

person's eligibility and notify the person of the decision.

(e) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS-379 is not signed or all required information has not been provided;

(2) Form LS-379 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS-379 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS-379 and supporting documentation returned by mail was not received in the county FSA or AMS office by the 5th business day following the final day of the voting period;

(5) Form LS-379 or supporting documentation is mutilated or marked in such a way that any required information on the Form is illegible; or

(6) Form LS-379 and supporting documentation not returned to the appropriate county FSA or AMS office.

#### § 1221.228 Counting ballots.

(a) Form LS-379 shall be counted by county FSA offices or the AMS office on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Number of invalid ballots.

#### § 1221.229 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than the 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible

to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

#### § 1221.230 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

#### § 1221.231 Results of the referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results on its Web site. State reports and related papers shall be available for public inspection upon request during normal business hours at the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2628-S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

#### § 1221.232 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the "Sorghum Checkoff Program Referendum," all of the Forms LS-379 along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

#### § 1221.233 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

#### § 1221.234 Confidentiality.

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

Dated: July 9, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-17272 Filed 7-15-10; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1429

RIN 0560-A102

#### Asparagus Revenue Market Loss Assistance Payment Program

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) proposes regulations to implement the new Asparagus Revenue Market Loss Assistance Payment (ALAP) Program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the program is to compensate domestic asparagus producers for marketing losses resulting from imports during the 2004 through 2007 crop years. Payments will be calculated based on 2003 crop production. Through the ALAP Program, CCC is authorized to provide up to \$15 million in direct payments to asparagus producers. This rule proposes eligibility requirements, payment application procedures, and the method for calculating individual payments. This rule also proposes new information collection for the payment application.

**DATES:** We will consider comments that we receive by September 14, 2010.

**ADDRESSES:** We invite you to submit comments on this proposed rule and on the information collection. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- E-mail: [Gene.rosera@wdc.usda.gov](mailto:Gene.rosera@wdc.usda.gov).
- Fax: (202) 690-1536.
- Mail: Director, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0512, Rm. 4095-S, 1400

Independence Ave., SW., Washington, DC 20250-0512.

- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal Rulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday. A copy of this proposed rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

**FOR FURTHER INFORMATION CONTACT:**

Gene Rosera, Program Manager, FSA, USDA, Mail Stop 0512, 1400 Independence Ave., SW., Washington, DC 20250-0512; telephone (202) 720-8481; fax (202) 690-1536; e-mail: [gene.rosera@wdc.usda.gov](mailto:gene.rosera@wdc.usda.gov). Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 10404 of the 2008 Farm Bill (Pub. L. 110-246) directs the Secretary of Agriculture to “make payments to producers of the 2007 crop of asparagus for market loss resulting from imports during the 2004 through 2007 crop years.” The 2008 Farm Bill provides that the payment rate will be based on the reduction in asparagus farm revenue for the 2004 through 2007 crop years. The payment quantity will be the quantity of the 2003 crop of asparagus produced on a farm, which is used as the “baseline” production amount before the losses in 2004 through 2007 occurred. The ALAP Program specified in this rule would provide a one-time payment for the losses.

Asparagus is produced on an estimated 2,600 farms throughout the United States. A substantial increase in asparagus imports over the last several years resulted in reduced revenue for U.S. asparagus producers. The increased supply of imported asparagus resulted in reduced domestic production, reduced U.S. market share of domestic producers, and reduced market prices for both fresh and processed asparagus in the United States. The ALAP Program is intended to compensate producers for the losses associated with those reductions.

This rule proposes to add 7 CFR part 1429 to specify the eligibility requirements, payment rates, and other provisions for the ALAP Program. The ALAP Program is a CCC program that will be administered by FSA.

**Proposed Eligibility Requirements**

The eligibility requirements in this proposed rule are based on provisions in the 2008 Farm Bill. To be eligible for ALAP as proposed in this rule, producers must:

- (1) Have produced asparagus in the United States during both crop years 2003 and 2007;
- (2) Certify production of fresh or processed asparagus or both for the 2003 and 2007 crop years; and
- (3) Apply for payment during the application period that will be announced by the FSA Deputy Administrator for Farm Programs.

Payments to asparagus producers would be calculated for each asparagus farm operation, based on their 2003 production quantity. Each applicant would be paid based on the applicant's share of specific asparagus production in the base period.

