

requires that importers have proportionate representation on the Board. Therefore, importers should have 20 percent of the seats on the Board. Currently, the four importer positions represent only 12.5 percent of the 32 industry seats on the Board. Adding two more importer member positions will give importers approximately 20 percent of the seats on the Board. Because the Plan and regulations are self-executing in this regard, no change to the regulations is needed.

Subsequently, the realignment was approved by Board at its February 15–16, 2000, meeting, with slight modification. Under the realignment, each district will represent, on average, 14 percent of total U.S. production.

Therefore, this final rule will realign the districts as follows:

*District 1*—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

*District 2*—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinnellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

*District 3*—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

*District 4*—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

*District 5*—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus,

Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

*District 6*—Texas.

*District 7*—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

With these district boundaries: (1) South Carolina and Tennessee will be moved from District 4 to District 3; (2) Arkansas and Louisiana will be moved from District 6 to District 3; (3) Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin will be moved from District 5 to District 4; (4) four California counties will be moved from District 7 to District 5; and (5) only Texas will remain in District 6.

This will create one producer vacancy in Districts 1, 6, and 7 and one handler in District 6. Current Board members will be affected because their states or counties will be moved to other districts. Nomination meetings will be held in the new districts to fill the vacancies.

#### List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Part 1210, Chapter XI of Title 7 is amended as follows:

#### PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR Part 1210 continues to read as follows:

**Authority:** 7 U.S.C. 4901–4916.

2. Section 1210.501 is revised to read as follows:

##### § 1210.501 Realignment of districts.

Pursuant to § 1210.320(c) of the Plan, the districts shall be as follows:

*District 1*—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

*District 2*—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinnellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee,

Taylor, Union, Volusia, Wakulla, Walton, and Washington.

*District 3*—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

*District 4*—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

*District 5*—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

*District 6*—Texas.

*District 7*—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and San Diego.

Dated: March 1, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–5419 Filed 3–5–01; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Commodity Credit Corporation

#### 7 CFR Part 1421

**RIN 0560–AG22**

#### Grazing Payments for 2001 Wheat, Barley, or Oats

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of the Agricultural Risk Protection Act of 2000 (ARPA) related to grazing payments in lieu of loan deficiency payments (LDP's), for the 2001 crop year only, to include producers who elect to use acreage planted to wheat, barley, or oats for the grazing by livestock and forgo any other harvesting of such acreage.

**EFFECTIVE DATE:** March 6, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Raellen Erickson, Program Specialist, Price Support Division, Farm Service Agency (FSA), USDA, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0540, telephone: (202) 720-7320.

**SUPPLEMENTARY INFORMATION:**

**Notice and Comment**

Section 263 of the ARPA requires that these regulations be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

**Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

**Federal Assistance Programs**

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies is Commodity Loan Deficiency Payments—10.051.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because

the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

Section 263 of the Act of 2000 requires that the regulations necessary to implement Title II, Subtitle A of the Act of 2000 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) related to the notice of proposed rulemaking and public participation in rulemaking. It also requires the Secretary to use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Act (SBREFA)), which provide that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose and thus does not have to meet the requirements of section 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This final rule is considered major for the purposes of SBREFA. Based on the foregoing authorities, however, it has been determined that it would be contrary to the public interest to delay the implementation of this rule. This rule, accordingly, has been made effective immediately.

**Paperwork Reduction Act**

Section 263 of the Act of the ARPA also requires that these regulations be promulgated and the program administered without regard to the Paperwork Reduction Act. This means the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public, does not have to be approved by the Office of Management and Budget.

