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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

RIN 0560–AH38

Grains and Similarly Handled Commodities-Marketing Assistance Loans and Loan Deficiency Payments for the 2006 Through 2007 Crop Years; Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing the Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) Program of the Commodity Credit Corporation (CCC). These amendments affect regulations governing: (1) Beneficial interest with respect to eligible commodities delivered to facilities other than licensed warehouses, such as feedlots, ethanol plants, wool pools, and other facilities determined by CCC to be the end user of the commodity; (2) the announcement of the adjusted world price (AWP) for rice; (3) CCC lien searches and the fees necessary to record and file liens on marketing assistance loans; (4) the liability of a producer who improperly disposes of pledged loan collateral for a CCC farm-stored loan; (5) producers' responsibilities for requesting loan deficiency payments; and (6) general eligibility requirements for cotton pledged as collateral for a marketing assistance loan.

DATES: *Effective Date:* This rule is effective June 6, 2006.

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SUPPLEMENTARY INFORMATION:

I. Statutory Background

Since the enactment of the Agricultural Act of 1949, the major activity of CCC has been the administration and implementation of nonrecourse loans to producers of major agricultural commodities. Generally, Congress established loan rates for certain commodities on a per unit basis, e.g. $1.95 per bushel for corn or $.52 per pound of upland cotton for the 2004 through 2007 crop years. Under a nonrecourse loan provisions, the producer may satisfy the loan obligation through forfeiture to CCC of the commodity pledged as collateral for the loan. Thus, if the per unit market price of the commodity was less than the Congressionally established loan rate, the producer could satisfy the loan obligation by delivery of the pledged commodity to CCC. Since the inception of nonrecourse loans, producers could only pledge as collateral for securing the nonrecourse loan commodities that were not subject to liens. If such liens existed on the commodity pledged as collateral, lien waivers were required to be obtained from all lien holders to ensure CCC's interest was fully protected. Also, since the inception of these loans, in order to make certain that the benefits of these loans go to the producers and no other party, CCC made nonrecourse loans to only those producers that maintain ''beneficial interest'' in the commodity at the time the loan is made and maintain beneficial interest throughout the loan period.

Beneficial interest has been viewed by CCC as consisting of three attributes which include:

- Title;
- Risk of loss; and
- Control.

Accordingly, at the time the producer requested a loan from CCC, through the earlier of loan repayment or loan maturity, the producer must own the commodity, have all risk in the commodity (if there is a loss in either the quantity or quality of the commodity), and retain all decision making and rights to the movement and disposition of the commodity. This key component of the CCC loan program is recognized by Congress as evidenced in sections 1204(f) and 1307(d)(2) of the 2002 Act. Related to this concept is that commodities that are purchased, substituted for another commodity of the same type, bartered, or processed, or altered from it's natural form may not be pledged as collateral for CCC loans. This concept is embodied in section 1201(b) of the 2002 Act, which limits the availability of CCC marketing assistance loans to the ''quantity of a loan commodity produced on the farm.''

Since 1949, commodities pledged as collateral for these loans could be stored on the producer's farm or in approved warehouses. Historically, approved warehouses have been warehouses that entered into storage agreements with CCC that set forth terms and conditions regarding: (1) Financial aspects of the warehouse; (2) rates that are applicable to the storage of CCC-owned inventory and CCC loan collateral; (3) handling and delivery charges with respect to these commodities; and (4) related storage issues. Most States, as well as the Department of Agriculture (USDA), have a warehouse licensing regime for the storage of agricultural commodities. An entity wishing to engage in storing these commodities must, in virtually all States, have a State or Federal license to engage in such business. These licensed entities issue warehouse receipts that evidence ownership of commingled commodities. Generally, those non-licensed entities in States with licensing programs may not store agricultural commodities on behalf of producers but are free to purchase commodities from producers. Accordingly, in such States, commercial feed lots, ethanol plants, wool pools and other entities that are the ''end users'' of the commodity are not licensed warehouses and, therefore, may not store commodities on behalf of producers. Similarly, CCC considers producers to have lost beneficial interest in the commodity upon delivery to such facilities and producers may not pledge as collateral for a CCC loan, commodities delivered to these facilities (except as provided for by the 2002 Act). In those States that do not have such a licensing regime, warehouses must still follow State laws relating to bailment

and storage. The State laws relating to bailment and storage may vary from State to State.

As a result of the accumulation of large quantities of commodities forfeitures under nonrecourse loans, in the mid-1980's Congress instituted a fundamental change to CCC loan programs when market prices are below the CCC loan rate. In addition to allowing producers the option to forfeit the commodity pledged as collateral for nonrecourse loans, producers were also allowed the opportunity to repay the nonrecourse loan at a price determined by CCC and to retain any difference between the amount of the loan made by using the established county loan rate and the repayment of the loan at the market price. These loans are referred to as ''marketing assistance loans''.

Nine-month marketing assistance loans are made available under the 2002 Act for specified commodities. Most CCC commodity loans are marketing assistance loans with the exception of nonrecourse loans made available to sugar processors. Marketing assistance loans accomplish two objectives. First, they provide producers with interim financing to continued farming operations without having to market their crop during periods of low market prices. Second, these loans facilitate the orderly marketing and distribution of commodities throughout the year. As a result of this lower repayment option, CCC takes possession of less than .4 percent of the commodities pledged as collateral for marketing assistance loans.

Eligible producers may request a marketing assistance loan on or before the final loan availability date for the applicable commodity. Eligible commodities pledged as collateral for a marketing assistance loan must be free and clear of all liens and encumbrances and no additional liens or encumbrances may be placed on the commodity after the marketing assistance loan is approved. The amount of the monetary gain that producers may obtain by repaying CCC marketing assistance loans at repayment rates below their established county loan rate can be substantial. Therefore, there is a significant incentive for a producer to obtain these loans solely for this benefit; however, both the producer and CCC incur costs in completion of the loan transaction due to costs associated with lien searches and lien filing fees as well as USDA personnel costs incurred in processing these loans. To reduce the costs associated to the delivery of this benefit, producers may simply request that a payment be made to them in an amount equal to what would be realized if the loan had been made and immediately repaid at the lower repayment rate. In return for the payment, referred to as ''loan deficiency payment (LDP), the producer agrees that the quantity of the commodity which was used in determining the payment will not be pledged as collateral for a CCC marketing assistance loan.

The LDP amount is equal to the established loan rate for the applicable loan commodity less the repayment rate multiplied by the eligible quantity of the commodity. With respect to commodities such as cotton, wheat, rice, feed grains, minor oilseeds, wool, mohair and pulse crops; section 1205 of the 2002 Act provides that these payments are made with respect to ''producers on a farm that, although eligible to obtain a marketing assistance loan under section 1201 with respect to a loan commodity in return for loan deficiency payments * * *.'' A similar provision is set forth in section 1307 of the 2002 Act for producers of peanuts. With some technical exceptions for cotton, an LDP may be made to a producer only if the commodity could otherwise serve as collateral for a CCC marketing assistance loan.

II. The 2002 Farm Security Rural and Investment Act—Legislative Mandates

The manner in which agricultural commodities are marketed and used has changed substantially since the enactment of the Agricultural Act of 1949. Changes in commodity marketing and use have been driven in part by the dramatic consolidation in farm operations since the middle 1900's. Advances in agronomics and technology, including biotechnology, have allowed producers to significantly expand the sizes of their operations and benefit from crop specialization and economies of scale. Coincident to this have been structural changes in the livestock and poultry feeding sectors and the remarkable growth in ethanol production. These changes have pushed larger and larger quantities of agricultural commodities into commercial marketing channels and away from the primary on-farm uses of the early 1900's.

