

3. Section 1230.112 is revised to read as follows:

**§ 1230.112 Rate of assessment.**

In accordance with § 1230.71(d) the rate of assessment shall be 0.40 percent of market value.

Dated: July 15, 2002.

**A. J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–18258 Filed 7–18–02; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1470**

**RIN 0560–AG63**

**Apple Market Loss Assistance Payment Program II**

**AGENCY:** Commodity Credit Corporation, USDA.

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

**SUMMARY:** This rule establishes the Apple Market Loss Assistance Payment Program II. The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

**DATES:** Comments on this rule must be received on or before August 19, 2002, to be assured consideration. Comments on the information collections in this rule must be received by September 17, 2002 to be assured consideration.

**ADDRESSES:** Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–7901 or e-mail: [danielle\\_cooke@wdc.usda.gov](mailto:danielle_cooke@wdc.usda.gov). Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at <http://www.fsa.usda.gov/dafp/psd/>.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, FSA; telephone (202) 720–1919

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This proposed rule is issued in conformance with Executive Order

12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, the administrative remedies must be exhausted.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires 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**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking on the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

**Federal Assistance Program**

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are: 10.075—Special Apple Program.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of the Apple Market Loss Assistance Payment Program application as necessary for the proper functioning of the program.

*Title:* Apple Market Loss Assistance Payment Program.

*OMB Control Number:* 0560–0210.

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

*Abstract:* Apple operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify: (1) The pounds of apples produced and harvested during the 2000 crop year; (2) receipt of no other payments by the apple operation for the market loss of apples from any other Federal program, except Federal Crop Insurance; and (3) that they understand the apple operation may be randomly selected by the Commodity Credit Corporation (CCC) to provide documentation during a spot check to verify claims. The information collection will be used by CCC to determine the program eligibility of apple operations. CCC considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on apple operations, the national payment rate would be inaccurate, 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 5 minutes per response.

*Respondents:* Apple Operations.

*Estimated Number of Respondents:* 10,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 10,840 hours.

Proposed topics for comment include:

(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; or (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 the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Grady Bilberry, Director, Price Support

Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512 or telephone (202) 720-7901.

#### Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Background

Section 741 of Public Law 107-76 directs the Secretary of Agriculture to use \$75 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers for the 2000 crop of apple production.

During the past few years a number of factors have produced a serious economic crisis that threatens the existence of apple producers throughout the United States. Apples are grown in every state in the continental United States, and are grown commercially in 36 states. Twenty years of increasing world production, stagnant domestic consumption, natural disasters and low-priced juice imports have altered the blueprint for economic success in the apple industry.

This rule would address the situation by establishing a new program. The payments provided by this rule will offset a portion of the per-bushel losses producers have incurred marketing apples in the U.S. Those eligible will receive an immediate payment to help pay operating expenses and meet other financial obligations.

The Act, as amended by Public Law 107-117, provides that producers of apples can receive a payment on a per-pound basis for 2000 crop production from a qualifying operation, up to a maximum of 5,000,000 pounds per separate apple operation. To be eligible, apple producers must: (1) Have produced and harvested apples during the 2000 crop year, (2) not have received a payment from any other Federal program, other than crop insurance, for the same market loss, and (3) apply for cash payments during the application period for each apple operation. Public Law 107-76 also specified that benefits under the program would not be subject to limitations, other than those provided for in the statute. Therefore, producers do not have to be actively engaged in the business of producing and marketing agricultural products at the time of application if the producer was

actively engaged during the 2000 crop year. At the close of the sign-up period, a national per-pound payment rate will be determined by dividing the available \$75,000,000 by the total pounds of apples from all applicants, with no operation exceeding 5,000,000 pounds. Because outlays for this program are fixed, the national average payment rate and individual payments can only be calculated after the total eligible quantity of apple production has been determined. Information provided on applications will be subject to verification by FSA. Applications to be verified will be selected randomly. Penalties for false certifications can be easily assessed and are expected to minimize such certifications. Apple operations may, during the applicable period, apply in person at FSA county offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated FSA county office or obtained via the Internet. The Internet website is located at [www.fsa.usda.gov/dafp/psd/](http://www.fsa.usda.gov/dafp/psd/).