**Background**

Producers of certain commodities are allowed by the provisions under section 135 of the Agricultural Market Transition Act (7 U.S.C. 7235) and related provisions to obtain, upon harvest, market assistance loans, or, in lieu of those loans, "loan deficiency payments" (LDP's). Section 205 of ARPA, however, provides additional relief for farmers in a form which in effect amounts to the equivalent of an LDP. Under section 205 of ARPA, a

farmer who is otherwise eligible for a wheat, barley, or oat LDP under section 135 of AMTA can graze the acreage instead and still receive a payment if the producer enters into an agreement with the Secretary to forgo any other harvesting of the wheat, barley, or oats on that acreage. That section (Section 205 of ARPA) provides further that the amount of the payment shall be determined using the loan deficiency payment rate determined under section 135(c) of the Agricultural Market Transition Act (7 U.S.C. 7235(c)) in effect, as of the date of the agreement, for the county in which the farm is located. That rate, the statute provides, will be multiplied by the payment quantity. The payment quantity, the law provides, is determined by multiplying (for the commodity involved) the quantity of the grazed acreage involved by the higher of the farm's established yield or the county's average yield. Further, section 205 provides that the payment shall be made at the same time and in the same manner as loan deficiency payments. Still further, the statute specifies that the payment shall be made not later than September 30, 2001. Also, section 205 provides that, in operating this program, the Secretary shall establish an availability period for the payment consistent with the availability period for wheat, barley, and oats established for AMTA marketing assistance loans. Section 205 further specifies that the Secretary shall promulgate such regulations as are needed to administer the payments in a fair and equitable manner with respect to those producers of wheat and feed grains that will not receive the new payments.

This rule implements those provisions by regulations that will be codified in a new subpart in 7 CFR part 1421. In so doing, however, several important determinations had to be made. Among those, was a determination with respect to limitations on payments. LDPs under section 135 of AMTA are, by the provisions of section 1001 of the Food Security Act of 1985, 7 U.S.C. 1308, as amended, payment-limited. That is, the amount that any one "person" (as defined in rules in 7 CFR part 1400) can receive in any one program year, in the form of LDPs, is limited to a set amount. By the terms of section 1001 of the Food Security Act, the limit applies to payments under section 135 of AMTA, and does not, for that reason, cover these new grazing payments, as such, in section 205 of ARPA. That follows because section 205 does not, as such, amend section 135 of AMTA. Rather,

section 205 is a stand-alone source of authority for making the new payments. Nonetheless, as indicated above, Congress, by the terms of section 205, instructs the agency to make the payment "in the same manner" as section 135 of AMTA and further instructs the agency to make the payments in such a way as to be fair with respect to farmers who will not be making use of the new authority. For those reasons, it seems clear that the payments should be treated as limited as well and, in order to do so, it is provided in these rules that a farmer will be considered to be eligible to receive, or retain, payments under section 205 of ARPA only to the extent that the farmer would have a remaining eligibility for payments under section 135 of AMTA taking into account the payment limit that applies to payment under that section. That is, if the producer had for example hit the payment limit under that section by receiving LDP's up to that limit, then the producer would not be eligible for grazing payments under the new program and would, if payments for grazing had already been received, be required to return those payments with interest. This conclusion—linking the two payments—is consistent with still another provision in section 205 of ARPA that being the provision which specifies that the producer will only be eligible for payments under section 205 to the extent that the farmer would be eligible for a payment under section 135. While that provision does not directly address the situation where the producer was eligible for the payment when it was received and only later hits the LDP payment limit, it would not make sense to have the rules allow the farmer retain the grazing as such would change the connection between the two programs from being a matter of substance to being one of timing only. Presumably, placing form over substance was not intended. Accordingly, once it has been determined that the grazing payment will in effect be tied to the same payment limit it follows that this rule will apply regardless of which payments were requested first. As indicated, this seems to be fully consistent with the idea of the statute which appear to be that the LDP program should not force farmers to harvest forage of certain crops just to utilize their LDP eligibility. Provision has been made in the rule to assure that the connection between the two programs will be enforced irrespective of whether the normal rules of offset would allow a charge-off between the two programs.