Based on the U.S. Census of Agriculture, the number of U.S. farms dropped from 5.4 million in 1950 to 2.1 million in 2002.[1] Much of the loss in farm numbers, however, occurred by the mid-1970's.[2] The 1974 Census of Agriculture reported 2.3 million farms.[3] Despite the slowing decline in farm numbers, the size of farm operations continues to grow. In 1974, there were 32,752 farms with 1,000 acres or more land. In 2002, there were 176,990 farms with 1,000 acres of more land. The number of farms with 2,000 acres or more increased more than 13 fold during this time, going from only 5,862 farms in 1974 to 77,970 farms in 2002.

Accompanying this consolidation in farm numbers and growth in farm size has been a similarly dramatic consolidation in the livestock and poultry feeding sectors. Based on the U.S. Census of Agriculture, 3 out of every 4 farms had cattle and 1 out of every 2 farms had hogs in 1950. In 2002, only 1 in every 2 farms had cattle, and only 1 in every 25 had hogs. Numbers are just as dramatic for poultry. In 1950, 4 of every 5 farms had chickens or turkeys. In 2002, only 1 out of every 14 farms had chickens or turkeys. The consolidation of cattle, hog, and poultry feeding into fewer and larger capital-intensive operations has shifted feed use away from the farms where grains and oilseeds are produced. This has left grain and oilseed producers increasingly reliant on commercial grain marketing channels as outlets for their production and sources of their revenue.

Figure 1 demonstrates the significant impact these structural changes have had on the amount of grain used on the farms where it is produced. During the 1949/50 marketing year just more than half of all grain and oilseed (wheat, corn, barley, oats, rye, sorghum, rice, and soybeans) production was consumed on the same farms where it was produced. Since then, while production of these commodities has increased more than 3 fold, the amount used on the same farm where it was produced has dropped by more than one-third. The bulk of this decline in on-farm use reflects consolidation in livestock and poultry feeding and specialization in grain and oilseed farming. It also reflects the phenomenal expansion in fuel ethanol production which has grown from a negligible share of domestic corn use in the 1970's to more than 12 percent of domestic use during the 2004/05 marketing year. Less significant, but also affecting this decline in on-farm use has been the shift away from bin-run seed in the small grains and soybeans as commercial seed

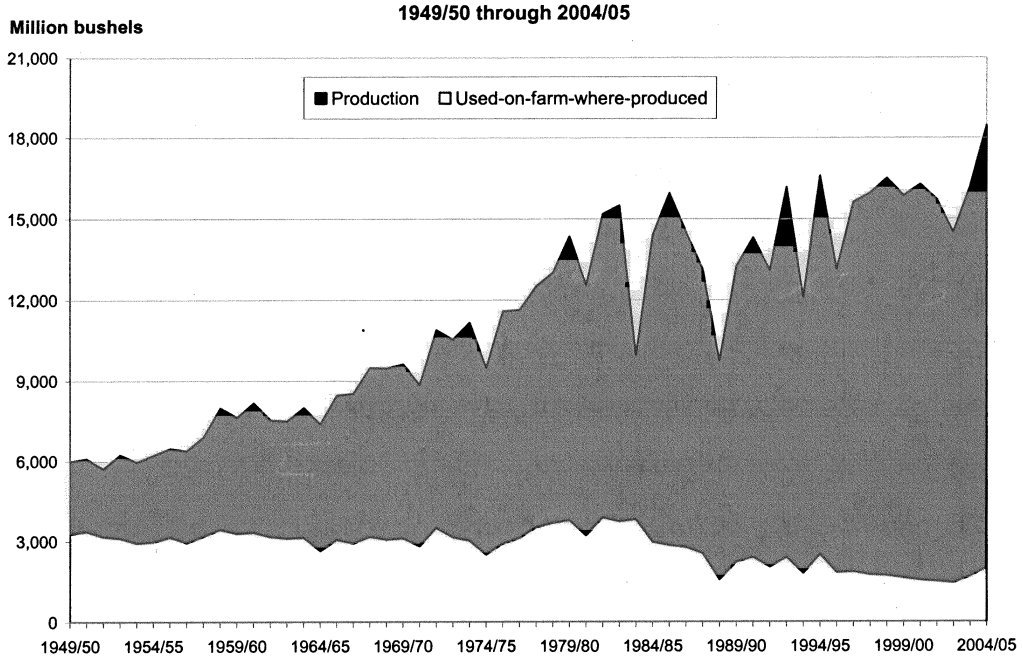
[1] U.S. Bureau of the Census, *U.S. Census of Agriculture:* 1950. Vol. II, General Report, Statistics by Subjects. U.S. Government Printing Office, Washington, DC, 1952.

[2] National Agricultural Statistics Service, *2002 Census of Agriculture.* Summary and State Data. Vol. 1, Geographic Area Series, Part 51. U.S. Department of Agriculture, Washington DC, June 2004.

[3] Bureau of the Census, *1974 Census of Agriculture.* Vol. I, Part 51, United States Summary and State Data. U.S. Department of Commerce, Washington DC, December 1977.

varieties have become ever more dominant.

Figure 1--Wheat, Feed Grain, Rice, and Soybean Production and Used-on-farm-where-produced 1949/50 through 2004/05

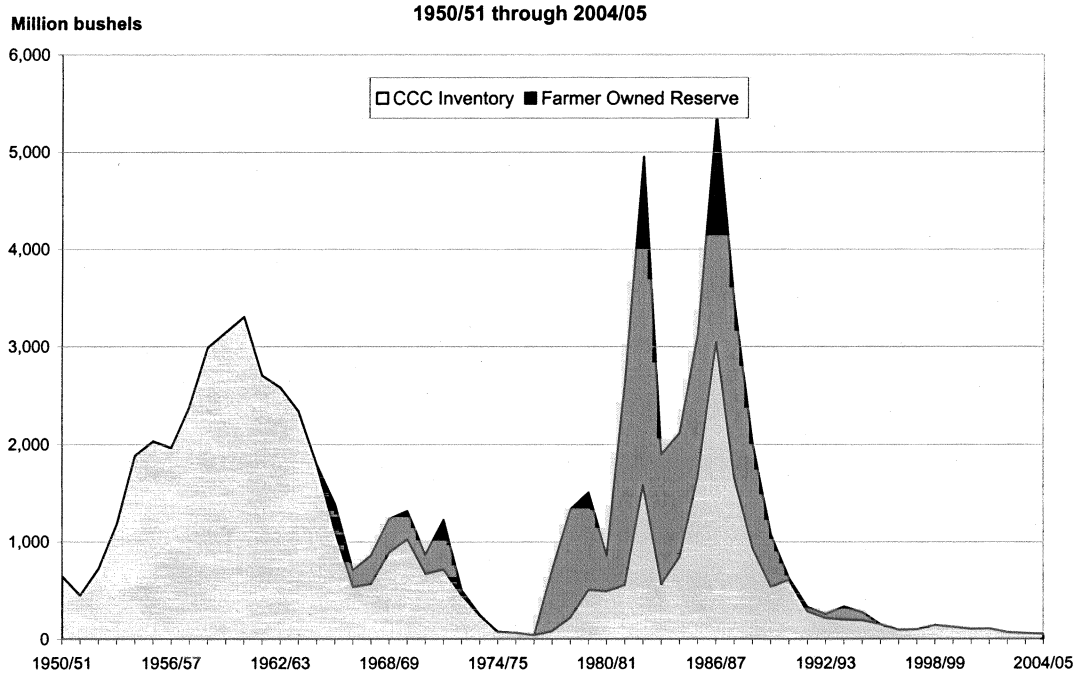


Source: Production is from USDA-NASS. Used-on-farm-where-produced for 1949-1978 is from USDA-NASS. Used-on-farm-where-produced for 1979 and later is based on analysis of USDA-ERS Agricultural Resource Management Survey data.

