

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1413

RIN 0560-AG71

#### Hard White Wheat Incentive Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Hard White Wheat Incentive Program (HWWIP). This program provides incentive payments to eligible hard white wheat producers in the amount of \$0.20 per bushel, with a maximum of 60 bushels of hard white wheat production eligible for payment on each acre planted. Planting certified hard white wheat seed is not an eligibility requirement to receive payment under HWWIP; however, an additional incentive payment in the amount of \$2.00 per acre is provided to hard white wheat producers who plant certified hard white wheat seed for any of the 2003 through 2005 crops of hard white wheat. The purpose of the program is to increase the production of both spring and winter varieties of hard white wheat during the 2003 through 2005 crop years.

**DATES:** Effective January 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Helen Smith, Production, Emergencies, and Compliance Division, FSA/USDA, Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250-0512; telephone (202) 720-7641; facsimile (202) 690-3610; e-mail: [HSmith@wdc.usda.gov](mailto:HSmith@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) requires that the regulations necessary to implement these provisions be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (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 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. A cost-benefit assessment was completed and is summarized after the background section.

### Federal Assistance Programs

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

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) 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.

Commodity Loans and Loan Deficiency Payments, 10.051.

### Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance 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 parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would

require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

### Executive Order 12988

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

### Executive Order 12372

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

### Unfunded Mandates Reform Act of 1995

This 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 section 202 and 205 of UMRA.

### Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) requires that authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), be used which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

### 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 information collection activities needed to

administer the program authorized by these regulations, are not subject to review by the Office of Management and Budget under the Paper Reduction Act.

#### **Government Paperwork Elimination Act**

The Farm Service Agency (FSA) 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 by participation in the Hard White Wheat Incentive Payment Program are not yet fully implemented for the public to conduct business with FSA electronically.

Applications for all programs may be submitted at the FSA county offices by mail or fax. At this time, electronic submission is not available. Full implementation of electronic submission is underway.

#### **Executive Order 12612**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### **Background**

Section 1616 of the Farm Security and Rural Investment Act of 2002, (the 2002 Act), provides that a total of \$20,000,000 of CCC funds be used during the 2003 through 2005 crop years, to provide incentive payments to producers of hard white wheat. The 2002 Act also mandates that this program shall be implemented on not more than 2,000,000 acres or equivalent volume of production for the 2003 through the 2005 crop years. An equivalent volume of production has been determined to be 120,000,000 bushels, which is the product of 2,000,000 acres times 60 bushels per acre.

In the event that the 2,000,000 acre limitation is reached under this program before the \$20 million authorized for the program is distributed, the 120,000,000 million bushels shall become the cap for implementing the program.

The purpose of this program is to create an incentive for producers to plant hard white wheat of winter and for spring varieties, which would

subsequently increase production for both domestic and export markets. Payments under this program are available to producers in every State.

The Hard White Wheat Incentive Program (HWWIP) will provide two payments to producers: An incentive payment of \$0.20 for each bushel of eligible hard white wheat production, with a maximum of 60 bushels per acre eligible for payment, and (2) a payment of \$2.00 per acre for certified seed. Producers do not have to plant certified seed to receive the production incentive payment.

With respect to the first payment, the reason for the 60 bushel per acre cap is to provide consistent payments to producers in the various geographic regions of the United States that have disparate hard white wheat production capabilities. Two payment options were considered. One, a direct payment per acre of production; and two, a direct payment for each bushel of production. Traditionally, hard white wheat yields in the Northwest growing region are significantly higher than in the Plains States. Accordingly, a per acre payment is not an equitable solution, nor does a payment based on production, with no limitation on the production eligible for payment, provide equitable assistance. Therefore, it was determined that a \$0.20 per bushel payment, with a 60 bushel per acre cap, will most equitably distribute payments and address production disparities across the hard white wheat growing areas. Also, it was determined that a bushel-based payment system would likely result in the production of more bushels of hard white wheat than will an acre-based payment system because it will attract more productive land. This incentive payment will be issued only if hard white wheat is actually produced and after production is verified by means of a settlement sheet or other similar documentation delivered to CCC.

In order to encourage purity and yield potential of the hard white wheat production, an additional incentive payment is provided in the amount of \$2.00 per acre for each acre a producer plants to 2003 through 2005 crops of hard white wheat with certified seed. Producers utilizing this option will be required to show proof that certified seed was planted on the reported acres. This additional payment is provided to help offset the added cost of the certified seed, and should increase the purity of the hard white wheat produced, decreasing the possibility that the seed used to plant the hard white wheat contains other types of wheat. This payment may be issued even if the crop subsequently fails and

no hard white wheat production is realized from the acreage planted to the certified seed.

