

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1436

RIN 0560-AH60

#### Farm Storage Facility Loan and Sugar Storage Facility Loan Programs

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) is amending the Farm Storage Facility Loan (FSFL) and Sugar Storage Facility Loan (SSFL) regulations to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The 2008 Farm Bill adds hay and renewable biomass as eligible FSFL commodities, extends the maximum loan term to 12 years, and increases the maximum loan amount to \$500,000. This rule also adds fruits and vegetables (including nuts) as eligible facility loan commodities and adds cold storage facilities as eligible facilities pursuant to discretionary authority in the 2008 Farm Bill. This rule amends the regulations to clarify requirements for loan security and to allow for a partial loan disbursement during construction if certain conditions are met. This rule amends the FSFL program regulations, which include SSFLs; however, there are no changes to the specific requirements for SSFLs.

**DATES:** *Effective Date:* August 17, 2009.

**FOR FURTHER INFORMATION CONTACT:**

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the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) FSFL program provides low-interest financing for producers to build or upgrade farm storage and handling facilities. FSA was initially authorized to implement the FSFL program through the CCC Charter Act (15 U.S.C. 714b), which provides that CCC may make loans to grain producers needing grain storage facilities in areas where the Secretary determines there is a deficiency of such storage. When there was no documented shortage of storage, such as the period between 1982 and 2000, the program did not operate. Section 1614 of the 2008 Farm Bill (Pub. L. 110-246, 7 U.S.C. 8789) authorizes changes to the FSFL program through 2012 without the specific requirement that the Secretary determine that there is a deficit in grain storage. This rule therefore amends § 1436.2, "Administration," to remove a provision that the Deputy Administrator may suspend the program if there is no shortage of storage.

The current FSFL program, which has been operating since May 2000, makes loans primarily for grain storage and drying equipment. This rule expands the program to include hay and renewable biomass as eligible facility loan commodities, as required by the 2008 Farm Bill, and to include fruit and vegetables as eligible facility loan commodities, which is a discretionary addition permitted by the 2008 Farm Bill.

The on-farm storage financed by the FSFL program allows producers flexibility in timing when to sell their crops. On-farm storage allows producers to avoid some fees associated with storing grain at commercial facilities (grain elevators). New uses for grain and other renewable biomass crops may increase the need for on-farm storage. In addition, the costs of building grain storage facilities are increasing.

Most of the current participants in the program are grain producers, particularly corn, soybean, and wheat producers. Some dairy farms use the program to fund silage storage. The expansions in this rule will allow new groups to benefit from the program.

Producers of fruits and vegetables are expected to participate in the FSFL program to fund short-term storage of perishable produce for farmers' markets. Producers of hay are expected to participate in the program to fund storage of high quality hay for sale to the equine and cow-calf industry. Renewable biomass producers are expected to participate in the FSFL program to fund storage of these renewable plant materials to maintain the quality of the biomass between harvest and delivery to a purchaser.

The amendments in this rule allowing larger loans will address the increasing cost for storage facilities. According to studies by Kansas State University, in FY 1999, the average cost to construct a bushel of grain storage was approximately \$1.37 per bushel; by FY 2007, the cost had increased to \$1.80 per bushel of grain storage.<sup>1</sup> Producers are also constructing larger structures for grain storage. In FY 1999, the majority of the bins constructed stored between 10,000 to 50,000 bushels of grain. In FY 2007, grain bin manufacturers reported the majority of the bins constructed had the capacity to store between 100,000 and 200,000 bushels of grain. The Kansas State University study in 2007 also found that producers are demanding larger grain bins. In general, larger buildings have a lower per bushel construction cost, but a higher total cost. An increasing percentage of FSFLs, over 5 percent in 2008, are for the maximum dollar amount allowed in the current regulations. As specified in the 2008 Farm Bill, the maximum cap is raised from \$100,000 per borrower to \$500,000 per loan, which should address the demand for larger and more costly structures.

