

determine whether the new producers requesting additional base have ability to produce spearmint oil. The names of all eligible new producers from each region shall be placed in separate lots per class of oil. For each class of oil, separate drawings shall be held from a list of all applicants from Region A, from a list of all applicants from Region B, and from a list of all remaining applicants from Regions A and B combined. If, in any marketing year, there are no requests in a class of oil from eligible new producers in a region, such unused allotment base shall be issued to two eligible new producers whose names are selected by drawing from a lot containing the names of all remaining eligible new producers from the other region for that class of oil. The Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate amount.

\* \* \* \* \*

Dated: May 5, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-11836 Filed 5-10-00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1436

RIN 0560-AG00

#### Farm Storage Facility Loan Program

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

**ACTION:** Interim rule.

**SUMMARY:** This rule implements the Commodity Credit Corporation's (CCC's) Farm Storage Facility Loan program utilizing authority in the CCC Charter Act. The program will provide financing for producers to build or upgrade farm storage and handling facilities.

**DATES:** This rule is effective May 11, 2000. Comments concerning this rule should be received on or before June 12, 2000 to be assured consideration. Comments on the information collections in this rule must be received by July 10, 2000 to be assured consideration.

**ADDRESSES:** Comments must be submitted to Grady Bilberry, Director, Price Support Division, Farm Service Agency, 1400 Independence Avenue, S.W., STOP 0512, Washington, DC 20250-0512.

**FOR FURTHER INFORMATION CONTACT:** Chris Kyer, (202) 720-7935 or e-mail [chris\\_kyer@wdc.fsa.usda.gov](mailto:chris_kyer@wdc.fsa.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Regulatory Flexibility Act

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

##### Environmental Evaluation

It has been determined by an Environmental Evaluation that this program, as a whole, will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement for the program is needed. However, because it is possible that individual projects may have limited impacts on the local environment, environmental evaluations for each project will be conducted to determine the need for environmental assessment and/or mitigation.

##### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 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).

##### The 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 sections 202 and 205 of the UMRA.

##### Paperwork Reduction Act of 1995

A Notice with request for comments on the information collection is part of this proposed rule. An emergency information collection package has been sent to OMB for review.

In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) request for approval of a new information collection in support of the Farm Storage Facility Loan Program.

*Title:* 7 CFR 1436, Farm Storage Facility Loan Program Regulations.

*OMB Control Number:* 0506-NEW.

*Type of Request:* Approval of an information collection.

*Abstract:* This information is needed to administer the CCC's Farm Storage Facility Loan Program. The information will be gathered from producers needing additional on-farm grain storage and handling capacity to determine whether they are eligible for loans.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 22 minutes per producer.

*Respondents: Eligible producers:* 200,000.

*Estimated Number of Respondents:* 50,000.

*Estimated Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 47,250 hours.

Proposed topics for comments are: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Chris Kyer, USDA—Farm Service Agency—Price Support Division, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250-0512; Telephone (202) 720-7935 or e-mail [chris\\_kyer@wdc.fsa.usda.gov](mailto:chris_kyer@wdc.fsa.usda.gov). Copies

of the information collection may be obtained from Chris Kyer at the above address.

All responses to this notice will be summarized. All comments will also become a matter of public record.

#### **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.

#### **Immediate Effectiveness of This Rule**

It has been determined that this rule should be issued as an interim rule, without prior comment, but subject to modification on the consideration of those comments that are timely received. It has been determined that to delay the implementation of the rule pending comment would be impracticable and contrary to the public interest. That finding is based on the current shortage of available storage, rapidly changing market needs that are forcing producers to consider new storage arrangement on their farms, and the lack of material adverse effect on other parties. With respect to storage availability, recent data indicates a critical shortage of storage that continues to deteriorate. The Deputy Administrator for Commodity Operations, Farm Service Agency, recently completed an analysis of on-farm and commercial grain storage utilization, which showed that the utilization of both on-farm and commercial storage had increased from 79 percent utilization in 1996 to 95 percent utilization in 1999. At the time of the review, eleven key grain producing states were utilizing over one hundred percent of available storage capacity when including temporary and emergency storage. Four other states were at ninety percent of storage capacity. The fifteen states identified with ninety percent or above utilization of grain storage capacity are: Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. In 1998 the requests by warehouse operators with CCC Uniform Grain Storage Agreements for emergency (on the ground) storage were at a level of 192.3 million bushels; for 1999, that level increased to 238.1 million bushels.

