to 100% of the cost to replace or rehabilitate trees or vines adjusted for normal mortality. In the 2002 Act, subject to a \$75,000 per person limit, producers are eligible for reimbursement only up to 75 percent of the replanting costs for trees, bushes and vines in excess of a 15 percent loss, adjusted for normal mortality. The definition of a natural disaster in the 1997 program included flood, drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, and excessive wind as determined by the agency. The 2002 Act broadened the definition of a

natural disaster to also include plant disease and insect infestation. Should funds be appropriated, payments would be provided for the replacement of all qualifying losses of eligible trees, bushes or vines within these limitations. The 1997 program provided payments to eligible tree and vine owners; as indicated, the 2002 Act added bushes to the eligibility criteria. Nursery tree stock and Christmas trees will not be covered under the new TAP program 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 2002 Act also limits payments by specifying that qualifying acres for a person may not exceed 500 in number. Again, however, while these regulations are being promulgated in the event of a program appropriation, there is not at this time such an appropriation. No payments will be made until there is such an appropriation at which time dates of coverage and other terms and conditions may be imposed as needed in light of available funds.

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 record keeping requirements.

For the reasons set forth in the preamble, Title 7 of the Code of Federal Regulations part 783 is proposed to be revised as follows:

1. Revise part 783 to read as follows:

### PART 783—TREE ASSISTANCE PROGRAM

Sec.

- 783.1 General.
- 783.2 Definitions.
- 783.3 Eligibility.
- 783.4 Application.
- 783.5 Benefits.
- 783.6 Obligations of an owner.
- 783.7 Multiple benefits.
- 783.8 Miscellaneous.

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

#### § 783.1 General.

(a) *Purpose and Limitation.* 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 or the Secretary under other authority makes funds explicitly available for purposes of this program. Otherwise, no payments shall be made under this part.

(b) *Administration.* The TAP will be administered by the Administrator of

the United States Department of Agriculture, Farm Service Agency (FSA), or a designee supervised by the Deputy Administrator for Farm Programs, FSA (Deputy Administrator), and carried out by FSA State and county committees.

(1) State and county committees do not have the authority to modify or waive any provision of this regulation. The State committee shall take any required action not taken by the county committee, correct acts of a county committee which violate this regulation, or prevent a county committee from taking action beyond what is allowed in this regulation.

(2) The Deputy Administrator, or designee, may determine any TAP issue and reverse or modify decisions a State or county committee makes.

(3) This program will cover losses for damages to trees, bushes and vines that occurred between dates announced by the Deputy Administrator. The Deputy Administrator may waive or modify deadlines or other requirements when doing so does not adversely affect the program or when an exception to this regulation is necessary to achieve the goals of the program and distribute benefits more equitably.

#### § 783.2 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 terms, as defined, apply to TAP:

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

*Cutting* means, a vine, which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit.

*Deputy Administrator* means the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture or his or her delegate.

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

*Individual stand* means an area of trees, bushes or vines, which 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 separate individual stands if the county committee determines that the trees,

bushes or vines are susceptible to losses at significantly differing levels.

*Lost means* if the tree has been damaged to such an extent that it would be more economically beneficial to replace it than to leave it in its deteriorated, low producing, state, as determined by FSA.

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

*Normal mortality* means the percentage of damaged or dead trees, bushes or vines in the individual stand that normally occurs in a 12 month period established by the State Committee (STC).

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

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

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

*Tree* means, a tall woody plant having comparatively great height and a single trunk from which an annual fruit or vegetable 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 trees under this part.

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

### § 783.3 Eligibility.

(a) *Eligible loss.* To be considered an eligible loss:

- (1) Trees, bushes or vines must have been lost as a result of a natural disaster;
- (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 would not normally have been rehabilitated or replanted within the 12-month period following the loss.

(b)(1) *Proof of damage.* 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) County Committee (COC) may require information from an expert in the case of plant disease or insect infestation.

(c)(1) *Eligible owners.* To be eligible for TAP payments the owner must:

- (i) Own the stand on which the claim for benefits is based;
- (ii) Have owned it at the time the natural disaster occurred; and
- (iii) Have continuously owned the stand until the TAP application is submitted; and

(2) Notwithstanding paragraph (c) of this section, no person, as defined in part 1400 of this title, with an annual gross revenue in excess of \$2.5 million for the preceding tax year will be eligible for benefits under this part.

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

(d)(1) *Succession.* A new owner is allowed to receive TAP benefits in an amount not to exceed those approved for the predecessor and not paid to the previous owner, if the previous owner 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 TAP applicant, successors may be eligible to receive the payments instead as specified in part 707 of this chapter.

### § 783.4 Application.

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

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) *Agency action.* 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) Will 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.

### § 783.5 Benefits.

(a) Subject to the availability of TAP funds, an approved owner 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 actual costs for the replanting or the amount calculated using rates established by the county 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 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. 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, as the county committee determines, the costs may not be reimbursed.

(d) Owners 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 shall not exceed 500 acres.

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

(g) If the total of all eligible TAP claims received exceeds the available TAP funds, payments shall be reduced by a uniform national percentage after the imposition of applicable payment limitation provisions.

#### § 783.6 Obligations of an owner.

(a) Eligible owners must execute all required documents, comply with all applicable noxious weed laws, 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 payment, the person and/or 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.

#### § 783.7 Multiple benefits.

Persons eligible to receive payments under this part and another program for the same loss, may receive benefits from only one program and must choose which program benefits they want. If other benefits become available after payment of TAP benefits the owner may refund the TAP payment and receive the other program benefit. If the owner purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for assistance or emergency loans under another Federal program for the same loss, the owner will be eligible for such assistance. In no case shall the total amount received from all sources exceed the amount of the owner's actual loss. Should the total amount of benefits exceed the owner's actual loss, the TAP benefits will be reduced accordingly.

#### § 783.8 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 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 paragraph 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. 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.

(d) The regulations regarding reconsiderations and appeals at part 11 of this title and part 780 of this chapter apply to this part.

(e) In lieu of payments in cash, qualifying losses may be compensated by seedlings sufficient to reestablish a stand.

(f) The Deputy Administrator may set such additional conditions and limitations on eligibility as may be needed to reflect limited funding or accomplish program objectives as deemed appropriate by the Deputy Administrator, consistent with governing legislation.

Signed in Washington DC on August 5, 2003.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 03-20345 Filed 8-8-03; 8:45 am]

BILLING CODE 3410-05-P

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 614 and 615

RIN 3052-AB96

#### Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; OFI Lending

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, agency, us, or we) proposes to amend its regulations governing other financing institutions (OFIs) and investments in Farmers' notes so it would be easier for Farm Credit System (FCS, Farm Credit, or System) institutions and non-System lenders to work together in providing affordable credit to agriculture and rural America. In addition, the proposed rule would remove provisions in the existing OFI and Farmers' notes regulations that: Impede the flow of credit; are not required by law; or do not enhance safe and sound operations. The FCA also proposes related amendments to its capital regulations.

**DATES:** You may send us comments by October 10, 2003.

**ADDRESSES:** Send us your comments by electronic mail to [reg-comm@fca.gov](mailto:reg-comm@fca.gov), through the Pending Regulations section of our Web site at [www.fca.gov](http://www.fca.gov), or through the government-wide Web site, [www.regulations.gov](http://www.regulations.gov). You may also submit your comments in writing to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, or by facsimile transmission to (703) 734-5785. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4498, TTY (703) 883-4434,

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:**