The prior regulations and the amendments in this rule apply to both the FSFL program and the SSFL program, which is a sub-program of the main FSFL program. Since the SSFL program was established, CCC has only received one loan application. That loan application was withdrawn by the applicant before approval. Therefore, most of the discussion in this preamble focuses on the FSFL program for all the

<sup>1</sup> The KSU studies discussed in this paragraph are available on the Internet at: <http://www.agrisk.umn.edu/cache/ARL01317.pdf> and <http://www.oznet.ksu.edu/library/agec2/mf2474.pdf>.

eligible facility loan commodities except sugar. Section 1404 of the 2008 Farm Bill requires the SSFL program to not charge prepayment penalties; no change is needed in this rule to implement that provision because the existing regulation already specifies that the loan may be paid in full or part without any penalty at any time before maturity. This rule makes minor language changes to some of the provisions concerning SSFLs, to keep the provisions for SSFLs consistent with the provisions for the other eligible facility loan commodities, but makes no changes to the substantive requirements for SSFLs.

### New and Revised Definitions

This rule amends § 1436.3, "Definitions," to add hay and renewable biomass to the definition of a "facility loan commodity," as required by the 2008 Farm Bill. The 2008 Farm Bill also gives the Secretary authority to include as eligible facility loan commodities "other storable commodities (other than sugar) as determined by the Secretary." Therefore, as a discretionary change, this rule adds fruits and vegetables as eligible facility loan commodities for FSFL. Fruits and vegetables include nuts. This rule adds definitions for hay and renewable biomass.

Hay is defined as a grass or legume that has been cut and stored. Commonly used grass mixtures include rye grass, timothy, brome, fescue, coastal Bermuda, orchard grass, and other native species, depending on the region. Forage legumes include alfalfa and clovers. Hay will be considered to include grains where the entire plant, including the seeds, has been cut, stored, and used for animal feed, such as in the case of frost-damaged grain crops harvested as hay. Loans will not be made to store wheat straw or corn stalks used for bedding; these are not considered hay.

"Renewable biomass" is defined as any organic matter that is available on a renewable or recurring basis including renewable plant material such as feed grains or other agricultural commodities (including, but not limited to, soybeans and switchgrass), other plants and trees (excluding old-growth timber), algae, crop residue (including, but not limited to, corn stover, various straws and hulls, and orchard prunings), other vegetative waste material (including, but not limited to, wood waste, wood residues, and food and yard waste) used for the production of energy in the form of heat, electricity, and liquid, solid, or gaseous fuels. Manure from any source is not included.

This definition is consistent with definitions of renewable biomass used

by other USDA and Department of Energy (DOE) programs. If renewable biomass storage facilities are eligible for other loans or grants, such as those provided by USDA Rural Development or DOE, the amount of those benefits will be subtracted from the amount of the FFSL, so as to avoid duplication of benefits. This is consistent with the prior operation of the FSFL program.

It also adds definitions for "cold storage facility," "commercial facility," and "commercial storage." The definitions of "commercial storage" and "commercial facility" are based on the terms commercial purpose and commercial operation that were previously in §§ 1436.6 and 1436.13. This rule moves the definitions related to commercial storage to § 1436.3, "Definitions," and amends them to include facilities for the new eligible facility loan commodities.

The definition of "storage need requirement" is removed from the Definitions section, and expanded specific provisions for storage need requirements for each type of eligible commodity are added to § 1436.9, "Loan Amount and Loan Application Approvals."

This rule adds a definition for "resale collateral value" to clarify how FSA county committees will determine the value of loan collateral if the collateral is removed from its original location and sold.

This rule removes the following terms that are no longer used in the rules: Person and Uniform Commercial Code.

### Loan Terms, Eligible Storage, and Equipment

Prior to this rule, the loan term for all storage facilities, except sugar facilities, was 7 years, and the useful life of a facility was required to be at least 10 years. This rule changes the maximum loan term to 12 years in § 1436.7, "Loan Term," and increases the required useful life of all facilities to a minimum of 15 years in § 1436.6, "Eligible Storage or Handling Equipment." The 12 year loan term is required by the Farm Bill; the 15 year minimum useful life of the facility is a discretionary change made to ensure that the loan will be adequately secured throughout the loan term. For most structures, the useful life of the commodity storage facility, if properly maintained, is well over 15 years. The required minimum useful life of a sugar facility is already set at 15 years in the current regulations, and is not changing with this rule. This rule also amends § 1436.6 to specify that the loan collateral must be used for the purpose for which the storage facility was delivered, erected, constructed,

assembled, or installed for the entire term of the loan. The intent of the program is to provide on-farm storage to producers for the storage of eligible facility loan commodities they produce and not for any other purpose.

