

**§ 9.1 Publication required.**

(a) The Director publishes a special edition of the **Federal Register** called "The United States Government Manual" as authorized by the Administrative Committee.

(b) The Director may update the *Manual* when such supplementation is considered to be in the public interest.

**§ 9.2 Scope.**

(a) The *Manual* will contain appropriate information about the Executive, Legislative, and Judicial branches of the Federal Government, which for the major Executive agencies will include—

(1) Descriptions of the agency's legal authorities, public purposes, programs, and functions;

(2) Established places and methods whereby the public may obtain information and make submittals or requests; and

(3) Lists of officials heading major operating units.

(b) The *Manual* will also contain brief information about quasi-official agencies and supplemental information that, in the opinion of the Director, is of enough public interest to warrant.

**PART 11—[AMENDED]**

■ 2. The authority citation for part 11 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

■ 3. Revise § 11.4 as follows:

**§ 11.4 The United States Government Manual.**

(a) The online edition of the *Manual*, issued under the authority of the Administrative Committee, is available through the Government Printing Office's Web site.

(b) Copies of a bound, paper edition of the *Manual* may be sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee.

**PART 12—[AMENDED]**

■ 4. The authority citation for part 12 continues to read as follows:

**Authority:** 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

**§ 12.3 [Removed]**

■ 5. Remove § 12.3.

**David S. Ferriero,**

*Chairman, Administrative Committee of the Federal Register.*

**William J. Boarman,**

*Member, Administrative Committee of the Federal Register.*

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**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1429**

**RIN 0560–AI02**

**Asparagus Revenue Market Loss Assistance Payment Program**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Asparagus Revenue Market Loss Assistance Payment (ALAP) Program authorized by the Food, Conservation and Energy Act of 2008 (the 2008 Farm Bill). The ALAP Program will 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 specifies eligibility requirements, payment application procedures, and the method for calculating individual payments.

**DATES:** *Effective date:* February 4, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Danielle Cooke, Program Manager, Farm Service Agency (FSA), USDA; telephone (202) 720–1919. 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**

During the 2004 through 2007 crop years, a substantial increase in asparagus imports to the United States

resulted in reduced domestic production, reduced U.S. market share for domestic producers, and reduced market prices for both fresh and processed asparagus in the United States. 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." A total of \$15 million of Commodity Credit Corporation (CCC) funds are authorized for payments, with an allocation of \$7.5 million of those funds for payments for asparagus marketed as fresh, and \$7.5 million for payments for processed asparagus.

The ALAP Program payment rates are based on CCC's estimate of the reduction in asparagus farm revenue per pound for the 2004 through 2007 crop years in the two marketing categories, fresh and processed. The payment quantity for a producer 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. Producers must have produced asparagus in both 2003 and 2007 to be eligible for this program. If applications exceed the available funding, the payment rates will be adjusted downward to remain within the available funding for each marketing category.

CCC published a proposed rule on July 16, 2010 (75 FR 41397–41404), with a 60-day comment period which ended on September 14, 2010. The proposed rule proposed eligibility requirements, payment application procedures, and the method for calculating ALAP Program payments. This final rule addresses the comments received on the proposed rule; minor revisions were made to address the comments.

The ALAP Program is a CCC program that will be administered by FSA. The ALAP Program provides a one-time payment to asparagus producers. The ALAP Program regulations are specified in 7 CFR part 1429, which is a new part.

**Discussion of Comments**

FSA received six comments on the proposed rule. The comments were from individual producers, a State advisory board, and a State asparagus commission. The comments generally supported the goals of the ALAP Program. Some comments suggested changes to the eligibility provisions. The following provides a summary of the comments that suggested specific changes to the regulations in the proposed rule, and FSA's response,

including changes we are making in the final rule in response to the comments.

*Comment:* The proposed eligibility provision that would have required producers to have produced asparagus in the United States during both crop years 2003 and 2007 should be changed. The import competition that depressed the U.S. market during the 2003 and 2004 crop years forced some growers out of business. Therefore, the proposed eligibility provision should be changed to allow asparagus producers that stopped growing asparagus after the 2003 and 2004 crop years to be allowed benefits under the ALAP Program, regardless of whether they were still producing asparagus during the 2007 crop year.

*Response:* The 2008 Farm Bill specifies that ALAP payments are to be made to producers of the 2007 crop of asparagus for market loss resulting from imports during the 2004 through 2007 crop years. We do not have the authority under this program to pay producers who did not produce asparagus in 2007. Therefore, no change has been made regarding this eligibility requirement.

*Comment:* Why is funding being allocated to domestic asparagus producers to make up for revenue losses rather than placing a limit on the amount of asparagus imports? Funds should be used to support the local farmer by expanding domestic asparagus farms and structures to improve farmer sustainability and reduce dependence on foreign imports.

