

DEPARTMENT OF AGRICULTURE**Foreign Agricultural Service****7 CFR Part 1580**

RIN 0551-AA80

Trade Adjustment Assistance for Farmers**AGENCY:** Foreign Agricultural Service, USDA.**ACTION:** Interim rule.

SUMMARY: This interim rule immediately implements the Trade Adjustment Assistance (TAA) for Farmers program as reauthorized by the American Recovery and Reinvestment Act of 2009 (ARRA) and provides for the opening of a 30-day comment period. The ARRA modified the TAA for Farmers program as established by Subtitle C of Title I of the Trade Act of 2002, which amended the Trade Act of 1974. The rule establishes the procedures by which producers of raw agricultural commodities can petition for certification, apply for technical assistance, and receive cash benefits for the development and implementation of approved business adjustment plans. The Foreign Agricultural Service (FAS) is issuing this interim rule and providing for the opening of an interim rule comment period to ensure that an adequate opportunity to comment is provided all interested parties. After closure of the interim rule comment period and after consideration is provided to all comments received during the interim rule comment period, this rule will be adopted as final with or without change by publication in the **Federal Register**.

DATES: *Effective Date:* March 1, 2010.*Comment Date:* Comments should be received on or before March 31, 2010, to be assured consideration.

ADDRESSES: Comments should be mailed or delivered to The Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, Washington, DC 20250-1021. Comments can also be e-mailed to tradeadjustment@fas.usda.gov. Comments received may be inspected between 10 a.m. and 4 p.m. in Suite 100, 1250 Maryland Avenue, SW., Washington, DC 20034.

FOR FURTHER INFORMATION CONTACT: The Trade Adjustment Assistance for Farmers Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural

Service, 1400 Independence Avenue, SW., STOP 1021; or by e-mail at tradeadjustment@fas.usda.gov; or by telephone at (202) 720-0638; or by fax at (202) 720-8461.

SUPPLEMENTARY INFORMATION:**Background**

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) reauthorizes and modifies the Trade Adjustment Assistance (TAA) for Farmers program and provides both technical assistance and cash benefits to producers as established by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107-210), which amended the Trade Act of 1974. The statute authorizes an appropriation of not more than \$90 million per year for the 2009 and 2010 fiscal years, and \$22.5 million for the period beginning October 1, 2010 and ending December 31, 2010 to carry out the program; including the U. S. Department of Agriculture (USDA) salaries and expenses.

Under this rule, a group of producers may petition the Administrator (FAS) for trade adjustment assistance during the petition period announced in the **Federal Register**. Petitioners must submit data on either the national average price, or quantity of production, or value of production, or cash receipts for the agricultural commodity for the most recent marketing year for which data are available and the three preceding marketing years. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been accepted. The Economic Research Service (ERS) will then conduct a market study to verify the decline in the national average price, or quantity of production, or value of production, or cash receipts for the petitioned commodity, and to assess possible causes, taking into due account any special factors which may have affected prices, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the Administrator (FAS) who will review and determine whether or not to certify the petitioning group's eligibility for trade adjustment assistance.

Upon certification of the petition, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as producers are found eligible, they may receive; (1) Training specifically tailored to their needs by the National Institute of Food and Agriculture (NIFA); and under certain circumstances (2) travel and per

diem payments to help offset costs incurred to attend initial training. Depending on the commodity and the region, the training package may include technical publications in print or on-line, group seminars and presentations, one-on-one meetings, and assistance in the development of business adjustment plans. Producers who satisfy personal and farm income limits; complete the designated technical training; and develop and implement approved business plans are eligible for TAA for Farmers cash benefits. During the 36-month period following certification of the petition by the Administrator (FAS), a producer may receive not more than \$12,000 for the development and implementation of business plans approved under the TAA for Farmers program. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA for Farmers obligations during the fiscal year, the payments provided for business plan development and implementation will be reduced proportionately, as determined by the Administrator (FAS).