This rule amends § 1436.6 to allow the Deputy Administrator, Farm Programs, to approve rebuild kits that are not from the original manufacturer for oxygen-limiting storage structures. Rebuild kits typically include new parts for the purpose of rebuilding an existing structure to bring it back to a manufacturer's specifications and may include, but are not limited to, nuts, bolts, washers, seals, gaskets, internal breather bags, a new base kit, and a new floor. Loans have been available for remanufactured oxygen-limiting storage structures built to the original manufacturer's design specifications using rebuild kits, but the prior rule allowed only original manufacturer rebuild kits. This discretionary change is necessary because the original manufacturer for the majority of the original oxygen-limiting structures is no longer in business. There are a number of reputable companies manufacturing the rebuild kits.

This rule amends § 1436.6 to add specific provisions for facilities and eligible cost items for hay, renewable biomass, and fruit and vegetable storage. In each case, the requirements are similar to those for other commodities, with the additional requirement for hay and renewable biomass that the flooring be suitable for the region in which the facility is located, and designed according to acceptable guidelines. This requirement is to ensure that the program makes loans for facilities that are appropriately designed for the intended purpose, and not for some other purpose. For fruit and vegetable cold storage facilities, the allowable cost items include building insulation to help limit the loss of cool air from the structure.

No loans will be approved for any portable structures, portable handling and cooling equipment, or used or pre-owned structures and equipment. Loans may be approved for modifications to existing structures. Loans will not be made for existing structures, but may be made for new components added to existing structures. Remanufactured oxygen-limited structures rebuilt to the original specifications are not considered used, due to the extensive nature of the remanufacturing process.

This rule amends § 1436.9, "Loan Amount and Loan Application Approvals," to specify that any portion of a storage structure that is not used for storing facility loan commodities, such

as an office space or display area, will not be eligible for loan. The loan amount will be adjusted to exclude this ineligible space. This provision was already in the regulation, but is clarified and expanded.

This rule further clarifies that FSFL structures are prohibited from being used for any commercial storage. The purpose of the FSFL program is to provide low-cost financing to producers to store the commodities that they produce. Accordingly, the program does not provide financing for commercial storage facilities.

This rule amends § 1436.9 to add provisions regarding how storage need requirements will be determined for specific eligible facility loan commodities. These requirements were previously in the Definitions section. The purpose of these requirements is to ensure that CCC uses its limited resources to finance storage facilities that are of a capacity appropriate to the needs of the producer. Storage capacity for two years will be used to estimate the storage needs for hay and renewable biomass commodities. This is the same time period used for all of the other originally approved facility loan commodities in the current regulations. For fruits and vegetables, the cold storage need requirement will be determined based on production for one year. Fruits and vegetables are perishable commodities and their quality can only be maintained for a limited period of time. Cold storage facilities can extend this period of time, but a cold storage facility cannot maintain the quality of fruits and vegetables for longer than a year. Although apples may be stored from between 3 to 8 months, and carrots will maintain their quality for approximately 6 months, the quality for many fruits and vegetables in cold storage can typically be maintained for only a week to 10 days.

#### Eligible Borrowers

Section 1614(b) of the 2008 Farm Bill (7 U.S.C. 8789(b)) requires that producers eligible for FSFLs have a satisfactory credit history, demonstrate the ability to repay the loan, and show a need for increased storage capacity. These requirements were already included in the regulations in § 1436.5, "Eligible Borrowers." This rule makes only minor changes, described below, to the regulations specifying borrower eligibility requirements.

Prior to this rule, the regulations allowed a producer to construct storage using as eligibility the producer's own share of the crop. On occasion, a crop share landlord or tenant requests to

construct a storage structure to store all commodities produced on the farm but only one of the individuals wishes to assume liability for the loan. This rule amends § 1436.5 to address this situation. A new provision in this rule allows the Deputy Administrator, Farm Programs, to issue a waiver to use all production from the farm to compute FSFL eligibility for a crop share landlord or tenant. These waivers must be requested by the applicant in writing, and will be issued on a case by case basis.

