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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### Notice of Funds Availability: Tebuthiuron Application Losses— Additional Assistance for Producers in New Mexico

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

**ACTION:** Notice.

**SUMMARY:** The Commodity Credit Corporation (CCC) is issuing this notice to inform interested parties that additional payments are available under the 2003 New Mexico Tebuthiuron Program (NMTP). The Agricultural Assistance Act of 2003 (the 2003 Act) required the Secretary to reimburse certain agricultural producers on farms in New Mexico for losses claimed in relation to the application by the Federal Government of the herbicide Tebuthiuron on land on or near the farms of the producers during July 2002. A Notice was published on July 8, 2003 announcing the terms of the program (68 FR 40619). This notice is to inform producers that remaining funds from this program are available to those producers who suffered crops losses in 2004 from the lingering residue of Tebuthiuron.

**DATES:** The Farm Service Agency (FSA) will accept applications from September 3, 2004, through October 4, 2004.

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

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

Section 217 of the 2003 Act (Pub. L. 108-7) requires that this program be administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act (PRA) and exempts this action from notice and comment requirements that might otherwise apply. This means the information to be collected from the public to implement this program and the burden, in time and money, the collection of the information would have on the public does not need to be approved by the Office of Management and Budget nor is it subject to the 60-day public comment period required by the PRA.

### Background

This notice provides NMTP terms and conditions and informs affected parties that they may be eligible for additional benefits. Section 210 of the 2003 Act, as amended by Public Law 108-11, provides that the Secretary shall use not more than \$1,650,000 of Commodity Credit Corporation funds to reimburse agricultural producers on farms located in the vicinity of Malaga, New Mexico, for all losses to crops and related expenses incurred as the result of the application by the Federal Government of Tebuthiuron on land on or near the farms of the producers during July 2002. An amount of \$414,614 remains. The agency will disburse this remaining amount to eligible producers that suffered losses from Tebuthiuron during the 2004 crop year.

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

Tebuthiuron has been used in the past by Federal agencies, such as the Forest Service and Natural Resources Conservation Service (NRCS) of USDA, and the Bureau of Land Management (BLM) of the Department of Interior, in drug crop eradication efforts and to control brush and weeds on public lands. Producers have claimed that Tebuthiuron use by the Federal Government and by a private landowner on July 8, 10, and 12, 2002, caused water drawn from the Black River to be tainted, causing losses to crops and livestock in the vicinity of Malaga, New Mexico. The 2003 Act provided funds to

address those claims. The program is limited to farmers in that area and for their losses and related expenses due to the July, 2002, applications. No other claims will be allowed. Allowance of claims is not intended to be, and is not, an admission of fact or liability on the part of anyone, but is intended to carry out the program as required by the 2003 Act, based on the claims of the producers and the assessment of New Mexico State University (NMSU), which will help collect and assess the information. Assistance will be provided to affected producers in proportion to the losses incurred. No claims will be paid except upon the making of a proper application during the application period as announced in this notice. All claims are subject to the availability of funds. Funding is limited to the \$414,614, which are the funds remaining from the 2003 Act. Each producer must file a claim on a form developed by FSA and provide supporting documentation for 2004 losses. Losses must have occurred prior to the filing of the application. They must not have been previously compensated under this program. Applications must be submitted by the program application deadline, which will be 30 days after the publication of this notice in the **Federal Register**, unless extended. Once the money is expended, all other claims must be rejected. The final determinations in this matter will be made by the FSA Deputy Administrator for Farm Programs (Deputy Administrator). Should funds still remain after this new round is completed, producers who file in this round may, in the period September 1-10, 2005, petition the Deputy Administrator for additional payments.

### New Mexico Tebuthiuron Program

#### I. How To Apply

(A) Producers must submit the following to FSA:

- (1) Application for benefits;
- (2) Certification from a qualified crop consultant or New Mexico Department of Agriculture soil test, that supports the producer's contention that the acreage claimed to have been damaged was caused by the July, 2002, Tebuthiuron applications; and
- (3) Verifiable or reliable production records for 2004 for the crop and farm, including, as applicable, commercial

receipts, settlement sheets, warehouse ledgers, load summaries, or appraisal information from a loss adjuster acceptable to CCC. In the absence of such records, CCC may assign production.

