

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### Assistance for Producers in New Mexico for Tebuthiuron Application Losses

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

**ACTION:** Notice.

**SUMMARY:** The Commodity Credit Corporation (CCC) is issuing this notice to inform all interested parties of the 2003 New Mexico Tebuthiuron Program (NMTP). The NMTP was authorized by the Agricultural Assistance Act of 2003 (the 2003 Act), which requires the Secretary to reimburse certain agricultural producers on farms in New Mexico for losses related to the application by the Federal Government of the herbicide Tebuthiuron on land on or near the farms of the producers during July 2002.

**DATES:** (1) The Farm Service Agency (FSA), through New Mexico State University (NMSU) will begin accepting applications on July 8, 2003.

(2) The application deadline is July 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Eloise Taylor, Chief, Compliance Branch, FSA/PECD, 1400 Independence Ave., SW., Washington, DC 20250-0517, (202) 720-9882, or e-mail at: [Eloise\\_Taylor@wdc.usda.gov](mailto:Eloise_Taylor@wdc.usda.gov). Persons with disabilities who require alternative means of communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

Section 217 of the 2003 Act requires that this program be administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act (PRA). This means the information to be collected from the public to implement this

program and the burden, in time and money, the collection of the information would have on the public does not need to be approved by the Office of Management and Budget nor is it subject to the 60-day public comment period required by the PRA.

#### Background

This notice provides 2003 NMTP terms and conditions and informs affected parties that they may be eligible for benefits. Section 210 of the 2003 Act provides that the Secretary shall use not more than \$1,650,000 of funds of the Commodity Credit Corporation to reimburse agricultural producers on farms located in the vicinity of Malaga, New Mexico, for all losses to crops, livestock, and trees, and interest and lost income, and related expenses incurred as the result of the application by the Federal Government of Tebuthiuron on land on or near the farms of the producers during July 2002.

Tebuthiuron is a commercially available herbicide that is used to control broadleaf weeds, grasses, and brush. It can be toxic to many plants and can kill trees, shrubs and other desirable plants with roots extending into treated areas.

Tebuthiuron has been used in the past by Federal agencies, such as the Forest Service and Natural Resources Conservation Service (NRCS) of USDA, and the Bureau of Land Management (BLM) of the Department of Interior, in drug crop eradication efforts and to control brush and weeds on public lands. Producers have claimed that Tebuthiuron use by the Federal Government and by a private landowner on July 8, 10, and 12, 2002, caused water drawn from the Black River to be tainted, causing losses to crops and livestock in the vicinity of Malaga, New Mexico. The statute provided funds to address those claims. The program is limited to farmers in that area and for their losses and related expenses due to the July, 2002, applications. No other claims will be allowed. Allowance of claims is not intended to be, and is not, an admission of fact or liability on the part of anyone, but is intended to carry out the program as required by the 2003 Act, based on the claims of the producers and the assessment of NMSU, which will help collect and assess the information. Assistance will be provided to affected producers in

proportion to the losses incurred. No claims will be paid except upon the making of a proper application during the application period as announced in this notice. All claims are subject to the availability of funds. Funding is limited to the \$1,650,000 provided by the 2003 Act and will remain available until expended. Each producer must file a claim on a form developed by FSA and NMSU, and provide supporting documentation for 2002 losses or losses in subsequent years. Once the money is expended, all other claims must be rejected. The final determinations in this matter will be made by the FSA Deputy Administrator for Farm Programs (Deputy Administrator).

#### 2003 New Mexico Tebuthiuron Program

##### I. How to Apply

(A) Producers must submit the following to FSA directly or through NMSU:

- (1) Application for benefits;
- (2) Certification from a qualified crop consultant or New Mexico Department of Agriculture soil test, that supports the producer's contention that the acreage claimed to have been damaged was caused by the July, 2002, Tebuthiuron applications; and
- (3) Verifiable or reliable production records for the 2002 and 2003 crop and farm, including, as applicable, commercial receipts, settlement sheets, warehouse ledgers, load summaries, or appraisal information from a loss adjuster acceptable to CCC. If the damaged crop was farm-stored, fed to livestock, or disposed of by means other than commercial channels, acceptable production records may include truck scale tickets, appraisals from loss adjusters acceptable to CCC, contemporaneous diaries, or other documents, such as contemporaneous measurements. In the absence of such records, CCC may assign production.
- (4) Records for any production of a crop that is grown with an arrangement or contract for guaranteed payment. Failure to report any applicable guaranteed contract or similar agreement shall be considered as providing false information to CCC, will render producers ineligible for NMTP payments, and may lead to other civil or criminal sanctions.

(5) For applicable prevented planting claims for 2003 or subsequent years, a certification by a qualified crop

consultant that supports the producer's claim that a crop could not be taken to maturity because of the presence of Tebuthiuron. Prevented planted acreage shall be limited to the acres of the crop planted in 2002.