Prior to this rule, the regulations required borrowers to carry crop insurance on all crops of economic significance. However, crop insurance under the Federal Crop Insurance Program is not available for some of the renewable biomass commodities, and as an example, hay may not be an economically significant crop on a particular farm depending upon the total expected value of all crops grown by the applicant. This rule amends this section of the regulations to clarify that if crop insurance is not available for a commodity for which a producer is requesting FSFL, crop insurance is not a requirement. This rule also adds a requirement that borrowers with outstanding FSFLs must present proof of crop insurance annually to the FSA office servicing their loan, and clarifies that crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, is required on all the commodities stored in the FSFL-funded facility, whether economically significant or not.

Loans are approved and disbursed to a farming operation that is an eligible entity or an eligible producer at the time of approval. This rule amends § 1436.16 "Foreclosure, Liquidation, Assumptions, Sales or Conveyance, or Bankruptcy" to add one more available option to address the situation where changes are made to the farming operation after the loan is disbursed. This rule adds a new paragraph (d) to § 1436.16 to specify that if any significant changes are made, as determined by CCC, to the legal or operating status of the farming operation with an outstanding FSFL, such as changing from a partnership to a corporation, or discontinuing farming, the borrower must do one of the following:

- Find an eligible borrower or entity to assume the loan;
- repay the loan; or
- undergo new financial analysis as approved and determined by CCC to ensure that CCC's interests are protected and it is determined by CCC that the current borrower is in a position to

continue making the scheduled loan payments.

The provisions for loan assumption or repayment are not changing; the financial analysis provision is a new option to allow flexibility in situations where changes are made to the farming operation after the loan is disbursed. This situation typically occurs when a borrower retires and wishes to maintain ownership of a structure but is no longer receiving a share of the crop. CCC will allow the loan to continue, provided the scheduled payments are made, the facility is not used as a commercial facility or operation, and one of the three provisions for addressing changes to the farming operation is met.

#### Loan Terms, New Loan Limit

Prior to this rule, the FSFL regulation at § 1436.9 limited FSFLs for all eligible facility loan commodities except sugar to a maximum of \$100,000 for each borrower signing the note and security agreement. This rule increases that limit to \$500,000 per loan, not per borrower, as required by the 2008 Farm Bill. This rule continues to specify the loan limit as 85 percent of the qualified costs to construct an on-farm storage structure, which is not a change from the prior regulation. With the new maximum limit of \$500,000, it will be possible for an eligible borrower to construct a structure costing nearly \$589,000. It will also be possible for a borrower to qualify for multiple loans for multiple facilities, but such borrower must separately qualify for each loan and CCC will administer each loan separately.

As discussed earlier, the loan term is extended to a maximum of 12 years, as required by section 1614 of the 2008 Farm Bill. This rule amends § 1436.7, "Loan term," to specify the loan term of 7, 10, or 12 years, with the loan term determined by the amount of loan principal; within the specific options set by this rule, the borrower may choose the term as follows:

- For a loan with the total principal of \$100,000 or less, the term will be set at 7 years.
- For loans from \$100,000.01 through \$250,000, the borrower can choose a loan term of 7 or 10 years.
- For loans from \$250,000.01 through \$500,000, the borrower can choose a loan term of 7, 10, or 12 years.

The requested loan term will be specified by the borrower at the time of loan application on the loan application form, as the required financial analysis must take into account the annual payment amount. The borrower may change the loan term prior to the final loan disbursement if the principal amount qualifies the loan for a different

term and if a new financial analysis indicates the annual payments will be manageable as determined by CCC. If a partial disbursement has been issued, the term on the amount disbursed can not be adjusted because the promissory note and the security agreement establishing the interest rate and loan term have already been completed and the lien perfected.

This rule amends § 1436.12, "Interest and fees," to clarify how the interest rate is determined for FSFLs. CCC borrows from the U. S. Treasury to fund the FSFL program. The FSFL interest rates are equivalent to the rate of interest charged on Treasury Securities of a comparable term and maturity. For this reason, the interest rate on the 7, 10, and 12 year FSFL loan terms may be different. The rates will be published on the FSA website and posted in the county office.