(4) Records for any production of a crop that is grown with an arrangement or contract for guaranteed payment. Failure to report any applicable guaranteed contract or similar agreement shall be considered as providing false information to CCC, will render producers ineligible for NMTP payments, and may lead to other civil or criminal sanctions.

(5) For applicable prevented planting claims for 2004, a certification by a qualified crop consultant that supports the producer's claim that a crop could not be taken to maturity because of the presence of Tebuthiuron. Prevented planted acreage shall be limited to the acres of the crop planted in 2002. Late-filed acreage reports can be submitted according to 7 CFR 1480.16.

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

## II. References and Payment Limitations

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

(B) Funding for the program is limited to \$414,614. In the event that amount is insufficient to pay all approved claims, CCC will reduce payments of all eligible and timely submitted claims on a pro rata basis or other method deemed appropriate by CCC.

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

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

## III. Who Is Eligible

Eligible producers for NMTP payments are agricultural producers in the State of New Mexico who suffered an eligible loss in 2004 claimed in good faith to be a result of residue of the herbicide Tebuthiuron in the Black River watershed in July 2002 in the vicinity of Malaga, New Mexico. An eligible loss will be a loss that meets all the criteria in section IV of this notice, plus those set out elsewhere in this notice, and those contained in the

program application or otherwise imposed by the Deputy Administrator.

## IV. Eligibility Determinations

Eligibility determinations will be made by the Deputy Administrator upon receipt of all of the necessary data and the report of eligible claims timely submitted. Subject to the continued availability of funds, eligible losses are only those (1) claimed as a direct result from the Federal Government's use of Tebuthiuron in the vicinity of Malaga, New Mexico; (2) incurred before the filing of the producer's application; and (3) not previously paid under the NMTP program provided for in the **Federal Register** notice published July 8, 2003. All three criteria must also be met. All other applicable criteria must also be met. Payments are subject to the availability of funds. Claims are subject to proration if the claims of all applicants filing in the 2004 application period set out in this notice exceed the remaining available funding (\$414,614) provided in this notice or any other level as restricted by law. Proration shall be on the basis described elsewhere in this notice. The Deputy Administrator shall determine the level of proof needed to substantiate a claim for purposes of payment.

## V. Payment Calculations

Subject to all the other conditions of this notice or conditions of the application, and subject to the availability of funds and proration, payment shall only be made to eligible producers for eligible losses and, to the extent practicable, shall be calculated in the following manner:

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

(1) An unharvested payment factor shall be applied to the crop acreage planted but not harvested;

(2) A prevented planting factor shall be applied to any prevented planted acreage eligible for payment; and

(B) NMTP payments for lost crops will be calculated using the "county expected yield", as established by the Deputy Administrator, which will be the Olympic average (disregard the high and low yields) yield for base period 1999–2003. In lieu of county expected yields, as determined acceptable by the Deputy Administrator, payment may be based on the use of "approved yields" using provisions similar to those for developing an "actual production history" (APH) for producers under the

provisions of the Noninsured Crop Disaster Assistance Program at 7 CFR 1437, subpart B. Verifiable or reliable production evidence acceptable to the Deputy Administrator may be used to establish the farms APH.

(C) NMTP payments to producers under this notice for losses to crops shall be based on an amount determined by multiplying the eligible loss of production for the farm by the applicable payment rate. The payment rate will be based on the 2004 established Risk Management Agency (RMA) price for local, applicable insured crops, or the 1999–2003 Olympic average for local, applicable noninsured crops, as determined by the Deputy Administrator. Prices will be established by the Deputy Administrator, using supporting data from RMA, NASS, or other available sources. Grazing losses will be based on the loss of forage value.

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

## VI. General

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

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

(C) For additional information, and to submit an application directly to FSA, affected producers should contact the Farm Service Agency at the address above or contact the Eddy County FSA Office in Carlsbad, New Mexico.

(D) Payments are subject to administrative offset.