Also, in the meantime, changing market needs are putting pressure on producers to build new facilities since some buyers of grain seek to limit purchases to specialty grains that are not genetically modified or to segregate either specialty crops or grains that are not genetically modified. To meet those demands, while utilizing the benefits of genetically modified grains for other markets, the producer may find it necessary to grow different kinds of grain in which case they may need separate storage facilities in order to guarantee the proper identity of the grains. Many producers, however, will not be able to meet that need without the assistance provided for in this rule and will not be able to do so in a timely manner for this crop year unless this rule is made effective immediately. In addition, a delay in implementing this rule could also mean that producers, who otherwise might be helped and who are the most in need, will be unable to take full advantage of CCC's nonrecourse marketing assistance loan program for the current marketing year. For those producers who cannot store their crops, the only program option available is the loan deficiency payment available at the time of harvest, thus denying those producers the ability to delay marketings until a more favorable market situation might arise. Moreover, the lack of adequate facilities can mean that the producer also loses out on the other guarantees and assistance that a marketing loan can afford the producer such as the special benefits that can inure to a producer as a result of a marketing loan when the producer has reached the maximum limitation on the amount of payments that the producer can receive in the form of loan deficiency payments or marketing loan gains.

Storage conditions have not improved materially in the last few months so as to relieve the shortage of storage and, therefore, there is a critical need to act as quickly as possible. The public interest in this respect has been established by the Congressional direction contained in Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)), which requires a storage program whenever it is determined that there is a shortage of a storage. Furthermore, while the need for immediate assistance is critical, the potential harm to other parties, by issuance of this rule as an interim rule, is expected to be minimal by comparison. In addition, the rule is flexible enough so that, in the event that any comments are received that would dictate a reason to suspend the program, a suspension could be imposed before

the response to the comments is published. Even after the interim rule is issued, it will take some time to complete loan applications. As a result, a delay in the start-up of the program until comments could be received would put availability of the program beyond the time in which many producers in need of storage could obtain relief for the current crop year. This could be damaging not only to the producers themselves but also to the effort to increase the marketability in all markets of U.S.-produced grains.

Accordingly, for all the foregoing reasons, it has been determined that the provisions of this rule should be made effective immediately.

#### **The Small Business Regulatory Enforcement Fairness Act**

The finding made above, that this rule should be made effective immediately, applies for all purposes including, but not limited, to the provisions of 5 U.S.C. 808 of the Small Business regulatory Enforcement Fairness Act (SBREFA), which provides that a rule may, without regard to certain special Congressional oversight measures provided for in SBREFA, take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public interest. For the reasons set out, it has been determined that delay would be contrary to the public interest and that the rule should be made effective immediately.

#### **Cost Benefit Analysis Summary**

U.S. grain storage capacity steadily declined from 1987 to 1997. Storage capacity has increased modestly since its low in 1997, but increases have not been sufficient to keep pace with growing production. Despite persistent harvest-time storage capacity shortfalls and the advantages of on-farm storage for producers, low commodity prices and reduced farm income will limit the ability of producers to significantly expand their on-farm storage. The Farm Storage Facility Loan Program will add additional storage capacity in deficit areas and help farmers adapt to identity preserved storage and handling requirements for genetically enhanced organisms. One direct benefit to producers from the Farm Storage Facility Loan Program would be reduced financing costs on facility construction. Interest savings for a farmer on the construction of a 15,000-bushel grain bin could total as much as \$3,840 under the program when compared with financing through some commercial banks. Producers would also benefit from the potential for higher

market returns on their crops because on-farm storage capacity creates pricing and hedging opportunities that can significantly increase marketing returns. The Farm Storage Facility Loan Program is expected to expand on-farm storage by more than 750 million bushels over the next 5 years.