*Response:* The 2008 Farm Bill does not give us authority to use the funds authorized for the ALAP Program to limit imports or for any other purpose not specified in Section 10404. Asparagus farmers may use their ALAP Program payments to expand domestic production, but are not required to do so. No change was made to the final rule as a result of this comment.

*Comment:* Small asparagus producers with less than 2 acres or annual sales of less than 3,000 pounds should be excluded from ALAP program eligibility, because small producers that sell to local markets are insulated from imports and world supply levels that affect commercial producers.

*Response:* The 2008 Farm Bill does not distinguish between the different sizes of producers who may be impacted by imports. Adopting this comment would penalize small producers, contrary to the general goals of FSA farm programs. Presumably both small and large producers are impacted in some way by imports and while a large producer may suffer larger impacts, those larger impacts will qualify the larger producer for a higher payment, up

to the amount of the payment limit. ALAP only covers commercial producers, so very small producers that do not sell in commercial markets would be ineligible. To exclude small producers would have been directly contrary to the adoption of the payment limit for ALAP. The payment limit provision allows small producers to receive an equitable share of the funding. Accordingly, no change was made to the final rule in response to this comment.

*Comment:* Clarify how entities that have reorganized since 2003 under a different entity name or structure should apply for the ALAP Program.

*Response:* The application form for program benefits allows for the entry of the name and address of the asparagus farm operation where the 2003 crop was produced and the name and address of the asparagus farm operation where the 2007 crop was produced, if it is different from that in 2003. FSA believes that this addresses entity changes during the period of 2003 and 2007. Therefore, no change has been made to the final rule regarding this eligibility requirement. The local FSA county office can provide guidance in filling out the application.

*Comment:* Clarify the terms "production" and "engaged" for the purposes of determining grower eligibility. If a producer harvested an asparagus crop in 2003, and then replanted, but did not harvest the replanted crop in 2007 because the crowns were not mature enough to produce a marketable crop, would they be eligible?

*Response:* As specified in § 1429.105, to be eligible for ALAP payments, producers must "have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years \* \* \*" A producer that did not harvest asparagus in 2007 would not meet that eligibility requirement. The term "engaged" does not appear in the rule in the context of production; it appears only in reference to engaging in misrepresentation or fraud. No change has been made to the final rule in response to this comment.

*Comment:* Clarify how the applicable year average Adjusted Gross Income (AGI) provisions apply.

*Response:* Under the provisions of this final rule, if the total value of payments claimed exceeds the available funding, then any producer who has average AGI in excess of \$2,500,000 for calendar years 2003 through 2005 is not eligible for program benefits. The base years used for the determination have been adjusted from the proposed rule,

where the relevant AGI years were proposed to be the calendar years 2004 through 2006. This final rule amends § 1429.105(a)(4) accordingly and the amendment reflects an intent to be consistent with the application of the AGI test in other FSA commodity programs, such as the Direct and Counter-cyclical Program (DCP), where the application of the AGI test, unlike here, is required by the 2008 Farm Bill. Under the AGI test specified for other FSA programs by the 2008 Farm Bill, for practical reasons presumably (involving the availability of completed tax calculations), the relevant AGI years are those 3 tax years that precede the most immediate complete tax year preceding the program year. For example, for 2010 DCP payments, the 3 years preceding that most recent complete tax year (2009) which preceded the program year (2010) are the years 2006 through 2008. The asparagus program makes payments to 2007 crop year producers and for this purpose FSA has used 2007 as the program year, and the complete tax year preceding the program year would be 2006. Therefore, following the formula used under the AGI test, the 3 years preceding 2006 are the relevant base years, those being the years 2003 through 2005.

*Comment:* If a producer's share of production in 2003 for each marketing category of fresh and processed changed for the 2007 crop, will payment be calculated on the share percentages of the 2003 crop or the 2007 crop? For example, what if a producer marketed their 2003 crop for processing but switched entirely to fresh production in 2007? Would they be paid at the processed asparagus rate or the fresh asparagus rate?

*Response:* Payment will be calculated based on the marketing category share of the 2003 crop since that year is specified in the 2008 Farm Bill as the base year for the program. CCC will determine each applicant's payment quantity based on their share of their 2003 production quantity for each marketing category of fresh and processed as certified on the application. No change to the final rule was made as a result of this comment.

