

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