### Background

Section 5(b) of the CCC Charter Act (15 U.S.C. 714c(b)) authorizes CCC to use its general powers to make available materials and facilities required in connection with the production and marketing of agricultural commodities. Section 4(f) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that the Corporation may make loans to grain producers needing storage facilities and that loans shall be made in areas in which the Secretary determines that there is a deficiency of such storage.

CCC made loans for storage facilities intermittently since 1948 and stopped making new storage facility loans in 1982 based on studies that revealed that producers had sufficient storage for their crops. Since 1995, the storage situation has changed. Storage capacity utilization rates are running extremely high and storage shortages exist in some areas. The net decrease in storage capacity from 1996 to 1998 has been about 79.5 million bushels, of nearly 1 percent of total capacity. During this same period, grain production increased by nearly 8 percent, from 14 billion bushels in 1996 to 15 billion bushels in 1998. As a result, there is insufficient capacity to allow farmers to store their grain, forcing farmers to sell at harvest when prices are usually at their lowest.

CCC's immediate intent is to use this program to address the existing shortage of grain storage. However, section 5(b) of the CCC Charter Act, gives CCC broad authority to make "available materials and facilities required in connection with the production and marketing of agricultural commodities". Thus, CCC will explore making available facility loans for the storage of commodities harvested as other than grain such as silage, alternative types of storage arrangements such as "condominium storage", or storage facilities for other agricultural products. Since CCC has not identified shortages in storage facilities for other than whole grain or analyzed the feasibility of alternative storage arrangements, it would be improper to implement such provisions under an interim rule. CCC is seeking comments during the comment period on all of these aforementioned areas. Comments received will be given consideration for inclusion in the final rule.

On February 2, 2000, the Secretary announced the availability of financing for farm storage and handling facilities. Based upon this announcement, producers may have made commitments to construct on-farm storage facilities. The decision has been made to extend loan eligibility to those producers who took action on or after February 2, 2000 based on the Secretary's announcement.

Although a similar program was available in the past, this rule allows for a new farm storage facility loan program with terms and conditions that differ from the previous program. The rule calls for eligible producers to apply for farm storage facility loans at their FSA administrative county office. Producers requesting loans must provide information regarding the need for farm storage capacity and the storage facility they propose to construct. They must also establish that they are eligible for the program, and that the site proposed for a storage structure does not adversely impact the environment.

Specific eligibility requirements for applicants are a satisfactory credit rating as determined by CCC; no delinquent Federal debt as defined by the Debt Collection Improvement Act of 1996; production of facility loan commodities; proof of crop insurance from FCIC or a private company; compliance with USDA provisions for highly erodible land and wetlands; ability to repay the debt resulting from the program; compliance with any applicable local zoning, land use and building codes for the applicable farm storage facility structures; and need for new or additional farm grain storage or handling capacity. This information is needed by CCC to make loans where there is a bonafide need, and to make loans that will be repaid on time.

County offices will use existing office records to determine if the producer is in compliance with highly erodible land and wetlands provisions. The county office will utilize a government wide system to identify if the applicant is delinquent on any Federal debt. The applicant's credit history will be obtained using existing credit reporting agencies that are contracted to FSA. Proof of crop insurance must be provided by the applicant in the form of an approved crop insurance application or statement of coverage for the current crop year. Applicants must provide copies of local building permits, if applicable, to demonstrate compliance with local land use laws.

Applicants will be required to file requests for farm storage facility loans on form CCC-185, Loan Application for Farm Storage Facility and Drying Equipment Loan Program. The applicant

must provide information that is generally unavailable to CCC from other sources, such as, name, address, tax identification number and phone number of the person applying for the loan; the purpose of the loan and the amount of the loan requested; and details about the type and cost of the storage structure, and related handling systems, or drying systems the applicant proposes to install. This information becomes the basis for the net cost of eligible components which determines the amount of the loan. Producers must also provide specific commodity production data that supports the determination the producer requires storage or that existing facility loan commodity storage capacity is not adequate. This will help insure that CCC is not lending funds on capacity that is not needed. The applicant must provide information regarding whether the facility equipment has been purchased, delivered, or installed.