The decline in on-farm use has substantially increased the volume of grain moving through commercial marketing channels. In the early 1950's, 50 percent of all grain and oilseed production was sold commercially. In recent years, 90 percent of all grain and oilseed production has been sold commercially. As on-farm use has fallen since 1949/50, the volume that is marketed commercially has increased 6 fold, twice the 3 fold increase in production.

CCC nonrecourse loan provisions have been modified over the years to better reflect the needs of producers who must respond to these changes in commodity marketing and use. Particularly important in this regard has been the marketing assistance loan provisions which have given CCC tools like alternative marketing loan repayment rates and the LDP which have significantly reduced the quantity of loan collateral forfeited to CCC. With greater ability to minimize forfeitures, CCC inventories and quantities of grains and oilseeds otherwise controlled by CCC have declined dramatically since the 1980's, as shown in Figure 2.

Figure 2--Grain and Oilseed Marketing-year-end CCC Inventory and Farmer Owned Reserve 1/
1950/51 through 2004/05



1/ Includes wheat, corn, barley, oats, rye, sorghum, rice, and soybeans.
Source: USDA-Commodity Credit Corporation

Congress has recognized the impact that changing agricultural commodity markets have had on producers and CCC's ability to ensure that all producers of major commodities are eligible for marketing assistance loan benefits. Congress included special provisions in the 2002 Act to address specific situations that result in producers becoming ineligible for these benefits or to provide other assistance in lieu of such benefits. These provisions of the 2002 Act are set forth in sections 1201(c); 1204(h); 1205(a)(2),(f); 1206; 1209; and 1307(c)(2), and 1307(e)(4)(B).

Treatment of Certain Commingled Commodities

Section 1201(c) of the 2002 Act states:

> ''* * * the Secretary shall make loans to producers on a farm that would be eligible to obtain a marketing assistance loan, but for the fact the loan commodity owned by the producers on the farm commingled with loan commodities of other producers in facilities unlicensed for the storage of agricultural commodities by the Secretary or a State licensing authority, if the producers obtaining the loan agree to immediately redeem the loan collateral in accordance with section 166 of the Federal Agriculture Improvement and Reform Act of 1996 (U.S.C. 7286).''

This provision recognizes that producers who deliver a commodity to a facility where the commodity is commingled with commodities from other producers are ineligible for marketing assistance loans and loan deficiency payments if the facility is not authorized by State or Federal law to store such commodities for the benefit of producers. This provision provides a limited opportunity for producers who deliver their commodities to a facility such as a feedlot, ethanol plant, wool pool, or other facilities to receive benefits associated with the use of CCC-issued commodity certificates to acquire commodities pledged as collateral for a CCC marketing assistance loan so long as the loan making transaction and certificate exchange transaction authorized by section 166 of the Federal Agriculture Improvement and Reform Act of 1996 occur at the same time. Again, this provision takes into consideration that producers who deliver commodities to these facilities lose beneficial interest in the commodity upon delivery. Such facilities are not authorized to act as bailees with respect to the commodity and, similarly, may not issue documents presenting title to another party on behalf of the person delivering the commodity to the facility. CCC has administered this provision through the use of Form CCC–677, Farm Storage Note and Security Agreement, and has not set forth specific provisions in 7 CFR part 1421, but has utilized the regulations at 7 CFR part 1401 with respect to commodity certificate exchanges.

Good Faith Exception to Beneficial Interest

Section 1204(f) of the 2002 Act provides relief to those producers of 2001 crops of commodities for which marketing assistance loans were obtained but had lost beneficial interest in the commodity prior to the repayment of the loan. This relief was further restricted to those producers who acted in good faith, but had nonetheless not complied with program regulations, and provided that the producer be allowed to receive program benefits as of the date beneficial interest was lost. Since this provision was viewed to be self-enacting and applicable for only the 2001 crop year, the regulations at 7 CFR part 1421 do not contain any references to these sections of the 2002 Act.

Unshorn Lamb Pelts, Hay and Silage

Section 1205(a)(2) of the 2002 Act states:

> Non-graded wool in the form of unshorn lamb pelts and hay and silage derived from a loan commodity are not eligible for a marketing assistance loan under section 1201. However, effective for the 2002 through 2007 crop years, the Secretary may make loan deficiency payments available under this section to producers on a farm that produce unshorn lamb pelts or hay and silage derived from a loan commodity.

Section 1205(b) sets forth the rates to be used in making these payments. This provision takes into account that some

producers of a commodity that could be used to obtain a marketing assistance loan, but for the manner in which it was processed by the producer, could still be used to obtain a loan deficiency payment. The need for this provision is best understood by looking at corn that is used as silage. Corn that is harvested in a ''whole kernel'' form may be pledged as collateral for a marketing assistance loan and in the event the loan is not repaid at the end of nine months, CCC can take possession of the corn, which will, assuming proper care has been taken during the nine months, be in the same condition as when the loan was made. But, in the case of silage, the entire corn stalk is harvested and the stalk and the corn kernel are intermingled and chopped, which renders the corn worthless to CCC in the event of forfeiture; however, the corn silage is merchantable mostly for feeding purposes. Therefore, producers may obtain a loan deficiency payment by submitting a request for benefits using either form CCC–633 LDP, or CCC–709 for silage and hay; and CCC–633 Pelt or CCC–709 Pelt for unshorn lamb pelts, and the regulations at 7 CFR 1421.200(c) and (d).

Special Loan Deficiency Payment Rules for 2002 Crop Year Commodities

Sections 1205(f) and 1307(c)(2) of the 2002 Act provide special rules for the 2002 crops of wool, mohair, honey, dry peas, lentils, small chickpeas; and peanuts, respectively, in recognition of the extension in the 2002 Act of marketing loan and loan deficiency payment benefits to producers of these commodities who may have lost beneficial interest in the commodity prior to the issuance of regulations used in the administration of these programs. These provisions are reflected in 7 CFR 1421.6(b) and (c).

Grazing Payments in Lieu of Loan Deficiency Payments

Section 1206 of the 2002 Act provides that a producer of the 2002 through 2007 crops of wheat, barley, and oats who is otherwise eligible to receive a loan deficiency payment for such a crop but, instead of harvesting the commodity ''elects to use acreage planted to the wheat, barley, or oats for the grazing of livestock'' (and producers of triticale) to receive a payment based upon the loan deficiency payment rate in effect for such commodity (with respect to triticale, since there is no such rate, the wheat payment rate is used) on the date the producer signs an agreement with CCC to participate in this special program. Again, this provision is intended to provide assistance to producers without altering their normal production patterns, and is carried out by CCC through the use of Form CCC–633, Grazing, and the regulations at 7 CFR 1421.300 though 307.