This rule also amends § 1436.12 to specify that the loan application fee for FSFLs will be assessed per loan borrower and not per loan. The non-refundable loan application fee for each FSFL is increased from not less than \$45 per loan to not less than \$100 per borrower. This discretionary change is needed to cover the cost to CCC of making these loans. CCC is required to conduct lien searches, obtain credit reports, and file liens on the loan security for all borrowers on a loan. The cost to CCC for these lien searches, security filings, and credit reports has increased since the regulations were published in 2001. The purpose of the loan application fee is to cover the cost of the fees associated with the loan.

#### Security for Loan

This rule makes a number of changes to § 1436.8, "Security for Loan," to implement provisions of the 2008 Farm Bill regarding loan security. Section 1614(f)(2) of the 2008 Farm Bill (7 U.S.C. 8789(f)(2)) provides that a severance agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located will not be required if the borrower agrees to increase the down payment on the storage facility loan in an amount determined by the Secretary or provides another form of security acceptable to the Secretary. This rule amends the regulations to include this provision. CCC has determined that if the borrower increases the down payment from 15 percent to 20 percent, severance agreements will not be required. This will only apply to loans \$50,000 or less because all other loans already require additional security and in most instances when CCC has a mortgage on

the real estate, the facility is not severed from the real estate.

Section 1614(f)(3) of the 2008 Farm Bill (7 U.S.C. 8789(f)(3)) requires that CCC allow a borrower to use a parcel of real estate to secure a loan if this acreage is not subject to any other liens or mortgages superior to CCC's lien interest, and is of adequate size and value to secure the loan and insure repayment. That is consistent with current CCC policy. This rule amends the regulations to specifically include this provision.

This rule also amends § 1436.8 to require loans for \$50,000 or less that are secured by collateral with no resale value, as determined by CCC, to have additional security. Additional security on loans of \$50,000 or less has not been required in the past unless the aggregate outstanding FSFL balance for the borrower exceeds \$50,000 or CCC determines as a result of financial analysis that additional security is required. Some FSFL facilities, such as poured cement open bunker silos, have nothing that can be removed and sold if a borrower defaults on the loan. CCC will now require county committees to determine if a structure has resale collateral value and if additional security is required for the loan. This change is needed to protect CCC's interests in case of default. Most of the loans in the FSFL program are under \$50,000.

#### Disbursement

Section 1614(e) of the 2008 Farm Bill (7 U.S.C. 8789(e)) requires the availability of one partial loan disbursement and the final loan disbursement. This rule amends § 1436.10, "Down Payment," and § 1436.11, "Disbursements and Assignments," to implement the new provisions regarding the partial and final loan disbursement. The partial loan disbursement must be requested by the borrower and will be made to facilitate the purchase and construction of an eligible facility. The partial loan disbursement will be available after a portion of the construction has been done and commensurate with the amount of construction completed on the approved structure. CCC has determined at this time that the maximum amount of the partial loan disbursement will be 50 percent of the projected and approved total loan amount, and cannot exceed \$250,000. The borrower will need to provide acceptable documentation specifying the cost of the completed portion of the structure to CCC, then FSA will inspect the facility to verify the amount of the construction completed. Security

required for the principal amount of the partial loan disbursement will be required before the partial disbursement is finalized. CCC will make the final loan disbursement after the borrower provides acceptable documentation specifying the total cost of the facility to CCC and after the facility is completely delivered, erected, constructed, assembled, or installed. An FSA representative will inspect and approve the facility prior to the final loan disbursement. All security needed to fully secure both the partial and final loan disbursements must be received before the final loan disbursement.

For SSFLs, the option for a partial loan disbursement is not available, because section 1404 of 2008 Farm Bill, which amends 7 U.S.C. 7971(c), which contains provisions specific to SSFLs, does not include this provision.

As a conforming change, this rule amends § 1436.10 to specify that the down payment will be made before either the partial or final loan disbursements.

#### Fruits and Vegetables

The discretionary change to add cold storage for fruits and vegetables into the farm storage facility loan program regulation is one avenue USDA is implementing to help farmers. The post-harvest cooling of produce to remove the field heat is necessary to reduce incidents of microbial contamination. Cooling also extends the shelf life of produce.

Cooling facilities are an expensive outlet for beginning and start-up growers. Many farmers indicate a need to have on-farm or proximate access to cooling facilities, but found that financing them was difficult given the seasonal nature of their use. With credit more difficult to obtain, many producers have found they are unable to get commercial lending for a cold storage facility.