Discussion of Comments

FAS received sixteen comments on the proposed rule (74 FR 42799, August 25, 2009) during the proposed rule comment period which ran from August 25, 2009 through September 24, 2009. The comments focused on the following areas:

Payment Limitations and Adjusted Gross Income

Three respondents expressed concern with limitations currently capped at \$65,000 per year for counter-cyclical and Average Crop Revenue Election (ACRE) payments, and recommended removing these limits for cash payments under the TAA for Farmers program. Respondents also recommended removing the average Adjusted Gross Income (AGI) requirement. Section 296 of the Trade Act of 1974, as amended, specifically mandates limitations on assistance based on individual counter-cyclical, ACRE, and average AGI requirements as they are defined in the Food Security Act of 1985 (the 1985 Act). Therefore, these regulatory limits are being retained. FAS further refined these provisions by inserting language that clarifies the differences that exist in counter-cyclical, ACRE, and average AGI requirements for certified petitions for the 2008 crop year, and certified petitions for subsequent crop years.

The interim rule incorporates revisions to § 1580.301(d)(1) and (2) as contained in the proposed rule. The revision is for clarity and is consistent with the statutory authority for TAA for

Farmers. The statute provides that producers must demonstrate compliance that their average AGI does not exceed limits set forth in the 1985 Act. The average AGI provisions of the 1985 Act which are administered by the Commodity Credit Corporation pursuant to the regulations in 7 CFR part 1400 provide an average AGI limit of \$2.5 million for 2008 crop programs and, for 2009 and subsequent crops, limits of \$500,000 for nonfarm average AGI and \$750,000 farm average AGI. The proposed rule addressed the average AGI limits for 2009 and subsequent crops but did not include any reference to the \$2.5 million average AGI limit applicable to 2008 crops. The interim rule at § 1580.301(d)(1) and (2) is amended so that the average AGI limits are specified for all crop years that might be certified for TAA for Farmers.

For purposes of clarity, the interim rule incorporates revisions to the payment limitation provisions in § 1580.301(e) as contained in the proposed rule. The statutory authority for TAA for Farmers provides that the total amount of payments made to a producer during any crop year may not exceed the limitations applicable to counter-cyclical payments and ACRE payments. For 2008 and 2009 and subsequent crop years, the payment limitation is \$65,000. However, the proposed rule was not clear that the ACRE limitation is only effective for the 2009 and subsequent crop commodities. The interim rule is therefore amended at § 1580.301(e) to identify the payment limitation regulations applicable to the 2008 crop separately from regulations applicable to 2009 and subsequent crop commodities.

Specialty Crops

One respondent inquired if this program is specific to specialty crops and if processors are eligible for program benefits. The purpose of TAA for Farmers is to assist producers of raw agricultural commodities, aquaculture products, or wild-caught aquatic species, adjust to imports by providing technical assistance and cash benefits, and preparing and implementing business adjustment plans. The interim rule leaves unchanged the eligibility requirements to exclude processors since the statute specifically limits program benefits to producers of raw agricultural commodities.

Length of Intensive Training

One respondent suggested that the Intensive Technical Assistance offered by NIFA be a minimum of 16 hours to accommodate the needs that would vary from applicant to applicant. The

respondent felt that training must be at least 16 hours so that important information is covered that helps producers make the required adjustments in their agricultural businesses. The interim rule leaves the Intensive Technical Assistance training unchanged to provide the Administrator flexibility in developing a series of comprehensive courses to meet the needs of an individual producer and their particular circumstances.

Further Revisions

In addition to the changes made in response to the comments listed above, FAS made additional changes in the interim rule by adding three new definitions that were not included in the proposed rule, namely "County price maintained by the Secretary," "Deputy Administrator," and "NIFA."

The definition of "County price maintained by the Secretary" was added for consistency with the statute that provides for use of such price by producers to establish their eligibility, and to clarify that a maintained price might be obtained from any USDA agency that records commodity prices for the purpose of program administration. The proposed rule provided for use of prices "maintained by FSA," but the new definition and revised rule allows for the use of prices maintained by other USDA agencies in addition to prices maintained by FSA. This definition is consistent with the interim rule provision at § 1580.301(c)(3)(ii), under which a producer may establish benefit eligibility if there has been a decrease in the commodity price based on the county price, maintained by the Secretary on the date the petition was filed, compared to the county price for the 3 preceding marketing years.

The interim rule incorporates a definition of "Deputy Administrator," and adds a new provision at § 1580.501(e) that provides authority for the Deputy Administrator of FSA to waive or modify non-statutory deadlines or other requirements where lateness to meet requirements by applicants does not adversely affect the operation of the program. This definition and authority were included in the interim rule governing the previous TAA program and are included in this interim rule to provide FSA flexibility in administering the application and payment processes for TAA for Farmers applicants.