Other provisions in the new regulations specify that producers will not be eligible for the payment if the crop could not be harvested anyway because of weather or other reasons. Also, the rules provide that applications cannot be filed before the date on which mechanical harvesting of the crop would, otherwise, have first been possible. This provision is consistent with the timing provisions of the statute as described above. Also, there are provisions, requiring consistency between the producer's grazing reports and others that might be filed, and a number of other aspects of the program as well. Further, since the grazing payments allowed by the new rules only apply where the producer could otherwise have obtained LDP for the crop, the new rules will only apply to wheat, barley and oats crops produced by the applicant on a farm on which that person has an existing and valid production flexibility contract (PFC). That is because wheat, barley, and oats are so-called "contract commodities" and, by statute, generally, contract commodities are eligible for LDP only if produced on a PFC farm. The PFC program is a program in which farmers with certain crop bases under older programs can receive certain special payments if they agreed to abide by certain limited conditions with respect to the operation of their farms. The PFC program is administered under 7 CFR part 12. For the 2000 crop only, Congress has severed the tie between PFC's and LDP's. However, as the new grazing payment program applies only to the 2001 crops wheat, barley, and oats, the existence of a PFC contract will continue to be an eligibility requirement for the new payment. Should the requirements for LDP's be modified again, it would have to be determined whether such a change would also expand eligibility for the new grazing payment provided for in these new rules.

#### List of Subjects in 7 CFR Part 1421

Loan programs/Agriculture, Loan Deficiency Payment, Grazing Payments for 2001 Crop of Wheat, Barley, or Oats, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1421 is amended to read as follows:

#### PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for part 1421 is revised to read as follows:

**Authority:** 7 U.S.C. 7213–7235, 7237; 15 U.S.C. 714b, 714c; Sec. 813, Pub. L. 106–78,

113 Stat. 1182; Secs. 205 and 206, Pub. L. 106–224 (7 U.S.C. 1421 note).

2. Part 1421 is amended by adding Subpart—Grazing Payments for 2001 Crop of Wheat, Barley, or Oats to read as follows:

#### Subpart—Grazing Payments for 2001 Crop of Wheat, Barley, or Oats

Sec.

- 1421.300 Applicability.
- 1421.301 Administration.
- 1421.302 Definitions.
- 1421.303 Eligible producer and eligible land.
- 1421.304 Time and method for application.
- 1421.305 Payment amount.
- 1421.306 Misrepresentation and scheme or device.
- 1421.307 Refunds; joint and several liability.

#### § 1421.300 Applicability.

(a) The regulations in this subpart are applicable to 2001 crops of eligible acreage planted to wheat, barley, or oats that is grazed by livestock and not harvested in any other manner. This subpart sets forth the terms and conditions under which a grazing payment in lieu of a loan deficiency payment can be made by the Commodity Credit Corporation (CCC).

(b) The form that is used in administering these payments is available in State and county FSA offices and shall be prescribed by CCC.

#### § 1421.301 Administration.

(a) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA employees under the general direction and supervision of the State and county FSA committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

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

- (1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or
- (2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee shall preclude the

Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs (DAFP), FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program. In addition, DAFP may establish other conditions for payments that will assist in achieving the goals of the program and may include such provisions in the program agreement or other program documents.

#### **§ 1421.302 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart:

*COC* means the FSA county office committee.

*CCC* means the Commodity Credit Corporation.

*Department* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) or a designee of that person.

*FSA* means the Farm Service Agency of the Department.

*Secretary* means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

*STC* means the FSA State committee.

