

# Rules and Regulations

Federal Register

Vol. 67, No. 177

Thursday, September 12, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## 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:** Final rule.

**SUMMARY:** This rule implements the Apple Market Loss Assistance Payment Program II (AMLAP-II). The program is designed to provide relief to apple producers for the loss of markets during the 2000 crop year. 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.

**DATES:** Effective September 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, Price Support Division, FSA/USDA, Stop 0512, 1400 Independence Ave., SW., Washington, DC, 20250-0512; telephone (202) 720-1919; facsimile (202) 690-3307; e-mail: [Danielle\\_Cooke@wdc.fsa.usda.gov](mailto:Danielle_Cooke@wdc.fsa.usda.gov). 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).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final 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

A notice with request for comments on the information collection was part of the proposed rule. No comments were received from the public during the 60-day comment period regarding the information collection. In accordance

with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request to OMB for the approval of a reinstatement, with change, or a previously approved collection for which approval has expired for the Apple Market Loss Assistance Payment Program application, as necessary for the proper functioning of the program. A regular information collection package will be submitted to OMB.

#### Information Collection

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program implemented under this rule are not yet fully implemented for the public to conduct business with FSA electronically. However, the application form will be available electronically through the USDA eForms web site at <http://www.sc.egov.usda.gov> for downloading. The regulation will be available at FSA's Price Support Division internet site at <http://www.fsa.usda.gov/dajp/psd>. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available because signatures from multiple producers with shares in the apple operations production are required. Still, full implementation of electronic submission is underway.

#### 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.

#### Public Comments

This rule finalizes the proposed rule published in the **Federal Register** at 67 FR 139 on July 19, 2002. The comment period for the proposed AMLAP-II rule closed on August 19, 2002. Comments were received from two agricultural

trade associations and one farm bureau. Two comments received expressed the urgency for USDA to administer this critical assistance to apple growers. FSA recognizes the immediate need of the financial assistance this program will offer to the nation's apple growers and are undertaking measures to expedite the dispersal of funds and relieve some of the economic stress from production losses experienced by growers in the apple industry.

The other comment received directed concern toward inconsistencies in how the rule establishes eligible production. Their concern was that the rule, as written, would confuse program participants. The respondent indicated that the definition of "eligible production" in section 1470.103 should be changed to include harvested production, so it is consistent with section 1470.101(b), which indicates that payments shall be available only for apples produced and harvested. The respondent also noted that there were other areas in the rule that referenced eligible production as only having to be produced during the 2000 crop year rather than produced and harvested during the 2000 crop year. The Agency agrees that this clarification is useful and adopted the appropriate changes in this final rule to state explicitly in section 1470.103, as well, that eligible apple production must be produced and harvested during the 2000 crop year.

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

Administrative practice and procedure, Apples, Grant programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 1470 is 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 Assistance 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.

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

*Eligible production* means apples that were produced and harvested in the

United States anytime during the 2000 crop year, up to a maximum of 5,000,000 pounds per apple operation.

*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. In addition, applicants may download a copy of the application at <http://www.sc.egov.usda.gov>.

(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 and harvested 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 and harvested 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 and harvested 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 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 subpart, 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 subpart 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 August 30, 2002.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 02-23074 Filed 9-11-02; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1926**

**[Docket #S-018]**

**RIN 1218-AB88**

**Safety Standards for Signs, Signals, and Barricades**

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is revising the construction industry safety standards to require that traffic control signs, signals, barricades or devices protecting workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD).

**DATES:** This final rule will become effective December 11, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 11, 2002.

**ADDRESSES:** In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor of Labor, U.S. Department of Labor, Room S-4004, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

For copies of this **Federal Register** document contact: OSHA, Office of Publications, U.S. Department of Labor, Room N-3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1888. Electronic copies of this **Federal Register** document, as well as other relevant documents, can be obtained from OSHA's Web page on the Internet at <http://www.osha.gov>.