Recourse Loans for High Moisture Corn and Grain Sorghum and Seed Cotton

Section 1209 of the 2002 Act provides that CCC will make available recourse loans to producers of 2002 through 2007 crops of high moisture corn and grain sorghum. Similar to corn harvested as silage, corn and grain sorghum harvested with a high moisture content are not suitable for delivery to CCC in the event of a forfeiture of a marketing assistance loan. Commodities with a high moisture content deteriorate in condition quickly and have never been accepted by CCC in satisfaction of a nonrecourse loan. However, the harvesting of corn and grain sorghum in such a state is a normal production practice, and under section 1209 producers of these crops may receive low interest nine-month recourse loans from CCC. Such commodities may not be pledged as collateral for a marketing assistance loan, and thus, also are not eligible for a loan deficiency payment. The regulations used to administer this provision are found at 7 CFR 1421.115 and CFR 1427, Subpart D, for seed cotton recourse loans. The loan agreements are Forms CCC–677, Farm Storage Note and Security Agreement and CCC–881, for cotton seed loans.

III. Major Changes

In administering Title I of the 2002 Act for marketing assistance loans and loan deficiency payments, CCC has decided to amend 7 CFR parts 1421 and 1427 to account for the evolution of marketing patterns in those commodities subject to these regulations, and remove necessary burdens on producers of such commodities to obtain a marketing assistance loan or loan deficiency payment. Similar amendments are made in 7 CFR part 1427 to clarify determinations of whether a producer maintains beneficial interest in cotton tendered for a nonrecourse loan and for liquidated damages assessed when there is a breach of the CCC loan agreement or loan deficiency payment agreement.

In order to: (1) Enhance the manner in which marketing assistance loans and loan deficiency payments are made to producers by CCC; (2) provide greater clarity with respect to the manner in which the marketing assistance loan and loan deficiency payment provisions of the 2002 Act are set forth in program regulations; and (3) reduce unnecessary regulatory burdens on producers, the following revisions are made in 7 CFR parts 1421 and 1427.

A. Rice Adjusted World Price Announcement Time (1421.10 Market Rates)

Loan rates for farm-stored rice, or rice for which the grade and milling yield are not determined, are based on state average grade and milling qualities for the prior five years. The warehouse-stored rice loan rates are based on class, quality, and milling yield determinations obtained from a grading and milling sample of the individual lot of rice. The national average rough rice loan rate is used to determine farm-stored loan proceeds in States other than the six major rice-producing States. Grade and quality factor discounts apply when rice is delivered to CCC upon loan maturity. CCC announces the rice adjusted world price (AWP) every Tuesday at 3 p.m. eastern standard time (EST). The AWP is used to determine the applicable repayment and LDP rates. If Tuesday is a Federal holiday or is not a Government workday, the AWP announcement is made on the next workday. Because the AWP is announced in the middle of a workday, marketing assistance loan repayments and loan deficiency payment requests are not accepted on Tuesday between 2 p.m. and 3 p.m. EST. This window of time is commonly referred to as the ''dead hour''. Marketing assistance loan repayments and loan deficiency payment requests received on Tuesday before 2 p.m. EST are based on the rate in effect before the 3 p.m. EST announced AWP. All marketing assistance loan repayments and loan deficiency payment requests received after 3 p.m. EST are based on the AWP announced on that Tuesday. This rule changes the AWP announcement time for rice to on or after 7 a.m. EST each Wednesday. The announced AWP will be effective upon announcement thus eliminating the ''dead hour'' requirement. As a result, 7 CFR part 1421.10(c)(5)(i) is revised and 1421.10(c)(6) deleted.

B. Handling Payments and Collections (1421.13)

7 CFR 1421.13 sets forth the policy of CCC in handling the issuance of marketing assistance loans and loan deficiency payments of $9.99 or less and the collection of debts arising from such loans and payments in amounts of $9.99 or less. This rule deletes this section since CCC routinely issues payments and loans regardless of amounts and CCC debt collection policies are already set forth at 7 CFR part 1403.

C. Liens and Filing of Security Interest and Financing Statements (1421.104)

Lien searches are conducted by CCC when a producer requests a marketing assistance loan. These searches are conducted to ensure that CCC will be able to obtain clear title to any commodity forfeited to CCC in satisfaction of a marketing assistance loan. Currently, CCC is responsible for the costs associated with conducting the lien search and the filing fees for the applicable financing statements. CCC surveyed FSA offices in all 50 States regarding the costs and it was determined that the average cost, per loan, to conduct a lien search and file a financing statement was approximately $17.00. Due to the major budget constraints facing the Department of Agriculture, a review was undertaken concerning policies regarding lien searches and the filing of financing statements to determine if these costs could be reduced. CCC conducted a comprehensive review of its loan-making actions and determined that in crop year 2003 only 112 of 37,246 farm-stored loans with a principal amount of $25,000 or less were satisfied by forfeiture of the loan collateral to CCC. (0.3%). Approximately, $633,182 was expended to file lien searches and record financing statements for those loans. Results of the review also indicated that the settlements and forfeitures have been very minimal over several crop years in comparison to the number of marketing assistance loans disbursed. Accordingly, this rule amends 7 CFR 1421.104 and 1427.12 to provide that CCC will conduct lien searches for all loans types greater than $25,000 and file financing statements only for farm-stored marketing assistance loan disbursements of $25,000 or more. CCC believes this will reduce costs without increasing CCC's risk of forfeitures. CCC may, however, conduct lien searches and file financing statements for loan disbursements less than $25,000 when there is reason to believe that CCC's interest will not be protected.

D. Personal Liability of the Producer (1421.109)

The terms of the marketing assistance loan agreements include provisions that obligate the producer to undertake certain actions. One of the more important provisions of the loan agreement is the requirement that the producer agrees to not remove or dispose of any quantity of commodity that is pledged as collateral for a CCC farm-stored loan without prior written approval from CCC. Such violations are referred to as ''unauthorized removal'' and ''unauthorized disposition.'' When the producer is determined to have committed a violation, the FSA County Committee, on behalf of CCC, must make a determination as to whether the producer acted in ''good faith'' in moving or disposing of the loan collateral in violation of the loan agreement. If the FSA County Committee determines the producer acted in ''good faith,'' a producer with two or fewer violations must repay the marketing assistance loan quantity involved in the violation at the lesser of principal plus interest, or the applicable announced alternative repayment rate in effect on the date the violation occurred, plus liquidated damages in an amount equal to 10 percent of the loan rate. CCC has found it very difficult to determine the exact date in which a violation may have occurred. Therefore, this rule amends 7 CFR 1421.109 to provide that the producer must repay the marketing assistance loan quantity involved in the violation based on the repayment rate in effect on the date the violation was discovered by CCC. If CCC determines that there had been an unauthorized removal or disposition of loan collateral after the loan had been repaid, such action will be considered a violation for purposes of future administration of this provision. With respect to instances in which a producer has committed two such violations, CCC has also determined that liquidated damages in an amount equal to 25 percent of the loan rate is excessive and this rule will reduce this amount to 10 percent.