The applicant must sign CCC-185 when it is complete and will be provided a copy. Information to support the applicant's request will also be necessary. Financial information will be obtained from the applicant to determine if the applicant has the means to provide the required down payment and to make future loan installments. The applicant will be asked to verify debts and assets in order to prepare an accurate balance sheet and cash flow statement. The applicant will be asked to sign the form authorizing financial institutions and creditors to release asset and debt information to CCC. The applicant will be required to sign a UCC-1 Financing Statement and other forms as needed to grant CCC a security interest in the proposed structure and equipment. Upon acceptance of a complete application, a CCC representative will conduct a lien search as needed.

Borrowers must maintain the collateral in good condition; pay loan installments and real estate taxes on time, and maintain all peril structural, and if applicable, flood insurance policies. FSA will conduct annual collateral checks. If installments are not paid during each due and payable period, collection activity will proceed according to standard CCC policy.

### List of Subjects in 7 CFR Part 1436

Applicability, administration, definitions, availability of loans, eligible borrowers, eligible storage facilities, term of loan, security of loan, amount of loan and loan application approvals, downpayment, interest, repayment of loan, taxes, maintenance,

disbursements, sale or conveyance, environmental compliance.

Accordingly, for the reasons set forth in the preamble, the Commodity Credit Corporation adds 7 CFR part 1436 to read as follows:

**PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS**

Sec.

- 1436.1 Applicability.
- 1436.2 Administration.
- 1436.3 Definitions.
- 1436.4 Availability of loans.
- 1436.5 Eligible borrowers.
- 1436.6 Eligible storage facilities or handling equipment.
- 1436.7 Term of loans.
- 1436.8 Security for loan.
- 1436.9 Loan amount and loan application approvals.
- 1436.10 Down payment.
- 1436.11 Disbursements.
- 1436.12 Interest.
- 1436.13 Repayment of loan.
- 1436.14 Taxes.
- 1436.15 Maintenance.
- 1436.16 Sale or conveyance.
- 1436.17 Environmental compliance.

**Authority:** 15 U.S.C. 714 *et seq.*

**PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS**

**§ 1436.1 Applicability.**

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by state law, CCC may adapt certain procedures relating to those issues that may vary between states.

**§ 1436.2 Administration.**

(a) The Farm Storage Facility Loan Program shall be administered under the general supervision of the Executive Vice President, CCC or designee and shall be carried out in the field by State FSA committees, county FSA committees and FSA employees.

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

(c) The State FSA committee shall take any action required by these regulations that has not been taken by the county committee. The State FSA committee shall also:

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

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

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

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county FSA committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Farm Storage Facility Loan Program.

(f) A representative of CCC may execute Farm Storage Facility Loan Program applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) The Deputy Administrator may suspend this program at any time when it appears that there is no shortage of storage that needs to be addressed or where some other reason shall arise for which it appears that the program goals can be achieved more efficiently in a manner different from that provided for this part.

**§ 1436.3 Definitions.**

The following definitions shall be applicable to the program authorized by this part and will be used in all aspects of administering this program:

*Aggregate outstanding balance* means the sum of the outstanding balances of all loans disbursed to the applicant.

*Assumption* means the act or agreement by which one borrower takes over or assumes the mortgage debt of another borrower.

*Collateral* means the storage structure, drying equipment or handling equipment securing the loan.

*Consent, disclaimer, severance, or subordination agreement* means an agreement under which a party may consent to the security interest of another in property, disclaim security interest in property, or subordinate security interest in property to the interest of another party.

*Facility loan commodity* means wheat, rice, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed,

mustard seed, crambe, other oilseeds as determined and announced by CCC, corn, grain sorghum, oats, or barley harvested as whole grain.

*Financing statement* means a document that gives legal notice of a lien on chattel property when properly filed or recorded.

*Non-movable or non-salable collateral* means either collateral the county committee determines cannot be sold and moved to a new location because of the type of construction or collateral that has deteriorated to the point that it has no sale recovery value.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise, or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien in the United States.

*Uniform Commercial Code* means the multi-state code of laws covering commercial transactions such as sales, negotiable instruments, and secured transactions.

