

# Rules and Regulations

Federal Register

Vol. 66, No. 49

Tuesday, March 13, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1481

RIN 0560-AG41

#### Limited California Cooperative Insolvency Payment Program

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

**ACTION:** Final Rule.

**SUMMARY:** This rule sets forth the regulations for the Limited California Cooperative Insolvency Payment Program authorized by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the Act). Fruit and vegetable producers who are members of a large California cooperative recently suffered losses due to the insolvency of that cooperative. Congress has designated \$20 million for their benefit. This rule implements that program.

**DATES:** Effective March 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** Toni D. Williams, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250-0512; telephone (202) 720-2270 or e-mail: [Toni\\_Williams@wdc.fsa.usda.gov](mailto:Toni_Williams@wdc.fsa.usda.gov). A copy of this final rule is available on the PSD homepage at <http://www.fsa.usda.gov/dafp/psd/>.

#### SUPPLEMENTARY INFORMATION:

##### Notice and Comment

Section 840 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387), requires that the regulations necessary to implement these provisions

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 (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

#### 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.

#### Regulatory Flexibility Act

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).

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

#### 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. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

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

Section 840 of Pub. L. 106-387 requires that the regulations necessary to implement these provisions 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) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), which provides 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 § 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. In addition, this rule is not considered a major rule for the purposes of SBREFA. Accordingly, because it would be, as expressed in Pub. L. 106-387, contrary to the public interest to delay those provisions of this rule is issued as final and are effective immediately.

#### Paperwork Reduction Act

Section 840 of Pub. L. 106-387 requires that the regulations implementing these provisions be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required after the rule is published. An emergency request for approval of an Information Collection has been submitted to OMB.

#### Background

Section 843 of the Act (Pub. L. 106-387) as further amended in the

Consolidated Appropriations Act, 2001 (Pub. L. No. 106-554, enacted on Dec. 21, 2000), authorizes the Secretary of Agriculture to provide up to \$20 million of funds of the Commodity Credit Corporation (CCC) to make payments to producers of tomatoes, pears, peaches, and apricots who suffered a loss because of the insolvency of an agriculture cooperative. Payments cannot, under the terms of the legislation, exceed 50 percent of the loss.

In particular, the legislation provides in full:

The Secretary of Agriculture shall use no more than \$20,000,000 of funds of the Commodity Credit Corporation to make payments to producers of tomatoes, pears, peaches, and apricots that suffered a loss because of the insolvency of an agriculture cooperative in the State of California; *Provided*, that the amount of a payment made to a producer under this section shall not exceed 50 percent of the loss referred to in this section.

Recently, Tri-Valley Growers (TVG), a California fruit and vegetable processing cooperative, became insolvent. TVG at its high point had approximately 500 members and TVG members produced more than 50 percent of the canned peaches and 10 percent of the canned tomato products sold in the United States. Because of the insolvency, TVG was not able to fulfill its contract with its grower members who, as a result, suffered large 2000-crop losses. Given the timing of that insolvency in relation to the timing of the statute, the unusual and emergency nature of the relief (as reflected in the exemptions from the usual requirements of rulemaking), the geographic limitation in the statute, and the size of this well-known insolvency and its broad and significant effect on members and, through them, on local economies, it appears clear that this relief is intended to be limited to TVG members alone. There are no comparable insolvencies. While there may be other farmers who were impacted by the market effect of the insolvency, this legislation by its nature is not directed at the myriad of market events that can affect growers in all parts of the country. Rather, it is directed at one event (insolvency), in one place (California). To broaden the reach of the program would be to dilute the benefits that would otherwise go to those who lost their contracts because of the failure of their cooperative. For such persons the relief would not be simply relief from external market conditions like the many external conditions that can affect growers of all types of commodities. Such a dilution, for the reasons given, does not seem consistent with the nature and, what appears to be,

intent of the legislation. In fact, the original provisions of the statute limited relief to those who could not market their crop because of the insolvency, which indicates an intent to limit payment to members with contracts. The amendment, as it is understood, was undertaken because it was realized that without the amendment cooperative members would be excluded from participation if they made use of a secondary market or a distress sale for their crops no matter how small a return their crop might have brought. In fact, it is understood that it has been the intent of this legislation from the beginning to address the special needs of the TVG members. For that reason, even assuming that the statute could be read more broadly, the statute does not compel the agency to grant all possible claims but rather allows the Secretary to determine, as a matter of discretion, which claims to allow, the only limitation being that no more than \$20 million be spent. Given that discretion, it would in any event be appropriate, and the determination of the agency, to limit participation to TVG members because of the special impact on them, because of the insolvency, and because of the desire to avoid possibly diluting the assistance that is available to them. The insolvency occurred early in 2000 had its greatest impact on farms who could not then deliver commodities under the 2000-crop contracts these farmers had with TVG. In order that the relief may be concentrated where the need is the greatest. This program will be limited to those claims for that crop year understanding that those claims will be more than enough to use all of the \$20 million allotted. The program, it should be emphasized, is also limited only to that production which was under a 2000 crop year contract with TVG and not any additional production which the producer may have had.