E. Loan Deficiency Payments (1421.200; 1427.23)

Loan deficiency payments made under 7 CFR parts 1421 and 1427 are currently requested by producers by using: (1) Form CCC–709 Field Direct LDP; (2) Form CCC–633 LDP; (3) CCC–633 Pelt; (4) CCC–709 Pelt; (5) Cotton AA; and through the online CCC eLDP process. Each crop year, numerous producers fail to submit an applicable loan deficiency payment request for program benefits before beneficial interest is lost in the commodity. Producers and other members of the agricultural industry have attributed the loss of benefits to the use of multiple forms to obtain the same benefit and the lack of understanding about beneficial interest. In an effort to simplify this process, CCC recently issued a new form, Form CCC–633 EZ, Loan Deficiency Payment (LDP) Agreement and Request, for use in the 2005 and subsequent crop years. The CCC–633 EZ is a two part form consisting of an agreement which is page 1 of the CCC–633 EZ and a request for benefits which is either page 2, 3, or 4, depending on the requested commodity. Form CCC–633 EZ, Page 1 allows the producer to indicate their intentions to receive loan deficiency payments at a time well in advance of the time that they could inadvertently lose beneficial interest. The CCC–633 EZ, Page 1, Agreement, must be filed in the applicable FSA Service Center before loss of beneficial interest. A producer may submit the CCC–633 EZ, Page 1, Agreement, prior to the harvest, shearing or slaughter of the commodity (but not before the applicable crop year) throughout any time during the marketing assistance loan availability period. The request for LDP benefits page must be submitted before the applicable final loan availability date; however, the request for benefit (pages 2, 3 or 4) can be submitted either before or after loss of beneficial interest. This form became available for the 2005 crop year. Accordingly, this rule amends 7 CFR 1421.200 and 1427.23 to set forth policies associated with the use of the new CCC–633 EZ form.

F. Loan Deficiency Payment Rates

In order to more accurately reflect variations in market prices for the same commodity that reflect the geographic location of a producer's farm, CCC has historically established loan rates on a county-by-county basis for many commodities. This creates a situation where a crop may be produced in a county but is stored or marketed in a different county with a different loan rate. Section 7 CFR 1421.201 is revised to clarify that, in those instances where a commodity is stored in a county other than where the commodity was produced, the loan deficiency payment rate will be the rate for the county where the commodity is stored or marketed.

G. Beneficial Interest

As noted in the background discussion in this preamble, the concept of ''beneficial interest'' is a core feature of the CCC nonrecourse loan programs since 1949, is embodied in the 2002 Act, and consists of three parts: Title to the commodity must be with the producer; control of the commodity must remain with the producer; and the producer must retain risk of loss in the commodity in the event of its destruction. For many years, this provision was readily applied as the commodities subject to 7 CFR parts 1421 and 1427 were either used as feed by a producer on the producer's farm or delivered to a warehouse for sale or storage. The sale would be a simple

transaction in which cash, or a check, would be received by the producer based upon the market price of the commodity upon the date of sale or delivery to the warehouse.

Over time, different marketing arrangements have emerged that impact the manner in which CCC administers these programs. One significant change made in the marketing assistance and loan deficiency payment programs occurred in the early 1990's as a result of litigation arising out of the bankruptcy of a major cotton merchant. Prior to this case, CCC had allowed producers who had sold their ''equity interest'' in their cotton to a merchant to still obtain a nonrecourse loan from CCC. Under this arrangement, the merchant tendered to the producer a nominal payment that allowed the merchant, at its option, the right to purchase from the producer cotton pledged as collateral for a CCC nonrecourse loan at anytime prior to the maturity of the loan. In order to effectuate the sale, the producer, or the merchant as agent of the producer, had to first redeem the loan collateral. If the loan was not repaid by the maturity date, CCC took possession of the cotton in satisfaction of the loan.

In the case that influences this change, a large cotton merchant had obtained ''equities'' from a significant number of cotton producers and had obtained financing from several financial institutions to fund its operations. Unable to fulfill its obligations, the merchant filed for bankruptcy and its creditors asserted, in essence, that their liens extended to all property rights of the merchants, including the ''equities'' purchased by the merchant, and that this interest extended to the cotton even after the maturity of the CCC loan. As a result of court opinions in this matter, which held that this interest did extend beyond the maturity of the loan, CCC amended the regulations in 7 CFR parts 1421 and 1427 to ensure that this practice did not impact its ability, in the event of a forfeiture of the commodity at maturity, to obtain clear title to the commodity. This change is set forth in 7 CFR 1421.6(a)(2)(i) and 1427.5(e)(2)(i) and allows a producer to enter into an option to purchase contract with a buyer so that the producer can enter into marketing contracts prior to the harvest of their crop. The key feature of these provisions is that the option to purchase must terminate the earlier of: (1) Maturity of the loan that is secured by the commodity; (2) the date CCC claims title; or (3) such other date that is provided for in the option.

Since the adoption of these provisions in 7 CFR 1421.6 and 1427.5, CCC has not incurred losses similar to those that previously occurred. During the past 15 years, changes have occurred in marketing practices in which producers are able to develop marketing strategies to reduce their risks and to maximize their returns in the market. For example, there has been a significant increase in the use of contracts, commonly referred to as deferred price contracts and price later contracts, which allow producers the opportunity to identify their buyers and establish a sales price prior to harvest. Generally, such a contract does not deprive the producer of the ability to obtain a marketing assistance loan or a loan deficiency payment so long as payment for the transaction does not occur before the loan is repaid or the LDP is requested. Existing regulations are not clear on how CCC views these contracts. This rule is not intended to restrict in any manner the ability of a producer to obtain nonrecourse loans or loan deficiency payments, but are made solely to provide greater transparency in the operation of these programs. Also, in the context of this review, CCC has concluded that there are virtually no situations in which a producer has risk of loss in a commodity but does not have control; in other words, if a producer has control of the commodity, there is some risk of loss. Thus, to simplify these determinations, 7 CFR 1421.6 and 1427.5 are amended to remove references to risk of loss and to clarify actions a producer may take in the marketing of a commodity prior to the maturity of CCC loan, or a request for a loan deficiency payment, and still retain title to and control of a commodity.

Section 1001, ''Definitions'' of the 2002 Act specifically provides that

> ''* * * In determining whether a grower of a hybrid seed is a producer, the Secretary shall not take into consideration the existence of a hybrid seed contract and shall ensure that program requirements do not adversely affect the ability of the grower to receive a payment under this title.

Similarly, there is a growing number of situations in which the owners of genetically-modified seed and other similar specialty seeds retain title to the seed after delivery of the seed to a producer for planting by the producer. These situations are due in large part to the need for the owner of the seed to retain title to the seed in order for such owner to protect its patent rights to the seed variety involved in the transaction. At harvest, there are various scenarios that may ensue with respect to the actions that a producer may exercise with the commodity produced from these seeds. In some cases the owner takes possession of the commodity at harvest while in other instances the commodity remains with the producer for some period of time and the owner may elect to take all or just a portion of the production. Also, in some cases the owner has right of ''first rejection'' when the producer intends to market the crop. While CCC has attempted to treat these various situations in such a manner so as to allow the producer to obtain a marketing assistance loan or loan deficiency payment with respect to such contractual situations, existing regulations do not set forth with clarity the manner in which CCC views the use of these contracts. Accordingly, 7 CFR parts 1421 and 1427 are modified to make clear that these types of contracts do not deprive a producer of these benefits so long as no payment has been received under the contract prior to the request for the marketing assistance loan or loan deficiency payment and so long as the commodity has not been delivered to another party under the contract.