Payment eligibility for the ALAP Program will not be subject to adjusted gross income (AGI) and farm income limitations as currently specified in 7 CFR part 1400, because the payment is for the 2007 crop. However, to insure a fair distribution of funds where the need is greatest in the event of an oversubscription (a situation where the value of the applications would exceed available funding), an AGI limit of \$2.5 million and a \$100,000 cap on payments is proposed. This program is not expected, with respect to the authorized funding, to be sufficient to pay all eligible claims at the maximum payment rates. Without the cap, all or most of the funds would go, in terms of substantial amounts, to large producers only. The figure of \$100,000 was chosen because it provides a substantial level of benefits to those who might otherwise have larger claims. However, in the unlikely event that this program is not oversubscribed, the AGI and pay limits will not apply.

Asparagus producers must have been in compliance with the regulations in 7 CFR part 12, “Highly Erodible Land and Wetland Conservation,” during the years for which the person is requesting benefits. Those regulations provide for a denial of benefits for failing to comply with general requirements regarding the handling of highly erodible cropland and wetlands.

Growers producing asparagus under contract for crop owners are not considered asparagus producers for the purposes of the ALAP Program and will not be eligible for payments unless the grower has an ownership share of the crop and risk of loss in the crop itself, meaning that the producer will not be paid if the crop is not actually

harvested. The crop owner, which is to say the person or entity with the risk of loss in the crop, will be eligible for payment if all other requirements are met.

**Proposed Payment Calculation**

As proposed in this rule, asparagus producers who produced asparagus in 2003 and 2007 would receive a payment based on their 2003 crop production (referred to as the “base period”). The rule requires that the producer must have been a 2007 producer to be eligible for payment on asparagus produced in the base period and have produced asparagus for the commercial market in commercial quantities in 2007. The quantity used in the payment calculation would be the actual 2003 production amount marketed by the asparagus producer as either fresh or processed asparagus and included in the application.

Section 10404 of the 2008 Farm Bill requires that the payment quantity for asparagus for which asparagus producers on a farm are eligible for payments will “be equal to the average quantity of the 2003 crop of asparagus produced by producers on the farm.” “Average quantity” is not defined in the 2008 Farm Bill and use of national or State averages would not appear to be logical or consistent with the language of the 2008 Farm Bill. In this rule it is proposed instead that producers would simply receive their actual production on the farm and this would mean use of an “average” in the sense that operations with multiple producers would have individual producers receive their share of the production rather than duplicating base period quantities. This appears to make the most sense in the context of the 2008 Farm Bill. Using national or State average production rates would not reflect the relative amount of any individual producer's loss and would not accurately reflect the reference to the “farm” in the language in section 10404. As for the payment, the 2008 Farm Bill specifies that the rate, within the funding limits, will be based on “the reduction in revenue received by asparagus producers associated with imports during the 2004 through 2007 crop years.” The 2008 Farm Bill does not specify how CCC should determine revenue losses, but by an economic analysis CCC has calculated the amount of relevant loss per pound, as an average, for the 2004 to 2007 crop years as compared to the 2003 crop year. However, it is expected that this calculation would not result in the actual payment rate because it would produce payments that would aggregate to more than the funding

limit. CCC plans to prorate the claims by dividing the eligible pounds claimed into the funding to achieve a per pound effective rate, with a certain reserve. As specified in the 2008 Farm Bill, the available funding is \$7.5 million for payments for fresh asparagus and \$7.5 million for payments for processed asparagus. CCC has estimated that the reduced revenue associated with imports of asparagus during the 2004 through 2007 crop years was \$141.6 million for fresh-market asparagus and \$73.3 million for processed-market asparagus. These revenue losses include both the loss by domestic producers of U.S. market share for the 2004 through 2007 crops, and the reductions in domestic prices directly attributable to imports.

CCC has determined that the total domestic production of asparagus for the 2003 crop was 133.4 million pounds marketed as fresh, and 68.0 million pounds marketed as processed. Based on analysis of both reduced production and reduced prices due to imports for the 2004 through 2007 crop years, the estimated revenue loss was \$1.06 per pound of fresh asparagus and \$1.08 per pound of processed asparagus; therefore, these would be considered the maximum payment rates, if funds were adequate to cover all applications. The maximum payment rates are different for fresh and processed asparagus because the differences in production and demand elasticities by marketing category result in different revenue effects from imports. Fresh asparagus accounted for approximately 66 percent of total 2003 asparagus production and 75 percent of the total estimated monetary loss over the 2004–2007 crops.