**§ 1436.4 Availability of loans.**

(a) An application for a loan shall be submitted to the administrative county office that maintains the records of the farm or farms to which the application applies. Upon request, the applicant shall furnish information and documents as the state or county committee deems reasonably necessary to support the application. This may include financial statements, receipted bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of ingress and egress.

(b) Producers who authorize actions without an approved loan, do so at their own risk and without creating any liability on behalf of CCC except for producers who between February 2, 2000 and May 11, 2000 took action based on the announcement of the program. Such action may include, but is not limited to, entering into purchase contracts, purchases of materials, taking delivery of parts, site preparation, and construction.

**§ 1436.5 Eligible borrowers.**

(a) The term "eligible borrower" means any person who, as landowner, landlord, operator, producer, tenant, leaseholder, or sharecropper:

(1) Has a satisfactory credit history, and demonstrates an ability to repay the debt arising under this program;

(2) Has no delinquent Federal debt defined by the Debt Collection Improvement Act of 1996;

(3) Is a producer of a facility loan commodity;

(4) Demonstrates a need for increased storage capacity;

(5) Provides proof of crop insurance from FCIC or a private company;

(6) Is in compliance with USDA provisions for highly erodible land and wetlands conservation according to 7 CFR part 12;

(7) Demonstrates compliance with any applicable local zoning, land use, and building codes for the applicable farm storage facility structures;

(8) Provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and proof of all peril structural insurance, to CCC annually; and

(9) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR, parts 1500 through 1508.

(b) [Reserved]

#### **§ 1436.6 Eligible storage facilities for handling equipment.**

(a) Loans may be made only for the purchase and installation of eligible storage facilities and permanently affixed drying and handling equipment, or for the remodeling of existing storage facilities or permanently affixed drying and handling equipment as provided in this section. Eligible storage and handling facilities shall include the following:

(1) New conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least 10 years;

(2) Oxygen-limiting and other upright silo-type structures designed for whole grain storage and having a useful life of at least 10 years; and

(3) Flat-type storage structures for which the primary use is to store whole grain.

(b) The calculation of the loan amount may include costs associated with building or improving an eligible storage and handling facility, including:

(1) Permanently affixed grain handling equipment and grain drying equipment, including perforated floors considered to be essential to the proper functioning of the grain storage system;

(2) Safety equipment such as lighting, inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored grain, such as cleaners, moisture testers, and heat detectors;

(4) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral

to the proper operation of the grain storage and handling equipment; and

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the grain storage and handling equipment.

(c) Ineligible storage and handling equipment with respect to which no loans for installation or related costs shall be disbursed under this part include:

(1) Portable grain drying equipment and portable augers;

(2) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(3) Structures that are bunker-type, horizontal, or open silos;

(4) Structures that are not suitable for storing the facility loan commodities for which a need is determined; and

(5) Storage structures to be used for commercial purposes. Commercial purpose is defined as the storage and handling of grain, whether paid or unpaid, for persons other than the loan applicant. State FSA committees may allow, subject to the approval of the Deputy Administrator, Farm Programs, FSA, exceptions to this requirement if an applicant is otherwise eligible and the intent and purpose of the Farm Storage Facility Loan program is being met. Any facility that is in working proximity to any commercial storage operation, shall be considered to be part of a commercial storage operation.

(d) Loans may be approved for financing additions to more modifications of an existing storage facility to increase storage capacity if the county FSA committee determines that the modification is necessary to increase the storage capacity of the unit and is not for maintenance, repair, or replacement of items such as motors, fans, or wiring.

#### **§ 1436.7 Term of loan.**

The maximum term of the loan shall be 7 years from the date of execution of a promissory note and security agreement. No extensions of the loan term will be granted.

#### **§ 1436.8 Security for loan.**

(a) All loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified in accordance with applicable state law. CCC's security interest in the collateral shall constitute the sole security interest in such collateral except for prior liens on the

underlying realty that by operation of law attaches to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, a waiver, severance, or subordination of such lien must be obtained in writing from each person having an interest in the real estate on which the collateral is to be located. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) A lien on the real estate on which the farm storage facility is located will be required on all loans in the form of a real estate mortgage, deed of trust, or other security instrument approved by the CCC. For loan amounts exceeding \$50,000, CCC's interest in the real estate shall be superior to all other lien holders. If the real estate is covered by a prior lien, a lien may be obtained by means of a subordination agreement prescribed by CCC. CCC will not require such an agreement from any agency of the Department of Agriculture.