#### List of Subjects in 7 CFR Part 1470

Apple, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 1470 is proposed to be amended as follows:

#### PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

1. The authority citation for part 1470 is revised to read as follows:

**Authority:** Sec. 811, Pub. L. 106-387, 114 Stat. 1549; Sec. 741, Pub. L. 107-76, 115 Stat. 704; Sec. 102, Pub. L. 107-117, 115 Stat. 2230.

2. Redesignate §§ 1470.1 through 1470.16 as subpart A and add a heading for subpart A to read as follows:

#### Subpart A—Apple Market Loss Payment Program

3. Add subpart B to part 1470 to read as follows:

#### Subpart B—Apple Market Loss Assistance Payment Program II

Sec.

- 1470.101 Applicability.
- 1470.102 Administration.
- 1470.103 Definitions.
- 1470.104 Time and method of application.
- 1470.105 Eligibility.
- 1470.106 Proof of production.
- 1470.107 Availability of funds.
- 1470.108 Applicant payment quantity.
- 1470.109 Payment rate and apple operation payment.
- 1470.110 Offsets and withholdings.
- 1470.111 Assignments.
- 1470.112 Appeals.

1470.113 Misrepresentation and scheme or device.

1470.114 Estates, trusts, and minors.

1470.115 Death, incompetency, or disappearance.

1470.116 Maintenance and inspection of records.

1470.117 Refunds; joint and several liability.

#### Subpart B—Apple Market Loss Payment Program II

##### § 1470.101 Applicability.

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program II in accordance with section 741 of Public Law 107-76, as amended by Public Law 107-117. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

##### § 1470.102 Administration.

(a) The Apple Market Loss Assistance Payment Program II shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

#### **§ 1470.103 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering the Apple Market Loss Assistance Payment Program II established by this subpart.

*Administrator* means the FSA Administrator.

*Apple operation* means any person or group of persons who, as a single unit as determined by CCC, produces and market apples in the United States.

*Application* means Form CCC-891, the Apple Market Loss Assistance Payment Application.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits.

*CCC* means the Commodity Credit Corporation.

*County committee* means the FSA county committee.

*County office* means the local FSA office.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

*Eligible production* means apples that were produced in the United States anytime during the 2000 crop year, up to a maximum of 5,000,000 pounds per apple operation.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Payment pounds* means the pounds of apples for which an operation is eligible to be paid under this subpart.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

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

*Verifiable production records* means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

#### **§ 1470.104 Time and method of application.**

(a) Apple producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office.

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1470.103. Applications should be submitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total production must certify to the information on the Application before the Application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

#### **§ 1470.105 Eligibility.**

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced apples in the United States at some time during the 2000 crop year;

(2) Not have been compensated for the same market loss by any other Federal

programs, except an indemnity provided under a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Apply for payments during the application period.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this part are subject to the availability of funds.

#### **§ 1470.106 Proof of production.**

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year shall provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the Application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

#### **§ 1470.107 Availability of funds.**

The total available program funds shall be \$75 million as provided by

section 741 of Public Law 107-76 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

**§ 1470.108 Applicant payment quantity.**

(a) The applicant's payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5,000,000 pounds per distinct operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

**§ 1470.109 Payment rate and apple operation payment.**

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the \$75 million available for the Apple Market Loss Assistance Payment Program II by the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is expended.

**§ 1470.110 Offsets and withholdings.**

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of 7 CFR part 1403.

**§ 1470.111 Assignments.**

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

**§ 1470.112 Appeals.**

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

**§ 1470.113 Misrepresentation and scheme or device.**

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.117(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

**§ 1470.114 Estates, trusts, and minors.**

(a) 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.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

**§ 1470.115 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

**§ 1470.116 Maintenance and inspection of records.**

(a) Persons 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 by CCC. Such records and accounts must be retained for 3 years after the date of

payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation 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) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

**§ 1470.117 Refunds; joint and several liability.**

(a) In the event of an error on an Application, a failure to comply with any term, requirement, or condition for payment arising under the Application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this chapter.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

Signed in Washington, DC, on June 28, 2002.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 02-18218 Filed 7-18-02; 8:45 am]

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**RIN 3245-AE89**

**Small Business Size Standards; Forest Fire Suppression and Fuels Management Services**

**AGENCY:** U. S. Small Business Administration (SBA).

**ACTION:** Proposed rule.

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**SUMMARY:** The Small Business Administration (SBA) proposes to establish a \$15 million size standard for the Forest Fire Suppression and Fuels