The interim rule incorporates a definition of "NIFA," the National Institute of Food and Agriculture which was previously known as the Cooperative State Research, Education, and Extension Service (CSREES). This

agency was renamed effective October 1, 2009 and the definition is included for clarity because the name change is thought not to be commonly known by prospective program applicants. The definition of CSREES has been deleted because the name of the agency has been changed.

Upon further consideration of the proposed rule, FAS also made some other revisions and clarifications in the interim rule. The definition of "Average price received by the producer" was modified to remove the requirement that prices received by the producer be "not weighted by production." This change was made to reflect the likelihood that prices received by the producer at the point of first sale would be established based on current production levels, and thus would be weighted.

In §§ 1580.201(d) and 1580.203(a) the word "accepted" was changed to "filed" to conform to the term usage in the statute.

Clarification was made to § 1580.301(c)(3)(ii) to define the date on which a petition is filed as the date on which the Administrator (FAS) accepts a petition for consideration as published in the **Federal Register**, and add a provision that if county prices are not available from within USDA, prices from other verifiable sources may be used.

Upon further consideration of the proposed rule, FAS also decided not to conduct hearings with respect to appeals of adverse determinations. This change was made to minimize the potential burden upon the applicant and expedite FAS' review in making a final determination.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, it has been reviewed by OMB. A cost-benefit assessment for the proposed rule has been prepared and is available from the information contact cited above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to prepare an analysis of the economic impact of any rule that is subject to notice and comment rulemaking, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA does not apply to interim rules. As such, neither a regulatory flexibility analysis nor a certification is required at this time. FAS will prepare and publish its regulatory flexibility analysis or certification when this rule is finalized.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from the OMB with respect to the information collection required to support this program. The information collection is described below:

Title: Trade Adjustment Assistance for Farmers.

OMB Control Number: 0551-0040.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator (FAS) has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (Pub. L. 104-4)

These Executive Orders and Public Law 104-4 require consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

List of Subjects in 7 CFR Part 1580

Agricultural commodity imports; Reporting and recordkeeping requirements; and trade adjustment assistance.

■ For reasons set out in the preamble, 7 CFR part 1580 is revised to read as follows:

Title 7—Agriculture**PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS**

Sec.

- 1580.101 General statement.
- 1580.102 Definitions.
- 1580.201 Petitions for trade adjustment assistance.
- 1580.202 Hearings, petition reviews, and amendments.
- 1580.203 Determination of eligibility and certification by the Administrator (FAS).
- 1580.301 Application for trade adjustment assistance.
- 1580.302 Technical assistance and services.
- 1580.303 Adjustment assistance payments.
- 1580.401 Subsequent year petition recertification.
- 1580.501 Administration.
- 1580.502 Maintenance of records, audits, and compliance.
- 1580.503 Recovery of overpayments.
- 1580.504 Debarment, suspension, and penalties.
- 1580.505 Appeals.
- 1580.506 Judicial review.
- 1580.602 Paperwork Reduction Act assigned number.

Authority: 19 U.S.C. 2401.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance (TAA) for Farmers program as authorized by the Trade Act of 1974, amended by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107-210), and re-authorized and modified by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). The regulations establish procedures by which a group of producers of raw agricultural commodities or fishermen (jointly referred to as “producers”) can petition for certification of eligibility and through which individual producers covered by a certified petition can apply for technical assistance and cash benefits for the development and implementation of approved business adjustment plans.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Agricultural commodity means any commodity in its raw or natural state; found in chapters 1, 3, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the Harmonized Tariff Schedule of the United States (HTS).

Articles like or directly competitive generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A “like” product means substantially identical in inherent or intrinsic characteristics, and the term “directly competitive” means articles that are substantially equivalent for

commercial purposes (*i.e.*, adapted to the same uses and essentially interchangeable therefore). For fishery products, competition could be either from farm-raised or wild-caught products.

Authorized representative means an entity that represents a group of agricultural commodity producers or fishermen.

Average price received by the producer means the average of the 3 marketing year prices per unit received by the producer from the first level of sales for the commodity.