Minimum quality standards have been determined to be U.S. #2 Hard White Wheat or better, as established by Federal Grain Inspection Service. A settlement sheet or other similar documentation is required before incentive payments may be issued and must indicate at a minimum: That the wheat accounted for on the document is hard white wheat; the grade of the hard white wheat; name and address of person the hard white wheat was purchased from; net bushels; and name and address of purchasing facility. The settlement sheet shall be subject to verification by CCC.

#### **Cost Benefit Assessment Summary**

##### *Hard White Winter Wheat Incentive Payments*

Increased plantings of hard white wheat varieties are expected to be offset by lower plantings of other classes of wheat. Thus, the incentive payments will not measurably affect total wheat production. On the demand side, millers are likely to use hard white wheat for domestic food use at the expense of other wheat classes. The net impact on the estimated annual quantity of wheat used for food is negligible.

Currently, U.S. hard white wheat exports are small, partly due to an inadequate supply of consistent quality. Target markets are predominantly in southeast Asia, where hard white wheat varieties are used to produce Chinese noodles. Incentives to grow hard white wheat should increase supplies of consistent quality so exporters can compete in this export market.

Federal outlays are expected to increase by the amount of CCC funds that must be made available for the incentive payments, or \$20 million. Timing of these payments depends on producer participation. About \$6 million will likely be expended for the 2003 crop, \$12 million for the 2004 crop, and the remaining \$2 million for the 2005 crop. Because of the potential for hard white wheat payment requests to exceed available funds during the 2004 and 2005 crops, procedures will allow factoring of payment levels to avoid expending more than the \$20 million provided by the law.

For further information, contact: Phil Sronce at 202-720-2711, or [phil\\_sronce@usda.gov](mailto:phil_sronce@usda.gov).

#### **List of Subjects in 7 CFR 1413**

Agricultural commodities, Feed grains, Grains.

Accordingly, 7 CFR Chapter XIV is amended by adding part 1413 is set forth below.

1. Part 1413 is added to read as follows:

**PART 1413—HARD WHITE WHEAT INCENTIVE PROGRAM**

Sec.

- 1413.101 Applicability.
- 1413.102 Administration.
- 1413.103 Definitions.
- 1413.104 Signup and application process.
- 1413.105 Eligibility.
- 1413.106 Quality.
- 1413.107 Availability of funds and maximum eligible acreage and production.
- 1413.108 Applicant's maximum payment quantity.
- 1413.109 Calculation of assistance.
- 1413.110 Offsets and withholdings.
- 1413.111 Assignments.
- 1413.112 Appeals.
- 1413.113 Other regulations

**Authority:** 7 U.S.C. 7999; 15 U.S.C. 714b and 714c.

**§ 1413.101 Applicability.**

(a) These regulations in this part set forth the terms and conditions of the Hard White Wheat Incentive Program. The Farm Security and Rural Investment Act of 2002 provides that \$20,000,000 of the funds of CCC shall be available during the 2003 through the 2005 crop years for producers to produce and market hard white wheat limits this program to not more than a total of 2,000,000 acres or an equivalent volume of 120,000,000 bushels of production for the 2003 through 2005 crop years.

(b) A production payment incentive shall be available only for hard white winter wheat that grades U.S. # 2 grade or higher, established by the Federal Grain Inspection Service, that is produced and harvested in the United States.

(c) A certified seed incentive payment shall be available for each acre planted to certified hard white wheat seed, as approved by CCC. Producers are eligible to receive incentive payments for the production incentive or the certified seed incentive, or both. Each incentive payment is independent of the other.

**§ 1413.102 Administration.**

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall be carried out by the Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, their representatives and employees, have no authority to modify or waive any of the

provisions of the regulations of this part, except as provided in paragraph (e) of this section.

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

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation of this part to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of this program and does not violate statutory limitations on the program.

(f) Any payment applications not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the dates authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

**§ 1413.103 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering the Hard White Wheat Incentive Program established by this part.

*Application period* means the date established by the Deputy Administrator for producers of hard white wheat to apply for program benefits.

*CCC* means the Commodity Credit Corporation.

*Certified seed* means hard white wheat seed grown from acceptable seedstock and sold, according to rules imposed by a State's Certified Seed Board, as determined acceptable by the Deputy Administrator.

*County committee* means the FSA county committee.

*County office* means the FSA office.

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

*Deputy Administrator* means the Deputy Administrator for Farm

Programs (DAFP), Farm Service Agency or a designee.

*Eligible bushels* means hard white wheat bushels that were produced in the United States anytime during the 2003 through 2005 crop years, and for which an acceptable settlement sheet has been provided to the county committee.

*Farm Service Agency or FSA* means the Farm Service Agency of the United States Department of Agriculture.

*Payment* means the bushels of wheat or seed production for which an operation is eligible to be paid under this part.

*Settlement sheet* means a document provided to a seller of hard white wheat upon delivery of hard white wheat to a CCC-approved warehouse, or other hard white wheat purchasing facility determined acceptable by CCC, with information which includes, but is not limited to: the name and address of buyer and seller; gross quantity; net quantity; price per bushel; and type and grade of the delivered hard white wheat.

**§ 1413.104 Signup and application process.**

(a) Signup for the Hard White Wheat Incentive Program shall be conducted by CCC for each of the 2003 through 2005 crop years during the application period announced by the Deputy Administrator. Applications are available from any county FSA office. Applicants must submit a complete application to FSA during the application period.

(b) The producer shall submit one application for all farms within in a particular county. On the application, the applicant must certify to: The total number and location of acres planted to hard white wheat and the number of eligible bushels sold. Applicants must also provide a settlement sheet, to FSA upon disposal of the production certified to on the application.

(c) Each applicant for a certified seed incentive payment must submit an acceptable seed receipt for the certified seed to FSA, and certify to the number and location of acres planted with certified seed.

(d) Producers requesting benefits under this part must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by FSA.

**§ 1413.105 Eligibility.**

(a) The certified seed incentive payment and the production incentive payments are available to eligible producers under § 1413.101(b) and (c) for any or all of the years 2003 through

2005. Producers are eligible to receive both the certified seed and production incentive in the same year. Where an acre of land receives both the certified seed incentive and production incentive payment in the same year, only one acre shall be counted under the total 2,000,000 acreage limitation of § 1413.101(a).

(b) To be eligible to receive the certified seed incentive payment, a producer must:

(1) Submit a complete application during the application period.

(2) Submit a receipt for the purchase of certified seed to FSA.

(c) To be eligible to receive the production incentive payment, a producer must:

(1) Submit a complete application during the application period.

(1) Produce hard white wheat of the quality required under § 1413.106;

(2) Have an interested buyer with the intent to use the wheat for all purposes except for feed use.

#### § 1413.106 Quality.

The hard white wheat must be grade #2 or higher under the grading standards, established by the Federal Grain Inspection Service (FGIS).

#### § 1413.107 Availability of funds and maximum eligible acreage and production.

The total available program funds for the 2003 through 2005 crop years is \$20 million. To ensure that funds are available for each of the 2003 through 2005 crop years, payments may be factored based on total eligible producers for any year the eligible payments exceed the total funds available to be spent. The maximum hard white wheat acreage and production for which payments may be issued for the 2003 through 2005 crop year is to total 2,000,000 acres, or 120,000 bushels, whichever is greater. The certified seed incentive may be discontinued, as determined by the Deputy Administrator, in any year sufficient funds are determined to be unavailable.

#### § 1413.108 Applicant's maximum payment quantity.

(a) The maximum payment quantity of hard white wheat for which an applicant may be approved under the production incentive payment for any year shall be the smaller of:

(1) The actual number of bushels harvested from the acres certified on the application; or

(2) The product of:

(i) The number of acres certified on the application;

(ii) Times 60 bushels per acre.

(b) [Reserved]

#### § 1413.109 Calculation of assistance.

(a) Payment for the production incentive shall be the product of:

(1) The bushels determined in accordance with § 1413.108

(2) Times \$0.20.

(b) Payment for the certified hard white wheat planting incentive shall be the product of:

(1) The number of acres certified on the application;

(2) Times \$2.00 per acre.

#### § 1413.110 Offsets and withholdings.

CCC may offset or withhold payments approved under this part in accordance with part 1403 of this chapter.

#### § 1413.111 Assignments.

Persons entitled to a HWWIP payment may assign their rights to such payments in accordance with part 1404 of this chapter.

#### § 1413.112 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may request reconsideration or appeal such determination in accordance with parts 11 and 780 of this title.

#### § 1413.113 Other regulations.

(a) The provisions of part 12 of this title, and the controlled substance provisions of part 718 of this title apply to payments made under this part.

(b) The payment limitation provisions of part 1400 of this title shall not be applicable to payments made under this part.

(c) The provisions of part 707 of this title relating to the making of payments in the event of the death of a program participant or and in the event of other special circumstances shall apply to payments made under this part.

Signed in Washington, DC, on January 28, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 03-2359 Filed 1-29-03; 11:56 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM243; Special Conditions No. 25-226-SC]

#### Special Conditions: Bombardier Model BD-100-1A10 Airplanes; High-Intensity Radiated Fields (HIRF).

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Bombardier Model BD-100-1A10 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design includes four large liquid crystal display (LCD) electronic displays, an integrated electronic standby system, and full authority digital engine controls (FADEC) all of which perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is January 9, 2003. Comments must be received on or before March 5, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM243, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM243.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2799; facsimile (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA has determined that notice and opportunity for public comment in