#### **§ 1421.303 Eligible producer and eligible land.**

(a) To be an eligible producer for purposes of this subpart, the person must be a producer of an eligible crop which the producer agrees under the terms of this part to graze in lieu of any other harvesting. The only crops which are eligible for this program are the 2001 crops of wheat, barley or oats, and then only if all other conditions for eligibility under this part have met. For this purpose and all purposes of this subpart, the "person" may be an individual, partnership, association, corporation, estate, trust, or State or political subdivision or agency thereof, or other legal entity. The crop year will be determined using the normal designations that apply in connection with farm commodity programs operated under this chapter. Also, to be an eligible producer, the person must meet all other qualifications for payment that are set out in this subpart, set out in the program agreement, set

out under other provisions of this title, including regulations that appeal in parts 12, 718, 1400, and 1405 of this title, or otherwise set out. A person will not be considered the "producer" of the crop unless that person was responsible for the planting of the crop and had the risk of loss in the crop at all times material to the request for payment, including, but not limited to, the time of planting and the time of the request for, and payment of benefits under, this part.

(b) A minor may participate in the program if the right of majority has been conferred on the minor by court order or by statute, or if the minor participates through a guardian authorized to act on the minor's behalf in these matters. Alternatively, a minor may participate if the program documents are all signed by an acceptable (to CCC) guarantor or if bond, acceptable to CCC, is provided by a surety.

(c) For the crop to be eligible, the crop, in addition to other standards that may apply, must be grown on land that is classified as "cropland" in FSA farm records or on land that FSA determines has been cropped in the last 3 years except that the land may also qualify if the land is committed to a crop rotation, normal for the locality, that includes harvesting the subject crop for grain. These rules are designed to assure, to the extent practicable, the available payment did not produce plantings that otherwise would not have occurred and the CCC may deny payments in any instance in which there is reason to believe that the planting was done for that purpose. To that end, if the commodity involved has not been previously grown by the producer or is not one which is not predominately produced locally, the producer must submit evidence of seed purchases for planting the commodities and other evidence deemed needed or appropriate by the COC in order to assure that the program goals are made and that the land was not planted to an eligible commodity simply to obtain a payment. Also, the land to be eligible must, for the year involved, be grazed and cannot, during the crop year, be harvested at any time for any purpose, except as determined by the Deputy Administrator to accommodate producers with a history of double-cropping when the crop to be harvested is not the crop for which a payment is to be made under this subpart. Land will be considered grazed only to the extent that the crop on the land is consumed in the field as live plants by livestock for the normal period of time for grazing in the area.

(d) Further, the producers must have, to be eligible at the time the crop is grown and used, full right of possession in the property with the consent of the landowner and must have, but for an agreement made to receive payments under this subpart, the right to harvest and market the crop as grain and, as that time the crop is grazed, the right and ability to obtain a loan deficiency payment (LDP) under this title. Further, the producer must, at the time of the agreement made under this part to obtain a payment, meet all other eligible criteria for LDP's including the general statutory requirement that the producer will be eligible for LDP for "contract commodities" only if they were produced by that person on the farm on which there is a "production flexibility contract" (PFC) under the PFC program administered under 7 CFR part 1412. As wheat, barley and oats are contract commodities, this means that no grazing payments will be made under this subpart unless the wheat, barley or oat crop which is, or will be, grazed, was produced by the person seeking the payment on land on which there is PFC to which such person is party. In the event, that Congress, as it did for the 2000 crop, change the requirements for LDP's so as to eliminate the tie to an existing PFC, CCC shall determine whether that waiver will also expand the eligibility of producers for grazing payments under this subpart.

(e) In addition, no payment will be made if the crop could not have been harvested and used to obtain LDP's because of weather or other conditions that may have occurred or because of any legal restrictions against harvesting the crop, or because of promises made in connection with other programs, or because of any promise to any person, or because of any other reason. The producer must, in addition, to be considered eligible to receive a grazing payment on the commodity under this subpart, retain the control, title and risk of loss in the commodity for which the payment is sought from the date of planting through the date on which no mechanical harvesting of the crop is still possible. However, nothing in the prior sentence shall prevent a person from receiving a payment merely because the producer has granted a licence or permission to some other party to graze their animals upon the property. In addition, the producer can receive no payment for any crop on any land for which, for the relevant crop year, the producer reported to anyone for any purpose, harvesting the crop for grain. This prohibition and others under the program only apply to land for which

the payment is sought (that is, the part of the farm on which the crop is to be grazed) and does not extend to other parts of the farm. Any condition that applies under this subpart as a condition of payment, shall also be considered to be a condition for retaining payment.