Accordingly, for these reasons, the program provided for in this rule will be limited to the claims of members of TVG and the 2000 crop year production which had been under contract. In order to effectuate the terms of the statute in a manner that is faithful to the limit on the amount of the grower's total loss that is compensable, payments shall not exceed 50 percent of the member's contract production multiplied by the final base price for that production less proceeds from any other source. The final base prices are fixed and no other price will be used to calculate the payments. The final base prices per ton to be used are \$330 for apricots, \$233 for yellow cling peaches, \$243 for pears,

and \$48.50 for tomatoes. Contract production and final base price data have been obtained from TVG. As the total dollar amount of eligible claims may exceed the \$20 million authorized for the program, the rules allow for a factoring of claims, if needed. To receive payments, members must: (1) have been a member of TVG; (2) have produced eligible commodities during crop year 2000 under contract with TVG; and (3) apply for a payment during the application period.

Program applications will be mailed to members of TVG who had a contract to produce an eligible commodity during crop year 2000 by the Price Support Division located in Washington, D.C. The mailed application form, CCC-870, will have preprinted information obtained from TVG and the member will need to verify and/or the correct provided information if necessary. The application form has a correction line and a remarks section so that the member may make changes and explain the reason(s) for any changes in the remarks section. Names, addresses, TVG member identification numbers, contract production and a final base price per commodity and 2000 crop year payments made to members of TVG have been obtained from TVG.

Members of TVG may contact the California State FSA Office seven business days after the start of the application period to obtain an application form, CCC-870, if an application is not received by mail. Members of TVG requesting the application form from the California State FSA Office will have the choice of receiving the application form by mail or facsimile. Members may obtain an application form from the USDA eForms website at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov) seven business days after the start of the application period if an application is not received by mail. The application form on the USDA eForms website should only be used if members have not received an application by mail. The application downloaded from the USDA eForms website will not have preprinted information; therefore, members will need to provide the appropriate information. The California State FSA Office will only need to receive one application per TVG member. FSA will verify the information provided. To participate in the program, members of TVG must complete the application form and return it by mail to the California State FSA Office within the announced application period. The address for the California State FSA Office is located in section 12A and 12B on the application form.

**List of Subjects in 7 CFR Part 1481**

California, Cooperatives, Fruits and vegetables, Insolvency, Payments

Accordingly, a new part 1481 is added to 7 CFR chapter XIV, subchapter B, as set forth below:

**PART 1481—LIMITED CALIFORNIA COOPERATIVE INSOLVENCY PAYMENT PROGRAM**

Sec.

- 1481.1 Applicability.
- 1481.2 Administration.
- 1481.3 Definitions.
- 1481.4 Time and method of application.
- 1481.5 Eligibility.
- 1481.6 Availability of funds.
- 1481.7 Rate of Payment and limitations on funding.
- 1481.8 Offsets.
- 1481.9 Appeals.
- 1481.10 Misrepresentation.
- 1481.11 Maintaining records.
- 1481.12 Estates, trust, and minors.
- 1481.13 Death, incompetency, or disappearance.
- 1481.14 Refunds; joint and several liability.

**Authority:** Sec. 843, Pub. L. 106–387, 114 Stat. 1549.

**§ 1481.1 Applicability.**

(a) The regulations in this part set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to certain producers who suffered a loss because of the insolvency of an agriculture cooperative in the State of California as provided for in section 843 of Pub. L. 106–387. Additional terms and conditions may be set forth in the payment application form that must be executed by participants to receive a market loss payment.

(b) Payments shall be available only for eligible commodities produced during crop year 2000, and only to members of the Tri-Valley Growers cooperative of California who contracted with the cooperative for the sale of eligible commodities authorized in section 843 of Pub. L. 106–387. Such payments must meet all the conditions for payment set out in this part.

