

payment of any award made among the agencies, and shall explain the reasons for the allocation made.

#### § 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part or in accordance with any delegation made pursuant to § 1.189 of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145(b) through (i) and 1.146(b) of this part, or

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

#### § 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

#### § 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: October 7, 2002.

**Ann M. Veneman,**

*Secretary of Agriculture.*

[FR Doc. 02-26002 Filed 10-10-02; 8:45 am]

BILLING CODE 3410-01-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1470

RIN 0560-AG85

#### Apple Market Loss Assistance Payment Program III

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Apple Market Loss Assistance Payment Program III under the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) (the 2002 Act). The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

**DATES:** Effective October 8, 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:

#### Notice and Comment

Section 1601(c) of the 2002 Act requires that regulations needed to implement Title I of the 2002 Act, which includes this program, be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

#### Executive Order 12866

This rule was determined to be significant for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget.

#### Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies is:

Special Apple Program—10.075

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the

Commodity Credit Corporation (CCC) 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 Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a final environmental assessment and concluded that the proposed action will have no significant impacts upon the human environment as documented through the completion of a Finding of No Significant Impact (FONSI). A copy of the final environmental assessment and FONSI are available for inspection and review upon request.

#### 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

Title II of the Unfunded Mandates Reform Act of 1995 does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

#### Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement these provisions be issued as soon as practical after the date of enactment of Pub. L. 107-171 and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency find that there is good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

### Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

### 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/dafp/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 operation's production are required. Still, full implementation of electronic submission is underway.

### Background

Section 10105 of the 2002 Act directs the Secretary of Agriculture to use \$94 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers for loss of markets during the 2000 crop year.

Apples are grown in every state in the continental United States, and are grown commercially in 36 states. 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. 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 addresses the situation by continuing with an ongoing series of rulemaking that authorizes continuation of a program for the market loss of apples for 2000 crop production utilizing the forgoing authority. 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.

Section 801 of Public Law 106-387 authorized the first Apple Market Loss Assistance Program (AMLAP I) for the 1998 and 1999 crops of apples. Regulations for that program were published on March 8, 2001 (66 FR 13839). A similar program (AMLAP II) was authorized in section 741 of Public Law 107-76, as amended by Public Law 101-117, for the 2000 crop of apples, which provided that there could be no duplicative benefits made under another act for the same losses covered by AMLAP I. Because there was no exemption from rulemaking, as provided in section 1601(c) of the 2002 Act, a proposed rule was issued on July 19, 2002 for AMLAP II (67 FR 47477), and a final rule was published on September 12, 2002 (67 FR 57719).

The 2002 Act does not contain any reference to duplicative payments. Because (1) the 2002 Act was later enacted, and there is no legislative history to indicate that Public Law 107-76, as amended by Public Law 107-117, was to be applied to subsequently-enacted statutory provisions, and (2) the funds available to make payments under AMLAP II are not sufficient to cover all of the losses incurred by producers with respect to their 2000 crop of apples, AMLAP III payments made to producers who receive AMLAP II payments are not considered duplicative payments, which are prohibited under AMLAP II.

The 2002 Act 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 million pounds per separate apple operation. To be eligible, apple producers must: (1) Have produced and harvested apples during the 2000 crop year, and (2) apply for cash payments during the application period for each apple operation. The 2002 Act also specified that benefits under the program would not be subject to payment or income eligibility limitations, other than those provided for in the statute. Therefore, producers do not have to be in the business of producing and marketing agricultural products at the time of application if the producer was actively producing and

marketing agricultural products 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 \$94,000,000 by the total pounds of apples from all applicants, with no operation exceeding 5 million pounds. Because funds 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 application 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 Web site is located at <http://www.fsa.usda.gov/dafp/psd/>.

### List of Subjects in 7 CFR Part 1470

Apples, Reporting and recordkeeping requirements.

For the reasons set out 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; Sec. 10105, Pub. L. 107-171, 116 Stat. 489.

2. Add subpart C to part 1470 to read as follows:

#### Subpart C—Apple Market Loss Payment Program III

Sec.	
1470.201	Applicability.
1470.202	Administration.
1470.203	Definitions.
1470.204	Time and method of application.
1470.205	Eligibility.
1470.206	Proof of production.
1470.207	Availability of funds.
1470.208	Applicant payment quantity.
1470.209	Payment rate and apple operation payment.
1470.210	Offsets and withholdings.
1470.211	Assignments.
1470.212	Appeals.
1470.213	Misrepresentation and scheme or device.
1470.214	Estates, trusts, and minors.
1470.215	Death, incompetency, or disappearance.

- 1470.216 Maintenance and inspection of records.
- 1470.217 Refunds; joint and several liability.
- 1470.218 Violations of highly erodible land and wetland conservation provisions.

### Subpart C—Apple Market Loss Assistance Payment Program III

#### § 1470.201 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 III in accordance with section 10105 of Public Law 107–171. 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.

#### § 1470.202 Administration.

(a) The Apple Market Loss Assistance Payment Program III shall be administered under the general supervision of the Executive Vice President, CCC, 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 for 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 III and do 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.