As explained below, it is unlikely that there will be funds available to compensate producers at the maximum payment rates, unless very few producers apply for the ALAP Program. Therefore, the amounts identified as maximum payment rates are over estimates. The 2008 Farm Bill allocates exactly one half of the \$15 million available for the ALAP Program to each marketing category (fresh and processed). The rate determination process we propose in this rule would be implemented as follows:

Step 1: At the close of the announced application period, the total payment quantity from all eligible producers would be determined. Potential maximum payments to eligible producers would be calculated by separately multiplying the total eligible payment quantity in pounds by the maximum payment rates for fresh asparagus and processed asparagus.

Step 2: If the total amount of available funding allocated for each marketing category of asparagus is insufficient to compensate eligible producers for their eligible payment quantity at the maximum payment rates, then CCC would recalculate the payment rates determined by dividing the funds available, less a \$300,000 reserve for disputed claims, by total nationwide payment quantities for fresh and processed asparagus.

Step 3: CCC would pay producers using the applicable payment rate multiplied by their individual share in the actual 2003 production quantity, by marketing category, subject to the \$100,000 cap if there is an oversubscription of the program.

CCC estimates that if payment applications were submitted for 90 percent of the total quantity of the 2003 crop, the total value of requested payments would substantially exceed the level of funds available for payments. Multiplying 90 percent of the estimated 2003 crop production quantities by the estimated revenue loss per pound would result in the following estimated total payment amounts:

- Potential Requested Fresh Market Payments:
  - 133,400,000 lbs × 90 percent × \$1.06/lb. = \$127,263,600,
  - \$119,763,600 over the allocated funding level, and
- Potential Requested Processed Market Payments:
  - 68,000,000 lbs × 90 percent × \$1.08/lb. = \$66,096,000,
  - \$58,576,000 over the allocated funding level.

Based on the 90 percent examples, the estimated payment rate for fresh-market payments would be 6.12 cents per pound and the processed market payment rate would be 12.00 cents per pound. This would result in the following payments, leaving \$300,000 in reserve funds:

- Fresh Market Payments: 120,060,000 lbs × 6.12 cents/lb. = \$7,347,672
- Processed Market Payments: 61,200,000 lbs × 12.00 cents/lb. = \$7,344,000.

#### Proposed Application Process

CCC proposes to establish and announce a 30-day period for submitting payment applications for the ALAP Program. The application deadline will be announced in the final rule that will be published in the **Federal Register**. During the application period, asparagus producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to FSA by mail

or fax. The ALAP Program applications may be obtained in person, by mail, telephone, and fax from any FSA county office or via the Internet at <http://www.sc.egov.usda.gov>. The application is for an asparagus farm operation, including all producers who have a share in that operation, but only the producers in an operation who sign the application will be eligible to receive payment. Producers may receive payment from shares in multiple operations if they sign an application for each operation, subject to the \$100,000 cap.

Any applications not received by FSA by the last day of the application period would not receive consideration and producers on a late application would be ineligible for payment. A deadline for applications is necessary because CCC needs to know the total value of requested payments in order to calculate the payment rates to stay within available funding. The ALAP Program provides a one-time payment for asparagus market losses; the 2008 Farm Bill does not authorize annual appropriations for the ALAP Program. Therefore, there will be one application period for the ALAP Program.

CCC proposes to hold in reserve \$300,000 for errors and appeals; however, these reserve funds are only intended for corrections and payments for disapproved applications that are successfully appealed. Although CCC has discretion to grant relief and accept a late-filed application as timely filed, the late-filed application so approved would only be paid if there are available non-reserve funds. CCC does not expect that there will be any non-reserve funds available because the total expected applications are anticipated to use all available funds.

The 2008 Farm Bill ties the payments to 2003 production quantities. The application would require a producer to submit a certification of 2003 asparagus production and a certification that the same producer was also a producer of asparagus on a farm in 2007. Asparagus producers would need to provide acceptable production records for 2003 asparagus production, if requested. Applicants would not be required to submit 2007 production records because 2007 production would not be used in the calculation of payment quantity or rate. However, at the discretion of CCC, certifications of producer eligibility, including, but not limited to, certification of an interest in 2007 asparagus production on a farm, are subject to spot check and verification by CCC. The producer's place of production does not have to be the same in 2007 as it was in 2003. Production

beyond 2007 is not specifically required by the 2008 Farm Bill though the general reference to “producers” in the statute might arguably be construed to mean a continuing status as a producer. The rule as proposed does not require a continuing status as a producer beyond 2007, but it is as an area for comment.