**§ 1481.2 Administration.**

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, or designee and shall be carried out by the Farm Service Agency (FSA) office under the Executive Vice President's direction.

(b) FSA employees do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The Deputy Administrator, Farm Programs, FSA, may authorize the waiver or modification of deadlines in

cases where lateness or failure to meet such other requirements does not adversely affect the operation of this program and the action does not violate statutory limitations on the program.

(d) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

**§ 1481.3 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering the Limited California Cooperative Insolvency Payment Program established by this part.

*Administrator* means the FSA Administrator.

*Application* means Form CCC–870, the program application form.

*Application period* means March 8, 2001 through April 6, 2001.

*Commodity Credit Corporation or CCC* means the Commodity Credit Corporation.

*Department or USDA* means the United States Department of Agriculture.

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

*Eligible commodities* means apricots, yellow cling peaches, pears, and tomatoes.

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

*Members* means a grower that grew or produced, under a contract, an eligible commodity for TVG as a member of that cooperative during crop year 2000.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

*Tri Valley Growers or TVG* means the insolvent agriculture cooperative that operated in the State of California under that name and contracted with members for the marketing of 2000 crop year fruits and vegetables.

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

**§ 1481.4 Time and method of application.**

(a) FSA will mail an application form, CCC–870, from the Price Support

Division located in Washington, D.C. to members of TVG that had a contract to produce an eligible commodity during crop year 2000. The mailed application will contain preprinted information obtained from TVG. Members of TVG may request an application form, CCC–870, from the California State FSA Office if an application is not received by mail seven business days after the start of the application period in person, by phone, by mail, or by facsimile. Members may obtain an application form, CCC–870, from the USDA eForms website at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov) seven business days after the start of the application period if an application is not received by mail. The application downloaded from the USDA eForms website will not have preprinted information; therefore, members will need to provide the appropriate information. The California State FSA Office will only need to receive one application per TVG member. The address for the California State FSA Office is in section 12A and 12B of the application form. FSA will verify the information provided.

(b) A request for payments under this part must be submitted on a completed application form. That application should be submitted to the California State FSA Office and must be received by the California State FSA office by close of business on April 6, 2001.

Applications not received by the close of business on April 6, 2001, will be returned as not having been timely filed and the member will not be eligible for payments under this program.

(c) The members of TVG requesting payments under this part must certify with respect to the accuracy and truthfulness of the information provided in their application for payments. All information provided is subject to a spot check and other verification by FSA.

Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Furnishing the data is voluntary; however, without it program payments will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

**§ 1481.5 Eligibility.**

(a) To be eligible to receive a payment under this part, a member of TVG must:

(1) Have suffered financial losses during crop year 2000 on eligible commodities under contract with TVG.

(2) Apply for a payment during the application period.

(b) Payments may be made for losses suffered by an eligible member who is

now deceased or is a dissolved entity if a representative who currently has authority to act on behalf of the members, to the extent permitted by provisions of rules common to CCC programs. Proof of authority to sign for the deceased producer or dissolved entity must be provided. All members of a partnership or joint venture seeking benefits, or their duly authorized representatives, must sign the application for payment. If the entity has been dissolved all persons seeking payment because of the activities of that entity, or their representatives, must sign the application.

(c) Members must submit a timely application and comply with all other terms and conditions of this part and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application form to be eligible for a payment under this part.

#### **§ 1481.6 Availability of funds.**

The total available program funds shall not exceed \$20 million as provided by section 843, as amended, of Public Law 106-387.

#### **§ 1481.7 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, payments under this part may be made to members who suffered eligible 2000-crop year financial losses, because of the insolvency of TVG. Information that was provided to FSA by TVG will be preprinted on the application form, CCC-870. Payments will be calculated after the conclusion of the application period, and shall be made in an amount determined by:

(1) Having the member verify the eligible contracted commodities, the original dollar amount expected from TVG (calculated from TVG's final base price per commodity and the producer's contract production per commodity). The final base prices are fixed and no other price will be used to calculate the payments. The final base prices per ton to be used are \$330 for apricots, \$233 for yellow cling peaches, \$243 for pears, and \$48.50 for tomatoes. Contract production, final base price data and payments made to members of TVG for their 2000 crop year contract have been obtained from TVG.

(2) Having the member verify the dollar amount received from TVG and the dollar amount received from any other source for the production that was under contract for the 2000 crop year with TVG.