H. Application of Regulations to Certain Situations

To provide producers and purchasers of commodities with a clearer understanding of CCC's policies, 7 CFR 1421.13 is also revised by setting forth provisions for making eligibility determinations in certain marketing situations. CCC believes that this will be especially beneficial in the administration of sections 1201(c) and 1205(a)(2) of the 2002 Act as they are applied to the delivery of feed grains to facilities such as feedlots, dairies, ethanol plants, and other locations where commodities are delivered by producers to facilities not authorized to issue warehouse receipts.

I. Typographical Error Correction

Section 1421.10 is also amended to correct a typographical error. Section 1421.10(b) and (c) were intended to set forth statutory criteria that are used in establishing loan repayment rates for specified commodities but, as currently published, such provisions inadvertently omit a portion of the relevant provisions of the 2002 Act.

J. Substitute and Purchase Commodities

In 7 CFR part 1421 provisions are added to section 1421.5 to clarify that substituted and purchased commodities are ineligible for marketing assistance loans and loan deficiency payments.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be not significant and has not been reviewed by the Office of Management Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule will preempt State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

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 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State. Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The changes in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. The regulation is available at FSA's Price Support Division internet site at *http://www.fsa.usda.gov/dafp/psd*. Applications may be submitted at the FSA county offices, by mail or by FAX. Loan Deficiency Payments may be submitted electronically at *http://www.fsa.usda.gov/dafp/psd*.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects

7 CFR Part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1427

Agricultural commodities, Cotton, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR parts 1421 and 1427 are amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

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

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart A—General

■ 2. Amend § 1421.1 by adding paragraph (e) to read as follows:

§ 1421.1 Applicability.

* * * * *

(e) The information collection requirements contained in this regulation (7 CFR part 1421) have been approved by the Office of Management and Budget under provisions if 44 U.S.C. chapter 35 and have been assigned OMB Numbers 0560–0009 and 0560–0036.

■ 3. Amend § 1421.5 by adding paragraph (f) to read as follows:

§ 1421.5 Eligible commodities.

* * * * *

(f) A commodity that is purchased, substituted, or acquired by sale, gift, exchange of an existing harvested, sheared, or slaughtered commodity, or through any other transaction is ineligible to be pledged as collateral for a marketing assistance loan; in addition a loan deficiency payment shall not be made with respect to such commodities.

■ 4. Section 1421.6 is revised to read as follows:

§ 1421.6 Beneficial interest.

(a) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or is requested for a loan deficiency payment. For the purposes of this part, the term ''beneficial interest'' refers to a determination by CCC that a person has the requisite title to and control of the commodity that is tendered to CCC as collateral for a marketing assistance loan or is the commodity that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in a commodity is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(b) Except as provided in paragraph (e) of this section, when requesting a marketing assistance loan for a loan commodity, in order to have beneficial interest in the commodity tendered as collateral for the loan, a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted (with respect to wool and mohair from time of shearing) through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the commodity from the time of planting (for wool and mohair from the time of shearing) through the maturity date of the loan. To have control of the commodity, such person must have complete decision-making authority regarding whether the commodity will be tendered as collateral for a loan, when the loan will be repaid, or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the commodity will be maintained during the term of the loan;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse approved in accordance with § 1421.103(c). Delivery of the commodity to a location other than to such an approved warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, or other facilities as determined by CCC will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been approved by CCC under § 1421.103(c).

(c) Except as provided in paragraph (e) of this section, when requesting a loan deficiency payment for a loan commodity, in order to have beneficial interest in the commodity a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted, with respect to wool and mohair from the time of shearing, or from the time of slaughter for unshorn pelts, through the date the producer has elected to determine the loan deficiency payment rate;

(3) Have control of the commodity. For control such person must have complete decisionmaking authority regarding whether a loan deficiency payment will be requested with respect to the commodity; when the loan deficiency rate will be selected; and where the commodity will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse approved in accordance with § 1421.103(c). Delivery of the commodity to a location other than to an approved warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, or unapproved storage facility, will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been approved by CCC under § 1421.103(c).

(d) Notwithstanding any provision of paragraphs (b) and (c) of this section and § 1421.5(f), in order to facilitate handling situations involving the death of a producer, CCC will consider an estate, heirs of the deceased producer, and a person to whom title to a commodity has passed by virtue of State law upon the death of the producer to have beneficial interest in a commodity produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(e) Notwithstanding any provision of paragraphs (b) and (c) of this section and § 1421.5(f), a person who purchases or otherwise acquires a commodity from a producer under any circumstances does not obtain beneficial interest to the commodity whether such purchase or acquisition is made prior to the harvest of the crop or after harvest; however, CCC will consider a person to have beneficial interest in a commodity if, prior to harvest, such person has obtained title to the growing commodity at the same time that such person obtained full title to the land on which such crop was growing;

(f) If marketing assistance loans and loan deficiency payments are made available to producers through an approved cooperative marketing association in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved cooperative marketing association or its member approved cooperative marketing association, except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved cooperative marketing association shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

(g) A producer will lose beneficial interest in a commodity if the producer receives any payment from any person under any contractual arrangement with respect to a commodity if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the commodity or control of the commodity prior to or after harvest, shearing, or slaughter unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the commodity and such option contains the following language:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the commodity and beneficial interest in the commodity as specified in 7 CFR 1421.6 shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such commodity;

(2) The date CCC claims title to such commodity; or

(3) Such other date as provided in this option.

(h) Inclusion in a contract of one or more of the following types of provisions will not result in the loss of beneficial interest in a commodity:

(1) A provision that allows the producer to select the sales price of the commodity at the time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred price contract or a price later contract; or

(2) A provision in contract between the producer and a warehouse approved in accordance with § 1421.103(c) for the storage of CCC loan collateral that provides the producer with no more than 15 days from the date of physical delivery of the commodity to the warehouse to elect whether the commodity is to be stored on behalf of the producer or is to be considered transferred to the warehouse, for example, a contract normally referred to as an open storage contract.

(i) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities, and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan and a loan deficiency payment may be made with respect to such production if, at the time of the request for such a loan or payment, the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

■ 5. Amend § 1421.10 by revising paragraphs (b)(2), (c)(2), and (c)(5) to read as follows, and removing paragraph (c)(6):

§ 1421.10 Market rates.

* * * * *

(b) * * *

(2) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the market prices at appropriate U.S. markets as determined by CCC, to: Minimize loan forfeitures of such commodities; minimize the Federal Government-owned inventory of such commodities; minimize the storage costs incurred by the Federal Government; allow such commodities produced in the United States to be marketed freely and competitively domestically and internationally; and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries. The alternative repayment rate may be adjusted to reflect quality and location for each crop of a commodity as follows:

* * * * *

(c) * * *

(2) To the extent practicable, CCC shall determine and announce periodically an alternative repayment rate for peanuts, wool, and mohair to: Minimize loan forfeitures of such commodities; minimize the Federal Government-owned inventory of such commodities; minimize the storage costs incurred by the Federal Government; allow such commodities produced in the United States to be marketed freely and competitively domestically and internationally; and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

* * * * *

(5) The adjusted world price for each class of rice, loan rate basis, shall be determined by CCC and announced, to the extent practicable, on or after 7 a.m. Eastern Standard Time each Wednesday or more frequently as determined necessary by CCC, continuing through the later of:

(i) The last Wednesday of July 2007; or

(ii) The last Wednesday of the latest month the 2007-crop rice loans mature, or

(iii) In the event that Wednesday is a non-workday, the determination will be made on the next work day, on or after 7 a.m. Eastern Standard Time.