(6) Other information needed to verify the amount of the claim, including but not limited to information relating to acres planted, expected 1996 through 2000 actual yields, actual production, replanting expenses, legal fees, livestock records and associated matters as determined necessary by NMSU or CCC or as offered by the producer in support of the claim.

## II. References and Payment Limitations

(A) "Deputy Administrator" in this notice means the Farm Service Agency (FSA) Deputy Administrator for Farm Programs.

(B) Funding for the program is limited to \$1,650,000. In the event that the \$1,650,000 is insufficient to pay all approved claims, CCC will reduce payments of all eligible and timely submitted claims on a pro rata basis or other method deemed appropriate by CCC.

(C) Total NMTP payments are not subject to a per person payment limitation as defined in 7 CFR part 1400.

(D) NMTP payments shall be made without regard to crop liens or title under State law, but may be assigned.

## III. Who is Eligible

Eligible producers for NMTP payments are producers in the State of New Mexico who suffered loss in 2002 and subsequent years as a result of the use of the herbicide Tebuthiuron in the Black River watershed in July 2002 in the vicinity of Malaga, New Mexico.

## IV. Eligibility Determinations

Eligibility determinations will be made by the Deputy Administrator upon receipt of all of the necessary data and the NMSU report of eligible claims timely submitted. Subject to the continued availability of funds, eligible losses are those claimed as a direct result from the Federal Government's use of Tebuthiuron in the vicinity of Malaga, New Mexico. The Deputy Administrator shall determine the level of proof needed to substantiate a claim for purposes of payment.

## V. Payment Calculations

(A) NMTP payments for crop losses shall be based on the producer's share of the crop lost, or, if no crop was produced, the share the producer would have received if the crop had been produced.

(B) NMTP payments for lost crops will be calculated using the same or similar payment rates and county average yields established for the 2002 Crop Year Disaster Program as provided in 7 CFR part 1480, as determined by CCC. In lieu of county average yields, producers may use verifiable or reliable production evidence acceptable to CCC to establish the producers expected yield using the producer's 1996-2000 yields.

(C) NMTP payments to producers under this notice for losses to crops shall be made in an amount determined by multiplying the eligible loss of production for the farm by the applicable payment rate. Grazing losses will be based on the loss of forage value.

(D) Producers may be paid interest for 1 year for crop losses at such rate as determined by the Deputy Administrator, which may be the rate paid by the producer on outstanding loans, but not to exceed 7.44%.

(E) Attorney's fees may be claimed for representation resulting from losses due to the application of Tebuthiuron if the attorney certifies that representation was provided to a farmer. A written agreement of the terms and conditions must be provided along with the amount (by formula or dollar amount) as certified by the producer and attorney for which the producer is currently obligated or will be obligated to the attorney upon receipt of the NMTP payments.

(F) For replanting of alfalfa or pecan trees the producer must have certification from a qualified crop consultant that supports the producer's claim that a replanting is necessary due to the presence of Tebuthiuron.

(G) Miscellaneous expenses may be paid, provided that expenses are itemized and proper documentation is submitted that clearly identifies the nature of the expenses.

## VI. General

(A) The NMTP shall be under the supervision of the Deputy Administrator, who shall have the authority to modify terms and conditions of the NMTP, and to impose additional terms and conditions, in order to achieve the purposes of the program.

(B) The producer, to receive payment, must meet all conditions set out in these regulations, the program application, or otherwise imposed by the Deputy Administrator.

(C) For additional information, or to submit an application directly to FSA, affected producers should contact the Farm Service Agency at the address above.

(D) Payments are subject to administrative offset.

## VIII. Procedure, Application Deadline, Appeals, and Appeals Resolutions

NMSU will collect the information from all claimants. Any function NMSU declines to carry out shall be performed by the Deputy Administrator. Claimants must submit an application to NMSU or directly to the Deputy Administrator by the close of business on July 23, 2003. NMSU will submit the applications to CCC for consideration before August 4, 2003. CCC will accept or reject each application in whole or in part and will notify each producer in writing of such determination. If a producer disagrees with the determination, the producer must submit objections to CCC by writing to the Deputy Administrator, 1400 Independence Avenue, Room 3612, STOP 0510, Washington DC 20250-0510. Objections must be received within 10 days of notification of the determination.

If there are amounts in dispute, those amounts may be withheld from distribution to address those claims. If there is to be a proration such a withholding can affect all claimants. Alternatively, CCC may resolve the matter based upon the information at hand and make a full distribution, in which case there may not be sufficient funds to allow an appeal. The Deputy Administrator shall make the final determinations. All determinations on all claims shall be final except to the extent a withholding is made to allow for appeal to the Department's National Appeals Division. Notwithstanding any provision of this notice, the Deputy Administrator can adjust claims in any manner deemed appropriate to accomplish the goals of the program, may allow waivers of requirements as appropriate, and may prorate or withhold funds as needed to resolve claims under this program within the funding limit. The purpose of this notice is to inform producers of the availability of the program and to establish the basis on which program determinations can be made.

Signed at Washington, DC June 27, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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