(3) Once the member verifies the relevant dollar amounts, FSA will calculate payments to individual

members. Payments will be calculated by subtracting both the dollar amount received from TVG and the dollar amount received from any other source from the original dollar amount expected from TVG (calculated from TVG's final base price per commodity and the producer's contract production per commodity) on the contracted commodities. The difference will be considered to be the member's gross total loss for program purposes.

(4) The gross payment amount for the producer shall not exceed 50 percent of the member's gross total loss (authorized by the Act). At the close of the application period, if necessary, a uniform payment factor will be established so that total outlays will not exceed the \$20 million in funds available under this program. The uniform payment factor will be determined based on the factoring of the available funds of \$20 million divided by the total eligible losses suffered.

(b) [Reserved]

#### **§ 1481.8 Offsets.**

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the member, the member's commodity, or proceeds thereof, in favor of the producer or any other creditors, including agencies of the U.S. Government.

(b) The regulations governing offsets and withholdings found at 7 CFR part 1403 shall not be applicable to this part.

(c) Any payments received by a member of TVG are not subject to assignments, administrative offsets or withholdings, including administrative offset under chapter 37 of title 31, United States Code, as provided by P.L. 106-387.

#### **§ 1481.9 Appeals.**

Any member who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

#### **§ 1481.10 Misrepresentation.**

(a) Whoever issues a false document or otherwise acts in violation of the provisions of this program so as to enable a member to obtain a payment to which such member is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of, or assistance in the issuance of, a false document or the

making of, or assistance in the making of, a false statement in an application for payment or other document, for the purpose of enabling a person to obtain a payment to which such person is not entitled, may subject the person issuing such document or making such statement, or assisting in such acts, or benefitting from such acts, to liability under applicable Federal civil and criminal statutes. Such person shall also be liable for a refund of all program payments made along with any other person who is also liable for such repayments.

#### **§ 1481.11 Maintaining records.**

Members making application for a payment under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified for the program. Such records and accounts are subject to spot-checks and must be retained for three years after the date of payment to the producer under this program and any disposition after that time is at the risk of the producer if there is cause to believe that there are program matters at issue or which could become at issue.

#### **§ 1481.12 Estates, trust, and minors.**

(a) Program documents purportedly executed by a person legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible producer of the eligible commodities shall be eligible for assistance under this part only if such producer meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1481.13 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a producer that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

**§ 1481.14 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 the application or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the application or this part, all payments made under this part to any member shall be refunded to CCC together with interest as determined in accordance with this section and late payment charges as provided in part 1403 of this chapter.

(b) All members signing an application for payment as having an interest in such payments shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part. Reference in this part to "application" and "form application" shall be taken to be interchangeable.

(c) Interest shall be applicable to refunds required of any producer under this part if CCC determines that payments or other assistance were provided to a producer who was not eligible for such assistance or determines that a refund is due for any other reason. Such interest shall be charged at the rate of interest that the United States Treasury charges the CCC for funds, as of the date CCC made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. 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) In addition, late payment interest shall be assessed on all refunds in accordance with the provisions of part 1403 of this chapter.

(e) Members must refund to CCC any excess payments made by CCC with respect to such application.

Signed in Washington, D.C., on March 6, 2001.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 01-6179 Filed 3-8-01; 3:28 pm]

**BILLING CODE 3410-05-P**

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 72**

**RIN 3150-AG67**

**List of Approved Spent Fuel Storage Casks: HI-STAR 100 Revision**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the Holtec International HI-STAR 100 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 2 to the Certificate of Compliance (CoC). Amendment No. 2 revises the HI-STAR 100 cask system Appendix B of the Technical Specifications (TS), Item 1.4.6, "Specific Parameters and Analysis for the Storage Pad and Foundation" to simplify the language of this specification. The current 60-g limit for cask drop and tipover events in TS Item 1.4.6 would remain unchanged. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI-STAR 100 cask system, as amended, under a general license.

**DATES:** The final rule is effective May 29, 2001, unless significant adverse comments are received by April 12, 2001. If this rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, 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 be examined at the NRC Public Document Room located at 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also

available electronically at the NRC's 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 the NRC's public documents. An electronic copy of the proposed CoC and preliminary Safety Evaluation Report (SER) can be found in ADAMS under Accession No. ML003770774. For more information, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209, 202-634-3273 or by email to [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 (NWSA), requires that "[t]he Secretary [of the Department of Energy] 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 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 NWSA 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, 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 dry storage cask designs.

The NRC subsequently issued a final rule on September 3, 1999 (64 FR 48274), that approved the HI-STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and