**§ 1421.304 Time and method for application.**

Application for the program must be received, at the county office that is responsible for administering programs for the farm, no earlier than the date on which eligible crops would, for the 2001 crop, normally be harvested and no later than August 31, 2001. The application must describe the land to be grazed and, in accordance with standards set by CCC, the tract/field location. The COC will determine the first harvest date which shall take into account the date on which such crops are, locally, normally harvested for any purpose. Where multiple producers are involved, the form must reflect each producer's share in the crop. No producer must receive payments under this subpart except to the extent that the payments are commensurate with that share. Should a person who is entitled to receive a payment under this subpart die, that payment, as earned, may be made to other persons as provided for in the rules set out in part 707. Third parties may also receive payments to the extent provided for in that part for other situations involving an incapacitation of the producer. Refusals to allow CCC to verify information on any form or report utilized for this subpart can result in program ineligibility and producers must provide CCC and its agent to the property involved and to all records as may be relevant to the making of payments under this subpart. Further, false statements will disqualify the producer from the program and may be subject to other sanctions including criminal sanctions.

**§ 1421.305 Payment amount.**

(a) Eligible persons growing an eligible crop and agreeing to the restrictions provided for in this subpart may (if all other conditions of eligibility are met) receive a payment under this subpart. That payment for purposes of this section shall be referred to as a "grazing payment". The grazing payment shall be made at the per/unit LDP rate for the relevant crop. The LDP rate that applies shall be that which is current on the date on which the producer submits a complete program application or is deemed, by CCC, to have submitted a completed application. The rate shall be the rate for

the relevant county in which the farm is located. The "LDP rate" for this purpose means the rate for "loan deficiency payments" under this subpart. The LDP rate shall be applied against the payable units of production as determined under this section.

(b) The payable units of production shall be computed by multiplying the eligible grazed acres by the applicable yield determined under paragraph (c) of this section.

(c) The yield shall be either the farm's established yield for the crop as determined under part 1412 by the FSA or the relevant average county yield as determined by the FSA. The average county yield must be established by the COC by August 31, 2001, but shall be valid only if the STC concurs. That yield shall, if acceptable data is available, be based on NASS data using an Olympic average for the 1996 through 2000 crop years. If that data is not available, or STC does not concur, other sources may be used.

(d) No payment may be received or retained under this subpart to the extent that the payment, were they considered to be LDP's, would place that person over the per person per year payment limit that applies to LDP's. The producer agrees that the CCC may collect any payment considered to be an overpayment by reason of this subsection by withholding LDP payments until the matter is resolved, by treating the LDP as being not payable to the extent that a grazing refund would otherwise be due, by setoff, or by any other means available to CCC.

(e) Payments can be withheld until the actual grazed acreage is verified and justified in connection with any other reports filed with FSA with respect to the farm (or filed with some other person or agency) and until all other necessary information is obtained. The CCC may require such other verification as it deems appropriate to assure that the program goals are met.

(f) To receive the payment, the eligible producer must submit a request for payment on the FSA-approved form. That form will be "CCC-633 Grazing (Grazing Payment Program Application)". The form may be obtained from the county FSA office. Also, a copy may be obtained at <http://www.fsa.usda.gov/dafp/psd>. The form must be submitted to the county by the close of business on August 31, 2001.

(g) The producer will be ineligible for payments under this subpart if any discrepancies between the reported acreage on the program form and other reports of acreage by the producer are not resolved by a date set by the CCC.

(h) Unless otherwise authorized by the Deputy Administrator, all payment shall be made no later than September 28, 2001.