(c) Real estate liens may cover an acreage of land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage; and

(2) The acreage is large and valuable enough, in the approving authority's opinion, to insure repayment of the loan.

(d) Notwithstanding paragraphs (a), (b) and (c) of this section, a borrower, in lieu of such liens as are otherwise required by those paragraphs, may provide a letter of credit, bond, or other form of security, as approved by CCC.

(e) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest shall include the existing storage structure.

(f) The cost of filing and recording all real estate liens and later subordinations will be paid by the borrower. CCC shall pay such costs relating to filing and recording financing statements.

#### **§ 1436.9 Loan amount and loan application approvals.**

(a) The cost on which the loan shall be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-bushel cost established by the State FSA committee.

(b) The net cost for storage and handling equipment may include purchase price, sales tax, shipping, and delivery charges. The net cost shall not include secondhand material or any

other item that is determined by the approving authority to be ineligible for loan.

(c) The principal amount of any farm storage facility loan shall be 75 percent of the net cost of the applicant's needed storage or handling equipment not to exceed \$100,000. Borrowers are limited to obtaining one loan per fiscal year under this part.

(d) The aggregate outstanding balance of all facility loans for any one borrower may not exceed \$100,000.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan shall be prorated. Only costs associated with the applicant's needed storage capacity will be loan-eligible.

(f) The county FSA committee may approve applications, if loan funds are available, up to the maximum approval amount unless the State FSA committee establishes a lower limit for country FSA committee approval authority.

(g) Loan approvals will expire four months after the date of approval unless extended in writing for an additional four months by the State FSA committee.

#### **§ 1436.10 Down payment.**

(a) A minimum down payment representing the difference between the net cost of the storage facility and the amount of the loan determined in accordance with § 1436.9 shall be made by the loan applicant to the supplier or contractor before the loan is disbursed.

(b) The down payment shall be in cash unless some other form of payment is approved by CCC.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

#### **§ 1436.11 Disbursement.**

(a) Disbursement of the loan by CCC will be made when the farm storage facility has been delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(b) Disbursement will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan.

(c) Disbursement may be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower if CCC determines the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility.

#### **§ 1436.12 Interest.**

(a) Loans shall bear interest at the rate equivalent to the rate of interest charged on Treasury securities of comparable maturity on the date the loan is approved.

(b) The interest rate for each loan will remain in effect for the term of the loan.

(c) The loan applicant shall pay a non-refundable application fee of at least \$45 to CCC

#### **§ 1436.13 Payment of loan.**

(a) Equal installments of principal plus interest will be amortized over the loan term. Installments are due and payable by no later than the last day of each 12 month period of the loan, until the principal plus interest has been paid in full.

(b) The payment of each installment may be by cash, money order, wire transfer, or by personal, certified, or cashier's check. Repayment shall be applied first to accrued interest and then to principal.

(c) A claim will be established in accordance with 7 CFR part 1403 for the principal and accrued interest amount due and late payment interest for any installment that is not paid within 30 days after the due and payable date.

(d) Loan amounts outstanding, whether or not overdue, may be collected from payments that the borrower may otherwise be due to receive as marketing loan gains or other payments under 7 CFR part 1421 or 7 CFR part 1427. In the event that a claim is established against a borrower for any amount due under this part, the provisions of 7 CFR part 1403 may be used to recover the debt from other Federal payments or loans.

(e) CCC may declare the entire indebtedness immediately due and payable if the borrower violates any of the terms and conditions of this part, fails to pay any installment on time, or breaches any of the terms and conditions of any of the instruments executed in connection with the loan, or if the collateral is used in connection with any unauthorized commercial operation including, but not limited to, elevators, warehouses, dryers or processing plants, during the life of the loan.

(f) The loan may be paid in full or in part at any time before maturity.

(g) Upon payment of a loan, CCC shall release CCC's security interest in the collateral.