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

FSA will collect the information from all claimants. Claimants must submit an application by the close of business on October 4, 2004. You must submit an

application for benefits at the Eddy County, New Mexico FSA office. CCC will accept or reject each application in whole or in part and will notify each producer in writing of such determination. If a producer disagrees with the determination, the producer may request reconsideration, file an appeal, and enter into Alternative Dispute Resolution (ADR) according to the regulations found at 7 CFR part 780, Appeal Regulations, and 7 CFR part 11.

If there are amounts in dispute, those amounts may be withheld from distribution to address those claims. If there is to be a pro-ration, such a withholding can affect all claimants. Alternatively, CCC may resolve the matter based upon the information at hand and make a full distribution, in which case there may not be sufficient funds to allow an appeal. The Deputy Administrator shall make the final determinations. All determinations on all claims shall be final except to the extent a withholding is made to allow for appeal to the USDA National Appeals Division. Notwithstanding any provision of this notice, the Deputy Administrator can adjust claims in any manner deemed appropriate to accomplish the goals of the program, may allow waivers of requirements as appropriate, and may prorate or withhold funds as needed to resolve claims under this program within the funding limit. The purpose of this notice is to inform producers of the availability of the program and to establish the basis on which program determinations can be made. Upon the end of the 2004 application period referred to in this section, the Deputy Administrator shall decide whether, based on the total claims filed, a proration is appropriate or needed. If a proration is decided upon, payment calculations shall be adjusted accordingly.

If after paying claims for the 2004 applications, funds remain from the \$414, 614 referred to in section II of this notice, then, subject to conditions that will now be set out, those eligible producers who filed 2004 claims may file additional claims. The conditions are as follow. The claims must be filed in the period September 1–10, 2005. Payments on those claims may not exceed the funds remaining of the \$414, 614 mentioned above. The losses must meet the same criteria, except as to the time of occurrence, as the 2004 claims. The claims may be prorated as needed to reflect the remaining funds. The Deputy Administrator may set additional conditions as deemed warranted by the Deputy Administrator.

Signed at Washington, DC, August 24, 2004.

**Michael W. Yost,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### The Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 2004

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2004. The commodities made available under this notice must be distributed to eligible recipient agencies for use in preparing meals and/or for distribution to households for home consumption.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

**SUPPLEMENTARY INFORMATION:**

In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7502, and the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.*, the Department makes commodities and administrative funds available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with 7 CFR 251.3(h), each State's share of TEFAP commodities and administrative funds is based 60 percent on the number of low-income households within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the commodities will be used by eligible recipient agencies (ERAs) in providing nutrition assistance to those in need, and for allocating commodities and administrative funds among those agencies. States have full discretion in determining the amount of commodities that will be made available to ERAs for

use in preparing meals, and/or for distribution to households for home consumption.

The types of commodities the Department expects to make available to States for distribution through TEFAP in FY 2004 are described below.

#### Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities determined to be available for donation by the Secretary of Agriculture under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416), and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of commodities typically made available under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

In FY 2004, the Department anticipates that there will be sufficient quantities of nonfat dry milk and ready-to-eat pudding available for donation under section 416 and frozen turkey breast, canned and frozen orange juice, fruit-nut mix, dried cherries, dates, figs, canned tomatoes, walnuts, canned and frozen asparagus, canned salmon and raisins under section 32 to support the distribution of these commodities through TEFAP. Other surplus commodities may be made available to TEFAP later in the year. The Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the availability of commodities is subject to change.

Approximately \$80.7 million in surplus commodities purchased in FY 2003 are being delivered to States in FY 2004. These commodities include frozen strawberries, frozen ground bison, frozen turkey deli, frozen peaches, frozen asparagus, frozen lamb roasts, salmon, dried plums, dried raisins, dehydrated potatoes, non-fat dry milk, ready-to-eat pudding, and the following canned items: tomatoes and tomato sauce, apricots, peaches, pears, pineapple, asparagus, and bison stew.

#### Purchased Commodities

In accordance with section 27 of the Food Stamp Act of 1977, 7 U.S.C. 2036, the Secretary is directed annually, through FY 2007, to purchase \$140 million worth of commodities for distribution through TEFAP. These commodities are made available to States in addition to those surplus