

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.

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,