#### Miscellaneous Changes

FSA made two additional changes that were not in response to comments. The \$100,000 payment cap has been clarified to specify that a separate \$100,000 payment cap per producer applies to each of the two marketing categories: fresh and processed asparagus. In the event that the authorized funding for a marketing category, fresh or processed, is not

sufficient to pay all claims at maximum payment rates, a payment cap of \$100,000 per producer for each marketing category will apply. Likewise, if one marketing category is oversubscribed and not the other, the maximum payment limit will only apply to the oversubscribed marketing category. A producer that markets both fresh and processed asparagus may, accordingly, receive up to \$200,000 per farm operation if both maximum payment caps are applied. The use of these subcaps, rather than an overall cap of \$100,000, was intended to ease program administration and to some degree represents an understanding that Congress effectively created separate programs for the fresh and processed asparagus markets. The use of subcaps could, however, reduce the payments to small producers by providing larger payments to the largest producers than would a \$100,000 overall cap. However, for the reasons given, we think that the rule strikes a proper balance and the facilitation of the administration of the payment limits will aid in advancing the interests of all producers by making quicker payments possible.

An additional change was made to extend the application period from 30 days to 60 days to allow more time for producers to apply for program benefits.

#### **Effective Date**

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide benefits to asparagus producers who suffered economic losses. Therefore, to begin providing benefits to producers as soon as possible, this final rule is effective when published in the **Federal Register**.

#### **Executive Order 12866**

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore has not reviewed this rule. Even though this rule has been designated as not significant, a summary of cost benefit analysis is provided below, and the cost-benefit analysis is available through <http://www.regulations.gov>.

#### **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 will 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**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards by North American Industry Classification System Category (13 CFR 121.201) includes the following categories and the relative size standard: NAICS 11219, Other Vegetable (except Potato) and Melon Farming with maximum annual receipts of \$750,000; NAICS 311411, Frozen Fruit, Juice, and Vegetable Manufacturing, with up to 500 employees; and NAICS 311421, Fruit and Vegetable Canning, with up to

500 employees. It is difficult to estimate the number of small entities for asparagus producers because the data for annual receipts and number of employees are not readily available. Therefore, FSA used Census of Agriculture data to estimate the number and size of asparagus farms.

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 will likely go to the producers on larger farms that accounted for most of the production, rather than the smaller farms. CCC will calculate and disburse payments based on the actual 2003 crop production quantities for fresh and processed marketing. Producers on both small and large farms will receive payment in proportion to their production, subject to the \$100,000 cap for each marketing category that will impact only producers on the largest farms. Direct and indirect costs of applying for these one-time payments will likely be very small as a percentage of the resulting payment. The minimal regulatory requirements will impact large and small businesses equally, and the ALAP program's benefits should slightly improve cash flow and liquidity for farmers participating in the ALAP program. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), 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 the 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**

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. 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, "Civil Justice Reform." The provisions of this 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**

This rule has been reviewed under Executive Order 13132, "Federalism." 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 rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

**Executive Order 13175**

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. This rule was included in the October through December, 2010, Joint Regional Consultation Strategy facilitated by USDA that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each

region on the rules. When the consultation process is complete, USDA will analyze the feedback and then incorporate any required changes into the regulations.

**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 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 Payment Program.

**Small Business Regulatory Enforcement Fairness Act**

In general, any rule designated by OMB under Executive Order 12866 as economically significant is also a major rule. As noted above, OMB designated this rule as not significant. As a result, this rule is not considered a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review and this rule is effective on the date of publication in the **Federal Register**. Further, if this rule had been designated as significant, FSA would have found that there is good cause for making this rule effective less than 60 days after publication in the **Federal Register**. The good cause exemption would have applied as it would be contrary to the public interest to delay this rule given that it allows FSA to provide benefits to asparagus producers who suffered economic losses and that any delay in the effective date would further delay the provision of benefits clearly intended and provided for by Congress.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), in the proposed rule CCC described the new information collection activities associated with 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. Comments on the information collection were requested in the proposed rule. No comments about the information collection were received from the public during the 60-day comment period. The information collection reporting and recordkeeping requirements associated with this rulemaking have been approved by OMB and assigned control number 0560-0273.

**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) adds 7 CFR part 1429 to read as follows:

**PART 1429—ASPARGUS 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 60-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.

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

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

#### § 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 3 tax years of 2003 through 2005; 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 a 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 § 1429.109, 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 each of the two program marketing categories (fresh and processed) 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 Public Law 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 ALAP Program 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 January 30, 2011.

**Jonathan W. Coppess,**

*Executive Vice President, Commodity Credit Corporation.*

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**DEPARTMENT OF AGRICULTURE**

**7 CFR Part 2902**

**RIN 0503-AA39**

**Designation of Biobased Items for Federal Procurement**

**AGENCY:** Departmental Management, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is amending its Guidelines for Designating Biobased Products for Federal Procurement, to be consistent with certain statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act (FCEA) of 2008 was signed into law on June 18, 2008. The amendment is issued as an immediately effective final rule. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under USDA's usual procedure for notice and comment to provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw this direct final rule.

**DATES:** This rule is effective June 6, 2011. Submit comments on the direct final rule by April 5, 2011. If we receive any timely significant adverse comment,