Cash receipts mean the value of commodity marketings during the calendar year, irrespective of the year of production, as calculated by the Economic Research Service of the USDA.

Certification of eligibility means the date on which the Administrator (FAS) announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for trade adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

County price maintained by the Secretary means a daily price obtained from a USDA agency for the commodity and producer location, except that weekly or monthly prices may be used if daily prices are unavailable.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs of the Farm Service Agency (FSA).

Family member means an individual to whom a producer is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

- (1) Great grandparent;
- (2) Grandparent;
- (3) Parent;
- (4) Children, including legally adopted children;

(5) Grandchildren;

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Filing period means the dates during which petitions may be submitted, as published in the **Federal Register**.

FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Group means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year designated by the Administrator (FAS) with respect to an agricultural commodity. In the case of an agricultural commodity that does not have a designated marketing year, a calendar year will be used.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture, or the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, when available, or when unavailable, as determined by the Administrator (FAS).

NIFA means the National Institute of Food and Agriculture, the Federal agency within the U.S. Department of Agriculture which administers the Federal agricultural extension programs.

Producer means a person who shares in the risk of producing an agricultural commodity and is entitled to a share of the commodity for marketing; including an operator, a sharecropper, or a person who owns or rents the land on which the commodity is produced; or a person who reports gain or loss from the trade or business of fishing on the person's annual Federal income tax return for the taxable year that most closely corresponds to the marketing year with respect to which a petition is filed.

Raw or natural state means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching, irradiating, or fumigating.

State Cooperative Extension Service means an organization established at the land-grant college or university under the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341-349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, through section 31-1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Value of production means the value of commodities produced during the crop year calculated as production times the marketing year average price. This may be equal to cash receipts when the crop year for the commodity runs from January through December.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of producers in the United States or its authorized representative

may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator (FAS), and submitted to FAS no later than the last day of the filing period announced in the **Federal Register**. Petitions received after this date will be returned to the sender.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and e-mail address (if available) of each producer in the group, or its authorized representative. The petition shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petition shall indicate if the group is filing on behalf of all producers in the United States, or if it is filing solely on behalf of all producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area.

(4) The beginning and ending dates for the marketing year upon which the petition is based. A petition may be filed for only the most recent full marketing year for which data are available for national average prices, or quantity of production, or value of production, or cash receipts.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Supporting information justifying the basis of the petition, including required data for the petitioned marketing year and the previous 3 marketing years.

(i) Whenever possible, the petitioners shall use national average data compiled by the National Agricultural Statistics Service (NASS) or the National Marine Fisheries Service (NMFS), to determine national average prices, or quantity of production, or value of production, or cash receipts. If NASS or NMFS has not compiled such data for the commodity, the petitioners shall provide alternative data for the marketing year under review and for the previous 3 marketing years, and identify the source of the data. In such cases the Administrator (FAS) shall determine if the alternative data is acceptable.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide the national average prices or county prices if applicable, or quantity of production or value of production, or

cash receipts for the petitioned commodity in the impacted area for the marketing year under review and for the previous 3 marketing years, and identification of the data source.

(iii) The Administrator (FAS) may request petitioners to provide records to support their data.

(d) Once the petition is received, the Administrator (FAS) shall determine if it meets the requirements of § 1580.201(c) of this part, and if so, publish notice in the **Federal Register** that a petition has been filed and that an investigation is being initiated. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the data being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioner. If the petition does not meet the requirements of § 1580.201(c) of this part, the Administrator (FAS) shall notify as soon as practicable the contact person or the authorized representative for the group of the deficiencies.

§ 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person found by the Administrator (FAS) to have a substantial interest in the proceedings, submits not later than 10 days after the date of publication of notice in the **Federal Register** under § 1580.201(d) of this part, a request in writing for a hearing, the Administrator (FAS) shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner or any other person having an interest in the proceedings takes issue with any of the information published in the **Federal Register** concerning the petition, such person may submit to the Administrator (FAS) their comments in writing or electronically for consideration by the Administrator (FAS) not later than 10 days after the date of publication of notice in the **Federal Register** under § 1580.201(d) of this part.