■ 6. Revise § 1421.13 to read as follows:

§ 1421.13 Special marketing assistance loans and loan deficiency payments.

(a) Commodities stored in an unapproved storage facility may be pledged as collateral for a marketing assistance loan if the producer:

(1) Makes a request for the marketing assistance loan and obtains the commodity certificate to immediately exchange for the requested loan collateral at the same time at the county office that, under part 718 of this title, is responsible for administering the programs for the farm on which the commodity was produced.

(2) Submits the marketing assistance loan request and the commodity certificate exchange before or on the date of delivery to the unapproved facility.

(b)(1) Eligible producers of unshorn pelts produced from live sheep and hay and silage derived from an eligible loan commodity as provided in § 1421.5 are eligible to request unshorn pelt, hay, and silage quantities for a loan deficiency payment under subpart C of this part.

(2) Unshorn pelts, hay, and silage derived from an eligible loan commodity is not eligible to be pledged as collateral to obtain a marketing assistance loan under subpart B of this part.

Subpart B—Marketing Assistance Loans

■ 7. Amend § 1421.104 by revising paragraph (a) to read as follows:

§ 1421.104 Marketing assistance loan making.

(a)(1) CCC will conduct lien searches with respect to all commodities pledged as collateral for marketing assistance loan disbursements in amounts greater than $25,000 and perfect its security interest in such commodity as provided for under State law. With respect to marketing assistance loan disbursements of $25,000 or less, CCC may conduct a lien search when it is determined that CCC's interest is at risk and perfect its security interest in such commodity as provided for under State law. In all instances, if a producer has violated the provisions of this part in the crop year preceding the crop year in which the marketing assistance loan is being requested, CCC will conduct a lien search with respect to all commodities pledged as collateral for a marketing assistance loan and perfect its security interest in such commodity as provided for under State law.

(2) The cost for terminating the financing statement for marketing assistance loans disbursed under paragraph (a)(1) of this section before the end of the term shall be paid by the producer.

(3) If there are any liens or encumbrances on the commodity pledged as collateral for a marketing assistance loan made under this part, waivers that fully protect CCC's interest must be obtained even though the liens or encumbrances are satisfied from loan proceeds disbursed under this part. No additional liens or encumbrances shall be placed on the commodity after such a loan is approved.

* * * * *

■ 8. Amend § 1421.109 by revising paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 1421.109 Personal liability of the producer.

* * * * *

(d) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(e) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as a result of unauthorized

removal or disposition, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the marketing assistance loan which is commensurate to such quantity of the commodity. In the case of these violations, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages shall be assessed according to paragraph (d) of this section and the commodity involved in the violation must be redeemed at the lesser of:

(i) The rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement; or

(ii) The alternative repayment rate in effect on the date of the determination is issued by CCC that a violation has occurred, plus 15 percent of the original loan rate as provided on the note and security agreement.

(2) Did not act in good faith when the violation was committed, liquidated damages shall be assessed in accordance with paragraph (d) of this section, and administrative actions shall be taken in accordance with paragraph (h) of this section. The loan must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(f) When it has been determined that a violation of the terms and conditions of the note and security agreement has occurred as result of an incorrect certification, CCC will determine the quantity of the commodity involved with respect to such violation and require the repayment of that portion of the marketing assistance loan which is commensurate to such quantity of the commodity. In the case of an incorrect certification, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages shall be assessed according to paragraph (d) of this section, and the commodity involved in the violation must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(2) Did not act in good faith about the violation, liquidated damages shall be assessed in accordance with paragraph (d) of this section and administrative actions shall be taken in accordance with paragraph (h) of this section. The loan must be redeemed at the rate at which the loan was disbursed, plus interest and any other charges assessed under the note and security agreement.

(g) If the producer fails to pay such amount within 30 days from the date of notification of violations as provided in paragraphs (e)(1) and (f)(1) of this section, the producer must immediately repay the marketing assistance loan at the rate at which the loan was disbursed plus interest, and any other charges assessed under the note and security agreement.

(h) For violations subject to paragraphs (e)(2) and (f)(2) of this section, the producer must immediately repay the marketing assistance loan at the rate at which the loan was disbursed plus interest, and any other charges assessed under the note and security agreement. If the loan has already been repaid, any market gain previously realized on the loan, plus interest, must be refunded to CCC.

* * * * *

■ 9. Amend § 1421.112 by revising paragraph (a)(3) to read as follows:

§ 1421.112 Loan settlement.

(a) * * *

(3) If CCC sells the commodity described in paragraph (a)(1) and (a)(2)of this section in settlement of the marketing assistance loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. If CCC sells any commodity obtained by delivery or forfeiture under a non-recourse marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the commodity and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the commodity to CCC.

* * * * *

Subpart C—Loan Deficiency Payments

■ 10. Amend § 1421.200 by revising paragraph (c) to read as follows:

§ 1421.200 Applicability.

* * * * *

(c)(1) A producer must submit a completed request for a loan deficiency payment agreement and request form on or before the date beneficial interest is lost in the commodity and before the final loan availability date for the commodity. Producers must, on a form prescribed by CCC, indicate their intentions, in which the producer also agrees to the terms and conditions of the loan deficiency payment program, to receive a loan deficiency payment and submit the prescribed form to the FSA Service Center on or before beneficial interest is lost in such quantity. A producer may not obtain loan deficiency payment benefits, if the applicable form is not received in the FSA Service Center on or before beneficial interest is lost in the requested commodity.

(2) With respect to a request for a loan deficiency payment for unshorn pelts, a completed request for such a payment must be submitted on or before the earlier of the date of slaughter of the lamb or the loss of beneficial interest in the lamb or the unshorn pelt produced from the lamb. In addition, the lamb must have been owned for not less than 30 days prior to the date such application is filed with CCC and must have been slaughtered for personal use, or sold for slaughter and slaughtered within 10 calendar days after the sale.

* * * * *

■ 11. Amend § 1421.201 by revising paragraph (b) to read as follows:

§ 1421.201 Loan deficiency payment rate.

* * * * *

(b) The loan deficiency payment rate will be:

(1) For 2005 and preceding crop years, for loan deficiency payment other than field direct loan deficiency payments, the rate in effect in the county where the commodity is stored as of the day the producer submits to the FSA county service center a completed request for payments;

(2) For 2005 and preceding crop years, for field direct loan deficiency payments, the rate in effect for the county in which the farm is administratively located for CCC program purposes as of the date the commodity was delivered to a processor, buyer warehouse, cooperative marketing association, or similar entity.

(3) For 2006 and subsequent crop years, the loan deficiency payment rate in effect in the county where the commodity was marketed or stored on the date:

(i) The request for benefits is received in the FSA Service Center, if the producer retains beneficial interest in the quantity on that date.

(ii) Beneficial interest was lost, as determined by CCC and as provided in §§ 1421.6 and 1421.13, if on the date the request for benefits was received in the FSA Service Center the producer no longer has beneficial interest in the requested quantity.

* * * * *

■ 12. Amend § 1421.203 by revising paragraphs (a)(1), (b), and (c), deleting paragraph (d), and renumbering paragraphs (e) through (j) as paragraphs

(d) through (i), respectively. Revised paragraph (a)(1), (b) and (c) read as follows:

§ 1421.203 Personal liability of the producer.

(a) * * *

(1) When signing the Loan Deficiency Payment Agreement and Request, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation, that CCC will rely upon in determining a loan deficiency payment; and

* * * * *

(b) Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the loan deficiency payment.