Small farms are diversifying to make a profit and with the emphasis of buying locally grown food, many small fruit and vegetable producers market their crops at farmers markets. To remove the field heat from their produce, a cold storage facility is needed to cool down their crops immediately after harvest and prior to trucking to a farmers market. Many producers must truck their produce to a cold storage facility up to 2 hours away to remove the field heat, and go back to retrieve it before proceeding to the market.

The 2008 Farm Bill increased the loan limit from \$100,000 per borrower to a maximum of \$500,000 per loan. Even with the maximum loan amount, considering the cost of a cold storage

facility, only a small to moderate size facility could be constructed, thereby benefiting the small to mid size farmers. The smaller producers store their crops for a much shorter term and are constantly moving in and out a variety of different crops.

A study entitled "2007 Pennsylvania Shipping Point Market Feasibility Study," by Philip Gottwals, Duke Burruss, and Ali Church indicated that a self enclosed modular forced air cooling and cold storage facility that would meet the needs of the small producer cost approximately \$28,000 in 2007. This facility has a capacity of 20 pallets and would remove field heat by forced air cooling and serve as a temporary cold storage room. The structure in this example is 8 feet x 40 feet x 8.5 feet high equaling 2,720 cu. feet of storage space. The price is still around \$28,000.

A cold storage building measuring 40 feet x 60 feet x 14 feet high where half of the structure (16,800 Cu. feet) was refrigerated for cold storage, cost \$125,000. This is considered a small cold storage facility.

The addition of cold storage facilities for fruits and vegetables will help the Department's outreach goals and initiatives to expand access of USDA programs and services to underserved groups. Underserved groups include small farms, beginning farmers, and racial and ethnic minority groups. Only 2 percent of all U.S. farms primarily grow vegetables, whereas vegetable production is the primary enterprise for 6 percent of Black farmers, 13 percent of Asian farmers, and 9 percent of American Indian farmers. Fruits or nuts are the primary enterprise for 4 percent of all U.S. farms, but are the primary enterprise for 37 percent of Asian farmers and 16 percent of Hispanic origin farmers. Small farms and beginning farmers also are more likely to be involved in these farm enterprises. Therefore, adding these agricultural products to the eligible commodities increases the Departments outreach to these underserved groups.

Specialty crops, which include fruits and vegetables, account for most direct-to-consumer sales, and are produced at a high frequency by small farmers. The direct-to-consumer sales through local markets play a pivotal role in maintaining the viability of family farmers by providing them direct access to markets close to home. Farmers who sell directly to their customers receive more of the full retail price for their food, which means that many small farmers are able to earn greater returns.

#### Other Miscellaneous Changes

This rule amends § 1436.4, "Availability of Loans," to designate where the producer must submit loan applications for renewable biomass commodity facilities and cold storage facilities for fruits and vegetables. This rule amends that section to specify that if the commodities will be produced on land that has farm records established in a county office, the application must be submitted to that office. If the commodities will be produced on land that does not have farm records established in a county office, the application must be submitted to the county FSA office that services the county where the facility will be located. This amendment is needed to clarify where the loan applications should be filed, because the new eligible facility loan commodities may be produced on land that does not currently have FSA farm records.

This rule amends § 1436.9, "Loan Amount and Loan Application Approvals," to allow the Deputy Administrator, Farm Programs, to set a limit for the approval authority of original loan applications by county and State FSA committees that is lower than the maximum loan amount. The intent of this amendment is to protect the financial interests of CCC.

This rule also amends § 1436.9 to allow the State FSA committee the authority to extend the loan approval period for an additional 4 months for a total of 12 months from the original approval date. In the current rule, the initial loan approval period is set at 4 months from the county or State committee approval date. The FSA State committee or its representative can currently extend approval for another 4 months. This rule will change that to allow a second extension, for a total of 12 months. Currently, if the producer cannot complete construction of the facility in 8 months, the State Committee has to send the loan approval to the FSA headquarters office to formally approve the extension. There are common reasons why a facility cannot be completed in 8 months, such as weather, part defects, contractor scheduling issues, and other construction delays. The change will expedite and simplify the loan extension process for producers who have routine construction delays, by allowing a second loan extension to be made at the State committee level. Only the State committee will have the authority to extend the loan approval period to 12 months and that authority cannot be delegated. This change is permitted for all eligible facility loan

commodities except sugar. The provisions regarding the extension for SSFLs remain unchanged.