(c) A producer or group of producers that resides outside of the State or region identified in the petition filed under paragraph (a) of this section, may file a request to become a party to that petition not later than 15 days after the date that the notice is published in the **Federal Register** under § 1580.201(d) of this part. The Administrator (FAS) may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator (FAS) shall publish in the **Federal Register** as soon as practicable any changes to the original notice resulting from any actions taken under this section.

§ 1580.203 Determination of eligibility and certification by the Administrator (FAS).

(a) As soon as practicable after the petition has been filed, but in any event not later than 40 days after that date, the Administrator (FAS) shall certify a group of producers as eligible to apply for adjustment assistance under this chapter if the Administrator (FAS) determines:

(1) At least one of the following:

(i) The national average price of the agricultural commodity produced by the group during the most recent marketing year for which data are available is less than 85 percent of the average of the national average price for the commodity in the 3 marketing years preceding such marketing year; or

(ii) The quantity of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average of the quantity of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iii) The value of production of the agricultural commodity produced by the group during such marketing year is less than 85 percent of the average value of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

(iv) The cash receipts for the agricultural commodity produced by the group during such marketing year are less than 85 percent of the average of the cash receipts for the commodity produced by the group in the 3 marketing years preceding such marketing year;

(2) The volume of imports of articles like or directly competitive with the agricultural commodity produced by the group in the marketing year with respect to which the group files the petition increased compared to the average volume of such imports during the 3 marketing years preceding such marketing year; and

(3) The increase in such imports contributed importantly to the decrease in the national average price, or quantity of production, or value of production, or cash receipts for, the agricultural commodity.

(b) In any case in which there are separate classes of goods within an agricultural commodity, the Administrator (FAS) shall treat each class as a separate commodity in determining:

(1) Group eligibility;

(2) The national average price, or quantity of production, or value of production, or cash receipts; and

(3) The volume of imports.

(c) Upon making a determination, whether affirmative or negative, the Administrator (FAS) shall promptly publish in the **Federal Register** a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator (FAS) shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, Web site notices on the Internet, use of broadcast print media, and transmittal through local USDA offices.

(e) Whenever a group of agricultural producers is certified as eligible to apply for assistance, the Administrator (FAS) shall notify NIFA, the Agricultural Marketing Service, and FSA who will assist in informing other producers about the TAA for Farmers program and how they may apply for trade adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility under § 1580.203 of this title, may apply for adjustment assistance.

(b) An eligible producer may submit an application for adjustment assistance by submitting to FSA a designated application form at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) When submitting an application, the producer shall provide sufficient documentation to establish that:

(1) The producer produced the agricultural commodity in the marketing year for which the petition is filed and in at least 1 of the 3 marketing years preceding that marketing year;

(2) There has been a decrease in the quantity of the agricultural commodity produced by the producer in the marketing year for which the petition is certified from the most recent prior marketing year preceding that marketing year for which data is available; or

(3) There has been a decrease in the price of the agricultural commodity based on:

(i) The price received for the agricultural commodity by the producer

during the marketing year with respect to which the petition is filed from the average price for the commodity received by the producer in the 3 marketing years preceding that marketing year; or

(ii) The effective posted county price maintained by the Secretary for the agricultural commodity on the date on which the Administrator (FAS) accepts a petition for consideration as published in the **Federal Register** from the average effective posted county level price for the commodity in the 3 marketing years preceding that date. If USDA prices are not available, prices from verifiable sources, including universities, cooperatives, or local markets, may be used.

(4) If a petition is certified with respect to a commodity not produced by the producer every year, the producer may establish the average price received by the producer for the commodity in the 3 marketing years preceding the year in which the petition is filed by using annual price data for the 3 most recent marketing years in which the producer produced the commodity.

(5) The producer must certify that the producer has not received cash benefits under the Trade Adjustment Assistance for Workers or Trade Adjustment Assistance for Firms programs; or TAA for Farmers benefits based on the production of an agricultural commodity covered by another TAA for Farmers petition.

(d) The producer must certify that:

(1) For petitions certified for 2008 crops, their compliance with person determinations set forth in part 1400 of this title, subpart B and average adjusted gross income limitation requirements set forth in subpart G, effective July 18, 1996.