(c) If CCC determines that the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed in accordance with paragraph (b) of this section and the producer must repay the loan deficiency payment applicable to the loan deficiency quantity involved in the violation and charges, plus interest applicable to the amount repaid. If the producer fails to pay such amount within 30 days from the date of notification the producer must repay the entire loan deficiency payment and charges plus interest.

(2) Did not act in good faith when the violation was committed, liquidated damages will be assessed in accordance with paragraph (b) of this section and the producer shall repay the entire loan deficiency payment and charges plus interest.

* * * * *

PART 1427—COTTON

■ 13. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931–7939; and 15 U.S.C. 714b and 714c.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

■ 14. Amend § 1427.5 by re-designating paragraphs (g) and (h) as paragraphs (m) and (n), respectively; revising paragraphs (e) and (f), and adding new paragraphs (g) through (l), to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(e) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the cotton that is tendered to CCC for a marketing assistance loan or loan deficiency payment. For the purposes of this part, the term ''beneficial interest'' refers to a determination by CCC that a person has the requisite title to and control of cotton that is tendered to CCC as collateral for a marketing assistance loan or is the cotton that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in cotton is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(f) Except as provided in paragraph (h) of this section, when requesting a marketing assistance loan, in order to have beneficial interest in the cotton tendered as collateral for the loan, a person must:

(1) Be the producer of the cotton as determined in accordance with § 1427.4;

(2) Have had ownership of the cotton from the time it was planted through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the cotton from the time of planting through the maturity date of the loan. To have control of the cotton, such person must have complete decision making authority regarding whether the cotton will be tendered as collateral for a loan, when the loan will be repaid or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the cotton will be maintained during the term of the loan; and

(4) Not have received any payment from any party with respect to the cotton.

(g) Except as provided in paragraph (h) of this section, when requesting a loan deficiency payment, in order to have beneficial interest in the cotton a person must:

(1) Be the producer of the cotton as determined in accordance with § 1427.4;

(2) Have had ownership of the cotton from the time it was planted through the date the producer has elected to determine the loan deficiency payment rate; and

(3) Have control of the cotton from the time of planting through the date the producer has elected to determine the loan deficiency payment rate. To have control of the cotton, such person must have complete decision making authority regarding whether a loan deficiency payment will be requested with respect to the cotton; when the loan deficiency rate will be selected; and where the cotton will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) Not have received any payment from any party with respect to the cotton; and

(5) If the cotton has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the cotton to a warehouse approved in accordance with § 1427.10. Delivery of the cotton to a location other than to such an approved warehouse will result in the loss of beneficial interest in the cotton on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day regardless of any other action or agreement between the entity where the cotton was delivered and the producer, unless such an entity has been approved by CCC under § 1427.10.

(h) Notwithstanding paragraphs (f) and (g) of this section, in order to facilitate the handling of situations involving the death of a producer, CCC will consider an estate and a person to whom title to cotton has passed by virtue of State law upon the death of the producer to have beneficial interest in the cotton produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(i) Notwithstanding paragraphs (f) and (g) of this section, a person who purchases or otherwise acquires cotton from a producer under any circumstances does not obtain beneficial interest to the cotton whether such purchase or acquisition is made prior to the harvest of the crop or after harvest except in one instance. CCC will consider a person to have beneficial interest in cotton if, prior to harvest, such person has obtained title to the growing cotton at the same time that such person obtained full title to the land on which such crop was growing;

(j) A producer will lose beneficial interest in cotton if the producer receives any payment from any person under any contractual arrangement with respect to cotton if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the cotton or control of the cotton prior to or after harvest unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the cotton and such option contains the following provision:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the cotton and beneficial interest in the cotton as specified in 7 CFR 1427.5 shall remain

with the producer until the buyer exercises this option to purchase the cotton. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such cotton;

(2) The date CCC claims title to such cotton; or

(3) Such other date as provided in this option.

(k) Absent other provisions causing the producer to lose beneficial interest in the cotton, inclusion in a contract of a provision that allows the producer to select the sales price of the cotton at the time the contract is entered into or at a later date, a contract normally referred to as a deferred price contract or a price later contract, will not result in the loss of beneficial interest in the cotton.

(l) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan and a loan deficiency payment may be made with respect to such production if at the time of the request for such a loan or payment the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

* * * * *

■ 15. Amend § 1427.18 by revising paragraphs (e) and (f) to read as follows:

§ 1427.18 Liability of the producer.

* * * * *

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of their requests for a loan or any applicable form required by CCC, liquidated damages shall be assessed on the quantity involved in the violation. Liquidated damages assessed in accordance with this section will be determined by multiplying the quantity involved in the violation by 10 percent of the marketing assistance loan rate applicable to the loan note.

(f) When it has been determined that a violation of the terms and conditions of a loan deficiency application has occurred, CCC will determine the quantity of the cotton involved with respect to such violation and assess liquidated damages by multiplying the quantity of cotton involved in the violation by 10 percent of the marketing assistance loan rate.

* * * * *

■ 16. Amend § 1427.21 by adding a new paragraph (e) to read as follows:

§ 1427.21 Settlement.

* * * * *

(e) If CCC sells the commodity described in paragraph (a) of this section in settlement of the recourse loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale and CCC will deduct the amount of these costs from the sales proceeds. When CCC sells any cotton obtained by forfeiture under a marketing assistance loan, CCC will, in all instances, retain all proceeds obtained from the sale of the cotton and will not make any payment of any amount of such proceeds to any party, including the producer who had satisfied their obligation under the loan through forfeiture of the cotton to CCC.

■ 17. Amend § 1427.23 by revising paragraph (a)(3) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

(a) * * *

(3) A producer must submit a completed request for a loan deficiency payment for a quantity of eligible cotton under § 1427.5(a) on or before the date beneficial interest is lost in the commodity and before the final loan availability date for the commodity. Producers must, on a form prescribed by CCC, indicate their intentions to receive a loan deficiency payment and submit the prescribe form to the FSA Service Center on or before beneficial interest is lost in such quantity. A producer may not file such a form after beneficial interest is lost.

* * * * *

Signed in Washington, DC, on May 10, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–5078 Filed 6–5–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22358; Directorate Identifier 2005–NE–20–AD; Amendment 39–14632; AD 2006–12–07]

RIN 2120–AA64

Airworthiness Directives; Engine Components Inc. (ECi) Reciprocating Engine Cylinder Assemblies

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain Engine Components Inc. (ECi) cylinder assemblies, part number (P/N) AEL65102 series ''Classic Cast'', installed. That AD currently requires replacing these ECi cylinder assemblies. This AD requires the same actions, but replaces the ''Engine Models'' Table 1 and ''Engines Installed On, But Not Limited To'' Table 2 with corrected tables. Also, this AD corrects the casting part number. This AD results from reports of applicability errors found in AD 2005–26–10. We are issuing this AD to prevent loss of engine power due to cracks in the cylinder assemblies and possible engine failure caused by separation of a cylinder head.

DATES: This AD becomes effective July 11, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; telephone (817) 222–5145; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Lycoming Engines models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain ECi cylinder assemblies, P/N AEL65102 series ''Classic Cast'', installed. We published the proposed AD in the **Federal Register** on February 24, 2006 (71 FR 9480). That action proposed to require the same actions as AD 2005–26–10, but would replace the