#### **§ 1436.14 Taxes.**

The borrower must pay all real and personal property taxes that may affect CCC's security interest in all collateral securing the note evidencing the loan.

To protect its interests, CCC may pay any unpaid taxes with respect to the collateral securing a loan made in accordance with this part, and if CCC does so, the borrower shall reimburse CCC for such payment, and if unpaid by the borrower, such debt shall become part of the current installment due.

#### **§ 1436.15 Maintenance.**

(a) The borrower must maintain the loan collateral in a condition suitable for the storage of one or more of the facility loan commodities.

(b) Until the loan has been repaid, the borrower shall be liable for all damages to or destruction of the collateral. CCC shall not assume any loss of the loan collateral.

(c) CCC shall conduct annual collateral checks to insure compliance with this section.

(d) Structures must be insured against all perils in all cases and must also be insured against flooding if the structure is located in a flood plain, as determined by CCC. Proof of flood insurance, if required, and proof of all peril structural insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC shall have rights in ingress and egress where the facility is located. Failure of the borrower to secure such access will render a borrower ineligible for the loan and, if a loan has already been made shall constitute a loan violation for which the remaining balance of the loan shall become due immediately.

#### **§ 1436.16 Sale or conveyance.**

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and owing under this part or when the borrower voluntarily conveys the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities or other property securing a loan without repaying the loan in full, the borrower shall obtain approval for the sale or conveyance from the county FSA committee.

(b) Assumption of a farm storage facility loan is permitted.

#### **§ 1436.17 Environmental compliance.**

(a) Except as otherwise specified in this section, prior to approval of any farm storage facility loan, an environmental evaluation will be completed to determine if the proposed action will have any adverse impacts on the environmental and cultural resources.

(b) If it is determined that a proposed action or group of proposed actions will

not result in any adverse impact, the action will be considered as being categorically excluded for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508.

(c)(1) If adverse environmental impacts, either direct or indirect, are identified, an environmental assessment will be completed in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(2) The environmental assessment will be used to develop an action that results in no significant environmental impact on the human environment or cultural resources.

(3) No action will be approved that has been determined to have significant impacts on the human environment or cultural resources.

(d)(1) In order to minimize the exposure to environmental liabilities from the presence of contamination on real estate collateral, an evaluation will be made of the economic and environmental risks to the real estate collateral posed by the presence of hazardous substances and petroleum products.

(2) If the evaluation made under paragraph (d)(1) of this section reveals that the collateral is or may be contaminated, then the applicant will be notified and given an option of offering as collateral other real estate that is free from contamination or remediating the contamination on the original site offered as collateral.

Signed at Washington, D.C., on May 8, 2000.

**Keith Kelly,**

*Executive Vice President, Commodity Credit Corporation.*

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

#### Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers. These ranges of comparability

supersede the ranges published on March 27, 2000, 65 FR 16132, which become effective July 14, 2000; however, manufacturers are not required to use those March 27, 2000 ranges.

**EFFECTIVE DATE:** September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202-326-3035).

**SUPPLEMENTARY INFORMATION:** The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.<sup>1</sup> The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial

<sup>1</sup> 42 U.S.C. 6294. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

report, to report certain information annually to the Commission by specified dates for each product type.<sup>2</sup> These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

Manufacturers of clothes washers have made the required 2000 submissions of data for this product category. In analyzing the data, the Commission has grouped the figures in accordance with the revisions to Appendix F (Clothes Washers) published on March 27, 2000, 65 FR 16132, which eliminated the top-loading and front-loading categories for clothes washers.

Accordingly, the Commission is publishing these new 2000 ranges of comparability in the format of the revised Appendix for the clothes washer category. Today's ranges of comparability supersede the ranges (which were based on 1999 submissions) that were published along with the March 27, 2000 amendment eliminating the top-loading and front-loading categories, which have an effective date of July 14, 2000; however, manufacturers are not required to use those ranges.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after September 18, 2000. In addition, as of September 18, 2000, manufactured must base the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 2000 Representative Average Unit Costs of Energy for electricity (8.03 cents per kilo Watt-hour) and natural gas (68.8 cents per therm) that were published by DOE on February 7, 2000

<sup>2</sup> Reports for clothes washers are due March 1.