(2) For petitions certified for 2009 and subsequent crops, their average gross nonfarm income and average adjusted gross farm income meet requirements set forth in part 1400 of this title, subpart F, and payment limitation requirements set forth in part 1400 of this title, subparts A and B, effective December 29, 2008; and,

(e) The total amount of payments made to a producer for which the application was approved may not exceed the limitations on payments applicable to:

(1) For petitions certified for 2008 crops, counter-cyclical payments, set forth in part 1400 of this title, subpart A, effective July 18, 1996.

(2) For petitions certified for 2009 and subsequent crops, the counter-cyclical payments, including the Average Crop Revenue Election (ACRE) set forth in

part 1400 of this title, subparts A and B, effective December 29, 2008; and

(f) If requested by FSA, a producer must provide documentation regarding average adjusted gross income and payment limitations.

§ 1580.302 Technical assistance and services.

(a) *Initial Technical Assistance:* A producer covered by a certification who has been determined by FSA to meet the requirements of § 1580.301 of this part, is eligible to receive Initial Technical Assistance through NIFA to be completed within 180 days of petition certification. Such assistance shall include information regarding:

(1) Improving the yield and marketing of that agricultural commodity, and

(2) The feasibility and desirability, of substituting one or more agricultural commodities for that agricultural commodity.

(b) *Intensive Technical Assistance:* Upon completion of Initial Technical Assistance, a producer is eligible to participate in Intensive Technical Assistance. Intensive Technical Assistance shall consist of:

(1) A series of courses to further assist the producer in improving the competitiveness of producing the agricultural commodity certified under § 1580.203 of this part, or another agricultural commodity, and

(2) Assistance in developing an initial business plan based on the courses completed under paragraph (a) of this section.

(c) *During Intensive Technical Assistance:* NIFA shall deliver and the producer shall be required to attend a series of Intensive Technical Assistance workshops relevant to the circumstances of the producer.

(d) *Initial Business Plan:* Upon completion of the Initial and Intensive Technical Assistance, the producer shall be required to develop an Initial Business Plan recommended by NIFA and approved by the Administrator (FAS) before receiving an adjustment assistance payment. The Initial Business Plan will:

(1) Reflect the skills gained by the producer through the courses described in paragraph (c) of this section; and

(2) Demonstrate how the producer will apply those skills to the circumstances of the producer.

(e) Upon approval of the Initial Business Plan, the producer will receive an amount not to exceed \$4,000 to implement the Initial Business Plan or develop a Long-Term Business Adjustment Plan.

(f) A producer who completes the Intensive Technical Assistance and

whose Initial Business Plan has been approved shall be eligible, in addition to the amount under paragraph (e) of this section, for assistance in developing a Long-Term Business Adjustment Plan.

(g) *Long-Term Business Adjustment Plan:* The Long-Term Business Adjustment Plan shall:

(1) Include steps reasonably calculated to materially contribute to the economic adjustment of the producer to changing market conditions;

(2) Take into consideration the interests of the workers employed by the producer; and

(3) Demonstrate that the producer will have sufficient resources to implement the business plan.

(h) Upon recommendation by NIFA and approval of the producer's Long-Term Business Adjustment Plan by the Administrator (FAS), the producer shall be entitled to receive an amount not to exceed \$8,000 to implement their Long-Term Business Adjustment Plan.

(i) The Initial Business Plan and Long-Term Business Adjustment Plan must be completed and approved within 36 months after a petition is certified.

(j) A producer shall not receive a combined total of more than \$12,000 for the Initial Business Plan and the Long Term Business Adjustment Plan in the 36-month period following petition certification.

(k) The Administrator (FAS) may authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses incurred by a producer in connection with the initial technical assistance, if such initial technical assistance is provided at facilities that are not within normal commuting distance of the regular place of residence of the producer. NIFA and FSA will work with the producer and the Administrator (FAS) to facilitate application for and proper payment of reasonable allowable supplemental expenses. The Administrator (FAS) will not authorize payments to a producer:

(1) For subsistence expenses that exceed the lesser of:

(i) The actual per diem expenses for subsistence incurred by a producer; or

(ii) The prevailing per diem allowance rate authorized under Federal travel regulations; or

(2) For travel expenses that exceed the prevailing mileage rate authorized under the Federal travel regulations.

§ 1580.303 Adjustment assistance payments.