Information provided on applications and supporting documentation will be subject to verification by CCC; however, CCC is under no obligation to perform spot checks within any specific time frame and applicants are responsible for producing documents substantiating their application when requested by CCC.

In the event that CCC finds that a payment was issued based on inaccurate information on a certification submitted by an applicant, CCC may require a refund of all payments.

Asparagus producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program’s purpose will be required to refund any payments issued through the ALAP Program with interest, and may be subject to other civil, criminal, or administrative remedies.

Asparagus producers who apply for payment will receive payment only for their share of asparagus production in asparagus operations that operated in the 2003 base period. If every asparagus producer with a share in the asparagus farm operation does not sign the application; payments will not be calculated for the entire production of the asparagus farm operation, but will be calculated only for the share of the asparagus producers who signed the application. Similarly, if every producer with a share in the operation does not meet the eligibility requirements including the AGI limit, payments will not be calculated for the entire production of the operation, but will be calculated only for the share of the producers who meet the AGI and all other eligibility requirements.

#### Notice and Comment

The Administrative Procedures Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, a proposed rule must be published in the **Federal Register**, and interested persons must be given an opportunity to participate in the rulemaking through submission of data, views, or arguments. The law exempts from this requirement rules, such as this one, relating to public property, loans, grants, benefits, and contracts. However, the Secretary of Agriculture published in the **Federal Register** on July 24, 1971

(36 FR 13804), a Statement of Policy that USDA would publish a notice of proposed rulemaking for such rules. USDA is committed to providing the public reasonable opportunity to participate in rulemaking.

#### Executive Order 12866

This proposed rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget. A summary of economic impacts is provided below, and the cost-benefit analysis is available from the contact information listed above.

#### Summary of Economic Impacts

The 2008 Farm Bill authorizes \$15 million in payments to asparagus producers for losses that asparagus producers sustained due to imports. The estimated U.S. asparagus revenue losses due to crop year 2004 through 2007 imports in the fresh market totaled \$141.6 million, and in the processed market, \$73.3 million, for a total of \$214.9 million in losses. Therefore, we expect to receive applications that exceed the available funding. The payment rates would be calculated so as not to exceed the available funding. The expected benefit to producers is \$15 million, which is all of the available funding. Since producers are being paid for past losses on past production, this program is not expected to increase production of asparagus or to change the price that consumers pay for asparagus.

Alternative methods for calculating payment quantities and rates would result in a different distribution of payment amounts among producers, but would not reduce the costs or benefits of this program to below \$15 million.

#### Regulatory Flexibility Act

According to the 2007 Census of Agriculture, there are 2,605 asparagus farms, with 1,408 of those farms harvesting 1 acre or less. Those farms harvesting 100 acres or more account for 5 percent of farms harvesting asparagus and 74 percent of all asparagus production. Most of the payments as specified in this rule would go to the larger farms that accounted for most of the production, rather than the smaller farms. CCC is proposing to calculate and disburse payments based on the actual 2003 crop production quantities for fresh and processed marketing. Both small and large farms would receive payment in proportion to their production, subject to the \$100,000 cap that will impact only the largest farms. Direct and indirect costs of applying for these one-time payments would likely be very small as a percentage of the

resulting payment. The minimal regulatory requirements would impact large and small businesses equally, and the program’s benefits should slightly improve cash flow and liquidity for farmers participating in the program. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601), CCC is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited amount of funding available, payments are unlikely to have a substantial economic impact on entities of any size.

#### Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The implementation and administration of ALAP Program required by the 2008 Farm Bill that is identified in this rule is non-discretionary in nature, solely providing financial assistance. Therefore, FSA has determined that NEPA does not require that an environmental assessment or environmental impact statement be prepared and neither will be prepared.

#### Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### Executive Order 12988

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

#### Executive Order 13132

The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this

proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Domestic Federal Assistance to which this rule will apply is 10.098—Asparagus Revenue Market Loss Assistance Program.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), CCC is requesting comments from all interested individuals and organizations on new information collection activities associated with the ALAP Program. The information collection is necessary to implement the new program. CCC is making payments to eligible domestic asparagus producers for marketing losses due to imports during the 2004 through 2007 crop years.

*Title:* Asparagus Revenue Market Loss Assistance Payment Program.

*OMB Number:* 0560-NEW.

*Type of Request:* New information collection.

*Abstract:* This information collection is needed for CCC to identify eligible asparagus producers and to make

payments to those producers through the ALAP Program. CCC requires producers to submit an application on a form specified by CCC to the FSA County Office for the farms where they produced 2003 and 2007 crop asparagus.

For an application to be accepted and approved, the producer will be required to provide the following information: producer name, address, and taxpayer identification number; the name and location of the farm where 2003 crop asparagus was produced, the amount of asparagus produced in 2003, and a certification of interest in a farm where 2007 crop asparagus was produced; the applicant signature; the applicant's percentage share of 2003 crop asparagus production on the farm; the quantities expressed in pounds or hundredweight of 2003 crop asparagus marketed as fresh and marketed as processed, and the total of those two amounts.

Also, about 700 applicants are expected to complete a direct deposit application form, and all producers, if not submitting electronically, will travel an average of one hour to submit their application to the FSA county office. The average travel time is included in the estimated burden.

The following estimated burden is based on the 2007 Census of Agriculture that reports 2007 crop asparagus was produced on 2,605 farms in 48 States reporting harvested acreage of 43,010 acres. The major producing states were California (20,211 harvested acres); Michigan (12,127 harvested acres); and Washington (7,007 harvested acres). That Census reports that 11 States had 10 acres or less harvested that year. Based on information provided by the asparagus industry, there are about 1.1 producers per asparagus farm, or approximately 2,800 producers each having a crop share. These data serve as basis for the following estimates.

*Respondents:* Producers of 2007 crop asparagus who also produced 2003 crop asparagus.

*Estimated Annual Number of Applicants:* 2,800.

*Estimated Annual Number of Forms per Applicant:* 1.25.

*Estimated Average Time to Respond:* 83 minutes.

*Estimated Total Annual Burden Hours:* 3,850 hours.

We are requesting comments on all aspects of the information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper administration of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who will respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms or information collection.

All comments received in response to this rule, including names and addresses when provided, will be a matter of public record and will be available for review at the above address. Comments, including any comments that are received on the information collection, will be summarized in the submission for the Office of Management and Budget approval and included as supplemental information when the final rule is published in the **Federal Register**.

#### E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

#### List of Subjects in 7 CFR Part 1429

Asparagus, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Commodity Credit Corporation (USDA) proposes to add 7 CFR part 1429 to read as follows:

#### Part 1429—ASPARAGUS REVENUE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

Sec.	
1429.101	Applicability.
1429.102	Administration.
1429.103	Definitions.
1429.104	Application requirements.
1429.105	Producer eligibility requirements.
1429.106	Proof of production.
1429.107	Maximum and final payment rates.
1429.108	Calculation of individual payments.
1429.109	Availability of funds.
1429.111	Misrepresentation and scheme or device.
1429.112	Death, incompetence, or disappearance.
1429.113	Maintaining records.
1429.114	Refunds; joint and several liability.
1429.115	Miscellaneous provisions and appeals.

**Authority:** 15 U.S.C. 714b and 714c, and Sec. 10404, Pub. L. 110-246, 122 Stat. 2111.

**§ 1429.101 Applicability.**

(a) The regulations in this part are applicable to program applicants who produced both 2003– and 2007–crop asparagus. Asparagus producers may apply to the Commodity Credit Corporation (CCC) for a payment based on the actual quantity of their 2003 asparagus production and their share of that production.

(b) Total payments made through the Asparagus Revenue Marketing Loss Assistance Payment Program will not exceed \$15 million, allocated as \$7.5 million for fresh asparagus and \$7.5 million for processed asparagus, less any reserve allocated for disputed claims.

**§ 1429.102 Administration.**

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

(b) FSA State and county committees, and representatives and employees of those committees, do not have the authority to modify or waive any of the provisions of this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any action required by this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; and

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the regulations of this part.

(d) No delegation in this part to an FSA State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question for the Asparagus Revenue Marketing Loss Assistance Payment Program, or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State and county committees to waive or modify program requirements that are not statutory in cases where failure to meet such requirements does not adversely affect the operation of the Asparagus Revenue Market Loss Assistance Payment Program.

**§ 1429.103 Definitions.**

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Application* means the Asparagus Revenue Market Loss Assistance Payment Program application form approved for use in this program by CCC and any required accompanying information or documentation.

*Application period* means the 30-day period established by the Deputy Administrator for producers to apply for the Asparagus Revenue Marketing Loss Assistance Payment Program.

*Asparagus producer* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in § 1400.3 of this chapter, who is an owner, operator, landlord, tenant, or sharecropper, who directly or indirectly, as determined by the Secretary, shares in the risk of producing asparagus and who is entitled to ownership share in the asparagus crop available for marketing from the farm operation. Growers producing asparagus under contract for crop owners are not considered asparagus producers unless the grower can be determined to have an ownership share of the crop.

*Base period* means the 2003 crop year of asparagus.

*County office* means the FSA office responsible for administering CCC programs located in a specific area in a State.

*Crop year* means the marketing season or year as defined by the National Agricultural Statistics Service (NASS).

*Department or USDA* means the U.S. Department of Agriculture.

*Determined production* means, with respect to the base period, the total amount of fresh and processed asparagus specified on the application for payment verified by CCC as having been produced and marketed by the producer in the base period.

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

*Fresh asparagus* means domestically-produced asparagus that, regardless of intended use, was marketed as a fresh product without any processing other than cleaning, grading, sorting, trimming, drying, cooling, and packing.

*Hundredweight or cwt.* means 100 pounds.

*Processed asparagus* means domestically-produced asparagus that, regardless of intended use, was marketed as frozen, canned, pickled, or

otherwise treated or handled in such fashion that the buyer would not consider the asparagus to be consumed as fresh, as determined by CCC.

*Reliable production records* means evidence provided by the producer to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term “acceptable production records” is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

*Reported production* means the total amount of fresh and processed asparagus produced and marketed by a producer, as specified by a producer on the application for payment.

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

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

**§ 1429.104 Application requirements.**

(a) To be eligible for payment, asparagus producers must submit a completed application for payment and meet other eligibility requirements as specified in this part. Asparagus producers may obtain an application in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application from <http://www.sc.egov.usda.gov>.

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county in which the producer produced asparagus in 2003 unless the producer now resides in a different county than the county in which asparagus was produced in the base period.

(c) Asparagus producers who apply for payment must certify the information on the application before the application will be considered complete. Applications may be accompanied by acceptable production records for all fresh and processed asparagus produced and marketed from the farm in the 2003 crop year. Producers must certify they had a share interest in both 2003 and 2007 crop

asparagus. To be eligible for payment on asparagus produced in the base period, the producer must have produced asparagus in 2007 for the commercial market in commercial quantities as determined for this purpose by the Deputy Administrator. At any time CCC deems appropriate, either before or after payment issuance, CCC may, at its discretion, require a producer to provide documentation to support:

(1) Reported production of 2003 crop fresh or processed asparagus production or both entered on the application accompanied by acceptable production record,

(2) Share percentage of 2003 crop production by marketing category for each producer in the asparagus farm operation, or

(3) Any other eligibility requirement specified in this part including commercial quantities of 2007 production to meet the 2007 production requirement.

(d) Each asparagus producer who signs the application must certify the accuracy and truthfulness of the information in the application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program payments will not be approved. Providing a false certification may be punishable by imprisonment, fines, and other penalties or sanctions.

(e) Data furnished by the applicants will be used to determine eligibility for program payments. Although participation in the Asparagus Revenue Market Loss Assistance Payment Program is voluntary, program payments will not be provided unless the participant furnishes a complete application by the end of the application period with all requested data.

(f) Individuals or entities who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or received by the FSA county office, any late application will be considered as not having been timely filed and the applicants on that application will not be eligible for the Asparagus Revenue Marketing Loss Assistance Payment Program.

#### **§ 1429.105 Producer eligibility requirements.**

(a) To be eligible to receive the Asparagus Revenue Marketing Loss Assistance Payment Program payments, asparagus producers must submit an application during the application period and must:

(1) Have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years;

(2) Be an asparagus producer, as defined in § 1429.103, for the 2003 and 2007 crop years;

(3) Certify their shares and the pounds of fresh and processed asparagus produced and marketed from the farm operation during the 2003 crop year as reflected on the application;

(4) If the total value of payments claimed exceeds the available funding, have an average adjusted gross income (AGI) of less than \$2.5 million for the three taxable years of 2004–2006; and

(5) Be in compliance with the requirements in 7 CFR part 12 regarding highly erodible cropland and wetlands and meet any general farm program eligibility requirements that apply under 7 CFR part 1400 or other regulations as applicable.

(b) Asparagus producers must sign an application to be considered for payment eligibility. Asparagus producers who do not sign an application will not receive payment or a determination of eligibility, even if other producers in the asparagus farm operation sign an application and receive payment.

(c) Each applicant determined by spot check or other information to not have an interest as an asparagus producer in 2003 and 2007 who meets the other qualifications of this part will be ineligible for payment and such applicant's claimed share shown on the application will not be paid.

#### **§ 1429.106 Proof of production.**

(a) Producers selected for spot check by CCC must, in accordance with instructions issued by the Deputy Administrator or his designee, provide adequate proof of the fresh and processed asparagus produced and marketed during the 2003 and 2007 crop years.

(b) If adequate proof of marketed production and supporting documentation in support of any application for payment is not presented to the satisfaction of CCC or the FSA county office requesting information, the application and the producers on that application will be determined ineligible for payment.

#### **§ 1429.107 Maximum and final payment rates.**

(a) Subject to the funding limits that may apply to the program, the estimated maximum per pound payment rates for fresh market asparagus and for processed market asparagus are:

(1) \$1.06 per pound (\$106.00 per hundredweight) for 2003 crop quantities of asparagus marketed to fresh markets; and

(2) \$1.08 per pound (\$108.00 per hundredweight) for 2003 crop quantities of asparagus marketed for processing.

(b) This program will be administered to assure that total payments do not exceed the available funding. If the total value of payments claimed calculated using the maximum payment rates specified in paragraph (a) of this section exceeds the funding available for each marketing category, less any reserve that may be created as specified in paragraph (e) of this section, the payment quantities will be paid at a lower rate determined by dividing the funds available in each marketing category of asparagus, by the payment quantity from applications received by the end of the application period in each marketing category.

(c) In no event will the payment rate exceed the maximum payment rate for each marketing category of asparagus determined in paragraph (a) of this section.

#### **§ 1429.108 Calculation of individual payments.**

(a) Producers will be eligible for payment for both fresh and processed asparagus. CCC will calculate the payment quantity of 2003 fresh and processed asparagus for an asparagus farm operation based on the lower of:

(1) Reported production reflected on the application, or

(2) If applicable, determined production.

(b) The payment quantity will be multiplied by the following:

(1) Each asparagus producer's share, and

(2) The payment rate for the fresh or processed asparagus determined as specified in § 1429.107.

(c) If the total value of payments claimed exceeds the available funding, payments to producers are subject to a \$100,000 cap per asparagus producer as defined in this part, not per "person" or "legal entity" as those terms might be defined in part 1400 of this title.

#### **§ 1429.109 Availability of funds.**

(a) Payments specified in this part are subject to the availability of funds. The total available program funds will be \$15,000,000 as provided by section 10404 of Pub. L. 110–246.

(b) Of the available funds, \$7,500,000 are allocated for fresh market asparagus production and \$7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed \$15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

**§ 1429.111 Misrepresentation and scheme or device.**

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(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 program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds.

Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

**§ 1429.112 Death, incompetence, or disappearance.**

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may

receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus 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.

**§ 1429.113 Maintaining records.**

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

**§ 1429.114 Refunds; joint and several liability.**

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an asparagus farm operation's application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

**§ 1429.115 Miscellaneous provisions and appeals.**

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

Signed in Washington, DC on July 12, 2010.

**Jonathan W. Coppess,**

*Executive Vice President, Commodity Credit Corporation.*

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

[NRC-2009-0538]

**RIN 3150-A175**

**List of Approved Spent Fuel Storage Casks: NUHOMS® HD Revision 1; Withdrawal**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a proposed rule that would have revised the NUHOMS® HD cask system listing within the list of approved spent fuel storage casks to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1030. The NRC is taking this action because the applicant identified that a certain Technical Specification (TS) for Boral characterization was not written precisely. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the Safety Analysis Report (SAR), are not precisely quantified in that it requires that "the average size of the boron carbide