**§ 1421.306 Misrepresentation and scheme or device.**

(a) A producer shall be ineligible to receive payments under this subpart if it is determined by DAFP, the State committee, or the county committee to have:

(1) Adopted any scheme or device which 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 subpart to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the producer's actions, shall be refunded with interest together with such other sums as may become due. Any producer engaged in acts prohibited by this section and any person receiving payment under this subpart, as a result of such acts, shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

**§ 1421.307 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this application, or this subpart, and if any refund of a payment to CCC shall become due for that or other reason in connection with the application, or this subpart, all payments made under this subpart to any producer shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payments charges as provided for in part 1402 of this chapter.

(b) All persons listed on an application shall be jointly and severally liable for any refund due in connection with that application and for any related charges which may be determined to be due for any reason.

(c) Interest shall be applicable to refunds required of the producer. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment but the interest rate shall increase to reflect

any increase in the rate charged to CCC by Treasury for any percent of time for which the interest assessment is collected. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Late payment interest shall be assessed on refunds in accordance with the provisions of, and subject to the rates in 7 CFR part 1403.

(e) Producers must refund to CCC any excess payments made by CCC with respect to any application in which they have an interest. Such refund shall be subject to interest at the same rate that applies to other refunds.

Signed at Washington, D.C., on March 1, 2001.

**Diane Sharp,**

*Executive Vice President, Commodity Credit Corporation.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG70

#### List of Approved Spent Fuel Storage Casks: VSC-24 Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Pacific Sierra Nuclear Associates (PSNA) VSC-24 listing within the "List of approved spent fuel storage casks" to include Amendment No. 3 to the Certificate of Compliance (CoC). This amendment changes the Technical Specifications 1.2.1 and 1.2.6 to modify the fuel specifications for Combustion Engineering 16x16 spent fuel stored in the VSC-24 cask system, modifies the text in TS 1.2.7 for accuracy, modifies the text in Certificate Section 2.b. to remove ambiguity, modifies Certificate Section 3 to be consistent with TS 1.1.4, modifies Certificate Section 4 for consistency with TS 1.1.3, and modifies Certificate Section 5 to remove ambiguity.

**DATES:** The final rule is effective May 21, 2001, unless significant adverse comments are received by April 5, 2001. If either the rule is withdrawn or the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

All publicly available documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at <http://ruleforum.llnl.gov>. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may also be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC's Public Document Room Reference staff at 1-800-397-4209, (301) 415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML003733556. For more information, contact the NRC's Public Document Room Reference Staff at 1-800-397-4209, 301-415-4737 or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Stan Turel, telephone (301) 415-6234, e-mail, [spt@nrc.gov](mailto:spt@nrc.gov), of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or

more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPAA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948), that approved the VSC-24 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued Certificate of Compliance Number (CoC No.) 1007.

#### Discussion

On March 29, 2000, PSNA (the certificate holder) submitted an application to the NRC to amend CoC No. 1007 to change Technical Specifications (TS) 1.2.1 and 1.2.6. This change modifies the fuel specifications for Combustion Engineering 16x16 spent fuel stored in the VSC-24 cask system. Amendment 3 also modifies the text in TS 1.2.7 for accuracy, modifies the text in Certificate Section 2.b. to remove ambiguity, modifies Certificate Section 3 to be consistent with TS 1.1.4, modifies Certificate Section 4 for consistency with TS 1.1.3, and modifies Certificate Section 5 to remove ambiguity and removes the "Basis" section from all TSs in accordance with revised NRC TS format. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. The NRC staff found that the changes stated above do not reduce the safety margin. In addition, the NRC staff has determined that changes do not pose any increased risk to public health and safety. A full discussion of the NRC staff's evaluation is presented in its SER that can be found under ADAMS Accession No. ML003733556.

This direct final rule revises the PSNA VSC-24 cask system listing within the list of NRC-approved casks