#### § 1470.203 Definitions.

The definitions set forth in this section shall apply to the Apple Market Loss Assistance Payment Program III as follows:

*Administrator* means the Administrator, Farm Service Agency.

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

*Application* means the Apple Market Loss Assistance Payment Application.

*Application period* means the period beginning September 30, 2002, and ending on November 8, 2002, 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, Farm Service Agency, or a designee.

*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 million 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 subpart.

*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 harvested production reported and that can be verified by CCC through an independent source.

#### § 1470.204 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 § 1470.203. 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 November 8, 2002. 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.

#### § 1470.205 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) Apply for payments during the application period according to § 1470.204.

(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 subpart are subject to the availability of funds.

#### **§ 1470.206 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 must 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.

#### **§ 1470.207 Availability of funds.**

The total available program funds shall be \$94 million as provided by § 10105 of Public Law 107-171 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.

#### **§ 1470.208 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 million pounds per operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

#### **§ 1470.209 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 \$94 million available for the Apple Market Loss Assistance Payment Program III by, for all applicants taken together, 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 otherwise expended.

#### **§ 1470.210 Offsets and withholdings.**

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

#### **§ 1470.211 Assignments.**

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

#### **§ 1470.212 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 parts 11 and 780 of this title.

#### **§ 1470.213 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 § 1470.217(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

#### **§ 1470.214 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.

#### **§ 1470.215 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.

#### **§ 1470.216 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 at 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.

**§ 1470.217 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 title.

(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.

**§ 1470.218 Violations of highly erodible land and wetland conservation provisions.**

The provisions of part 12 of this title apply to this subpart.

Signed in Washington, DC, on September 25, 2002.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 02-25984 Filed 10-8-02; 1:07 pm]

BILLING CODE 3410-05-P

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR 217**

[INS No. 2219-02]

RIN 1115-AG73

**Passenger Data Elements for the Visa Waiver Program**

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This rule serves to further implement the automated entry and exit control system mandated by section 217(h) and other provisions of the Immigration and Nationality Act (Act) by specifying those passenger data elements that must be electronically transmitted to the Immigration and Naturalization Service (Service) by carries seeking to transport Visa Waiver Program (VWP) passengers into and out of the United States on or after publication of this rule. This rule will also ensure that legitimate VWP travel is not disrupted. This rule is necessary for the proper identification and monitoring of VWP aliens.

**DATES:** *Effective date:* October 11, 2002. *Comment date:* Written comments must be submitted on or before November 12, 2002.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2219-02 on your correspondence. Comments may also be submitted electronically to the Service at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). Comments submitted electronically must include the INS No. 2219-02 in the subject heading to ensure that the comments can be transmitted electronically to the appropriate program office. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Flemmi, Assistance Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 5237, Washington, DC 20536, telephone number: (202) 305-9247.

**SUPPLEMENTARY INFORMATION:**

**Background**

Congress mandated that, by 2005, the U.S. Department of Justice must complete deployment at all ports-of-entry (POE) of an entry-exit system that integrates the available alien arrival and departure data that exists in the systems of the Department and the U.S. Department of State (DOS). The Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106-215, 114 Stat. 337 (2000), codified, as amended, at 8 U.S.C. 1365a. This system also must include the arrival and departure for any visitor who transits through the air and

seaports and is admitted under the Visa Waiver Program.

**What Is the Visa Waiver Program (VWP)?**

The Visa Waiver Program (VWP) permits nationals from participating countries to apply for admission to the United States for a duration of 90 days or fewer, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa, provided that all other statutory and regulatory requirements are met. If arriving by air or sea, a VWP traveler must arrive on a carrier that signed an agreement (signatory carrier) with the Service guaranteeing that it will transport its VWP passengers deemed inadmissible or deportable out of the United States at no expense to the United States government. See 8 CFR part 217. The VWP has been expanded and made permanent. This rule implements one of the steps to making the VWP system permanent.

**How Does the Permanent VWP Change the Pilot Program?**

The Visa Waiver Permanent Program Act (VWPPA), Public Law 106-396, 114 Stat. 1637 (Oct. 30, 2000), converted the Vias Waiver Pilot Program which was first launched in 1988 into a permanent program with several modifications. Congress modified the pilot program in order to safeguard the United States' law enforcement and security interests and to reduce the ability of inadmissible aliens to enter the United States under the program. See H.R. Rep. No. 106-564, at 7 (2000); see also H.R. Rep. No. 106-1048, p. unavail. (2001). Among other modifications, the VWPPA required the Attorney General to develop and implement, on or before October 1, 2001, at automated entry and exit control system to collect the arrival and departure record for each VWP passenger admitted at a U.S. air or sea port-of-entry (POE). The automated control system was to be based, to the maximum extent practicable, on passenger data collected and electronically transmitted by each carrier that has an agreement with the Service to transport aliens to the United States. The Service has worked with and informed the Air Transport Association (ATA), International Air Transport Association (IATA), International Council of Cruise Lines (ICCL), and other interested stakeholders of the development of the electronic arrival passenger data transmittal system. Currently, over 140 carriers submit electronic arrival passenger information. Of those carriers who do not currently have this system in place, most are fully