(a) If the Administrator (FAS) determines that insufficient appropriated fiscal year funds are available to provide maximum cash

benefits to all eligible applicants, after having deducted estimated transportation and substance payments and administrative and technical assistance costs, the Administrator (FAS) shall prorate cash payments to producers for the approved initial and long-term business plans.

(b) Any producer who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(c) In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits in accordance with this part, such producer or producers specified in 7 CFR part 707 may receive such benefits.

§ 1580.401 Subsequent year petition recertification.

(a) Prior to the anniversary of the petition certification date:

(1) Groups or authorized representatives that provided the data to justify their initial petition shall provide the Administrator (FAS) data for the most recent marketing year, and

(2) The Administrator (FAS) shall make a determination with respect to the re-certification of petitions for the subsequent year by applying criteria as set forth in § 1580.203 of this part for the most recent marketing year.

(b) The Administrator (FAS) will promptly publish in the **Federal Register** the determination with the reasons for the determination.

(c) If a petition is re-certified, only eligible producers who did not receive training and cash benefits under this program may apply.

§ 1580.501 Administration.

(a) The petition process will be administered by FAS. FAS will publish in the **Federal Register** the filing dates for commodity groups to file petitions.

(b) FSA will administer the producer application and payment process.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The technical assistance process and the recommendation for approval of all producer business plans will be under the general supervision of NIFA. NIFA may award the technical assistance and services to a state cooperative extension service.

(e) The Deputy Administrator may, in consultation with the Administrator, FAS, authorize the State and County committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or

failure to meet such other requirements by applicants does not adversely affect the operation of the program.

§ 1580.502 Maintenance of records, audits, and compliance.

(a) Producers making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of the U.S. Department of Agriculture or any agency thereof, the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(d) If requested in writing by the U.S. Department of Agriculture or any agency thereof, or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c) of this part, within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this part's requirements, will result in ineligibility

for all program benefits subject to this part for the year or years subject to the request.

§ 1580.503 Recovery of overpayments.

(a) If the Administrator (FAS) determines that any producer has received any payment under this program to which the producer was not entitled, or has expended funds received under this program for purpose that was not approved by the Administrator (FAS) such producer will be liable to repay such amount. The Administrator (FAS) may waive such repayment if it is determined that:

- (1) The payment was made without fault on the part of the producer; and
- (2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a) of this section, the Administrator (FAS), shall recover the overpayment as a debt following the procedures in 7 CFR part 3. The requirement for demand and notice and opportunity for a hearing under the debt collection procedures in 7 CFR part 3 shall satisfy the notice and hearing requirements under 19 U.S.C. 2401f(c), and the appeal procedures in § 1580.505 of this part shall not apply to collection of overpayments

§ 1580.504 Debarment, suspension, and penalties.

(a) *Generally.* The regulations governing Governmentwide Debarment and Suspension (Nonprocurement), 7 CFR part 3017, and Government Requirements for Drug-Free Workplace (Financial Assistance), 7 CFR part 3021, apply to this part.

(b) *Additional specific suspension and debarment provision for this program.* In addition to any other debarment or suspension of a producer under paragraph (a) of this section, in connection with this program, if the Administrator (FAS) or a court of competent jurisdiction, determines that a producer:

- (1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or
- (2) Knowingly has failed, or caused another to fail, to disclose a material fact; and, as a result of such false statement or representation, or of such nondisclosure, such producer has received any payment under this program to which the producer was not entitled, the Administrator (FAS) shall suspend and debar such producer from any future payments under this program, as provided in 19 U.S.C. 2401f(b).

(c) *Criminal penalty.* Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other producer any payments authorized to be furnished under this program shall be fined not more than \$10,000 or imprisoned for not more than 1 year, or both.

§ 1580.505 Appeals.

(a) A producer adversely affected by a determination with respect to their application for trade adjustment assistance under § 1580.301 of this part or with respect to the receipt of technical assistance or payments under § 1580.302 of this part may file a notice of appeal within 30 days of the date that the notification of the adverse determination was sent.

(b) A producer may not seek judicial review of any adverse decision under this paragraph without receiving a final determination pursuant to this paragraph.

§ 1580.506 Judicial review.

Any producer aggrieved by a final agency determination under this part may appeal to the U.S. Court of International Trade for a review of such determination in accordance with its rules and procedures.

§ 1580.602 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number 0551-0040.

Dated: February 22, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank.