

(b) Of the available funds, \$7,500,000 are allocated for fresh market asparagus production and \$7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed \$15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

**§ 1429.111 Misrepresentation and scheme or device.**

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds.

Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

**§ 1429.112 Death, incompetence, or disappearance.**

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may

receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

**§ 1429.113 Maintaining records.**

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

**§ 1429.114 Refunds; joint and several liability.**

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an asparagus farm operation's application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

**§ 1429.115 Miscellaneous provisions and appeals.**

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

Signed in Washington, DC on July 12, 2010.

**Jonathan W. Coppess,**

*Executive Vice President, Commodity Credit Corporation.*

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**BILLING CODE 3410-05-P**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

[NRC-2009-0538]

**RIN 3150-A175**

**List of Approved Spent Fuel Storage Casks: NUHOMS® HD Revision 1; Withdrawal**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a proposed rule that would have revised the NUHOMS® HD cask system listing within the list of approved spent fuel storage casks to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1030. The NRC is taking this action because the applicant identified that a certain Technical Specification (TS) for Boral characterization was not written precisely. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the Safety Analysis Report (SAR), are not precisely quantified in that it requires that "the average size of the boron carbide

particles in the finished product is approximately 50 microns after rolling.” Use of language such as “average” and “approximately” is imprecise, and no ranges or statistical variations are specified. The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

**DATES:** The proposed rule published May 7, 2010 (75 FR 25120), is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6219, e-mail [Jayne.McCausland@nrc.gov](mailto:Jayne.McCausland@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On May 7, 2010 (75 FR 25120), the NRC published in the **Federal Register** a proposed rule that would have amended its regulations in 10 CFR 72.214 to revise the NUHOMS® HD System listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 1 to the CoC. Amendment No. 1 would modify the present cask system by adding Combustion Engineering 16 × 16 class fuel assemblies as authorized contents, reducing the minimum off-normal ambient temperature from -20°F to -21°F, expanding the authorized contents of the NUHOMS® HD System to include pressurized water reactor fuel assemblies with control components, reducing the minimum initial enrichment of fuel assemblies from 1.5 weight percent uranium-235 to 0.2 weight percent uranium-235, clarifying the requirements of reconstituted fuel assemblies, adding the requirements to qualify metal matrix composite neutron absorbers with integral aluminum cladding, deleting the use of nitrogen for draining the water from the dry shielded canister (DSC) and allowing only helium as a cover gas during DSC cavity water removal operations, and making corresponding changes to the technical specifications. The NRC also published a direct final rule on May 6, 2010 (75 FR 24786), that would have become effective on July 20, 2010. A correction notice was published on May 17, 2010 (75 FR 24786), to correctly specify an effective date of July 21, 2010. The direct final rulemaking and the companion notice of proposed rulemaking were published in the **Federal Register** on different dates instead of being published concurrently on the same date.

The rulemaking is being withdrawn because the applicant identified that a

certain TS for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, “Neutron Absorber Tests,” which references Section 9.1.7.3 of the SAR, are not precisely quantified in that it requires that “the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling.” Use of language such as “average” and “approximately” is imprecise, and no ranges or statistical variations are specified. The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

Dated at Rockville, Maryland, this 8th day of July, 2010.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Executive Director for Operations.*

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**BILLING CODE 7590-01-P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 217

#### RIN 1901-AB28

#### Energy Priorities and Allocations System Regulations

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish standards and procedures by which the U.S. Department of Energy (DOE) may require that certain contracts or orders that promote the national defense be given priority over other contracts or orders. This rule also sets new standards and procedures by which DOE may allocate materials, services and facilities to promote the national defense. DOE is publishing this rule to comply with a requirement of the Defense Production Act Reauthorization of 2009 (Pub. L. 111-67) to publish regulations providing standards and procedures for prioritization of contracts and orders and for allocation of materials, services and facilities to promote the national defense.

**DATES:** Comments must be received by August 16, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 1901-AB28, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- By e-mail directly to *GC-76EPAS@hq.doe.gov*. Include RIN 1901-AB28 in the subject line.

- By mail or delivery to Dr. Kenneth Friedman, Office of Infrastructure Security and Energy Restoration, U.S. Department of Energy, Room 1E-256, 1000 Independence Avenue, SW., Washington, DC 20585.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Dr. Kenneth Friedman (*see ADDRESSES*) and by e-mail to *Christine\_J.\_Kymn@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kenneth Friedman, Office of Infrastructure Security and Energy Restoration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (202) 536-0379 (*GC-76EPAS@hq.doe.gov*). Ms. S. Becca Smith, Office of the General Counsel (GC-76), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-9788 (*GC-76EPAS@hq.doe.gov*).

#### SUPPLEMENTARY INFORMATION:

##### Background

This rule expands upon Title 10 of the Code of Federal Regulations (10 CFR) part 216, DOE Energy Priorities and Allocations System (EPAS) regulations.

10 CFR part 216 implements DOE’s administration of priorities and allocations actions in order to maximize domestic energy supplies pursuant to its authority under Section 101(c) of the Defense Production Act (50 U.S.C. app. § 2071 *et seq.*) (DPA) as delegated by Executive Order 12919 (June 3, 1994). These proposed regulations, to be codified at 10 CFR part 217, would implement DOE’s administration of priorities and allocations in order to promote the national defense pursuant to its DPA authorities other than section 101(c). The EPAS has two principal components: priorities and allocations. Under the priorities component, certain contracts between the government and private parties or between private parties for the production or delivery of industrial resources are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term “national defense” is defined broadly and can include critical infrastructure protection and restoration, emergency preparedness, and recovery from natural disasters.