This rule amends § 1436.13, "Loan Installments, Delinquency, and Acceleration of Maturity Date," to clarify that the producer's first installment payment is due and payable to CCC one year from the date of each of the partial and final loan disbursements. Producers that request a partial disbursement, which will therefore also necessitate a final payment, will have two notes for the one loan with two payment schedules. One note will be for the partial disbursement and the second note will be for the final disbursement of the loan; there will be only one loan application required for the two notes. Producers that request a partial disbursement will have two annual installments due one year from each disbursement and annually on these dates until the loans have been paid in full.

This section is also amended to clarify the procedure for rescheduling debts. Any rescheduling or alternate repayment arrangements on any outstanding loans will require prior written approval from the Deputy Administrator, Farm Programs. This is a discretionary change to protect CCC's financial interest by assuring that proper procedure is followed in rescheduling any FSFL debts.

This rule adds retail and wholesale cold storage facilities to the provisions prohibiting commercial facilities for outstanding FSFLs in this section.

This section allows CCC to declare the entire loan immediately due and payable if the facility is used for a commercial operation, which is not a change from the previous rule.

In addition, nonsubstantive, housekeeping changes are being made to the regulations to fix typos and add to the clarity, readability, plain language, and consistency of the regulations. Some examples of these changes include:

- Clarifying the list of commodities to reflect the full list throughout the regulation, for example in the definition of "facility loan commodity," some of the commodities had not been added the last time the regulations were revised;
- Referring consistently to a commodity as a "facility loan commodity" instead of "grain" versus "commodities" or "agricultural commodities." The same type of wording change was made for commercial operations, facility, storage, and other terms where consistency was needed;

- Clarifying which provisions apply to sugar and which do not apply; and
- Replacing “shall” with “will” or “must” based on context where deemed appropriate.

#### Notice and Comment

These regulations are exempt from notice and comment provisions of 5 U.S.C. 553, as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 5 or title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking.

#### Executive Order 12866

This final rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost Benefit Analysis is summarized below and is available from the contact information listed above.

#### Summary of Economic Impacts

The amendments to the FSFL program in this rule will add costs of \$6 million in 2009, \$28 million in 2010, \$30 million in 2011, and \$32 million in 2012 over the cost of the existing program. This rule was designated as economically significant based on original estimates that included the full cost of the program instead of the regulatory impact of the changes to the existing program. The majority of the increase in demand for loans will come from the increase in loan size eligibility from \$100,000 to \$500,000; the remaining increase will come from demand for storage of the additional eligible crops for storage (hay, fruits and vegetables, and renewable biomass). The total program cost includes a roughly 3% increase per year in lending volumes, due to increased construction costs and capacity needs.

The total benefit to producers per year from the FSFL program is about \$10 million per year in interest rate savings over what they would have had to pay to finance comparable loans from commercial lenders. Assuming that all those producers could have gotten a commercial loan and would have done so, commercial lenders have an equivalent \$10 million loss in loan revenue per year. If credit markets remain tight, the benefits to producers could be larger, because the spread between FSFL rates and commercial rates might be larger. The availability of

below-market rate loans for on-farm storage facilities has a small potential negative impact on commercial storage facilities, such as grain elevators. FSFL has funded less than 4% of the on-farm storage capacity in the U.S., so it is unlikely that the program is having a significant impact on commercial storage facilities at a national level, although there may be more significant localized effects in locations where FSFL has a relatively larger share of the new facility loan market.

#### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for the subject matter of this rule.

#### Environmental Review

FSA has prepared a Programmatic Environmental Assessment (PEA) to evaluate the environmental consequences associated with implementing the changes to the FSFL Program authorized by the 2008 Farm Bill. The PEA notice is published elsewhere in this issue of the **Federal Register**. In consideration of the analysis documented in the PEA and the reasons outlined in the Finding of No Significant Impact (FONSI), the Preferred Alternative would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

#### Executive Order 12372

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

#### Executive Order 12988

The final rule has been reviewed under Executive Order 12988. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 870 must be exhausted.

#### Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

#### Unfunded Mandates

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. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of title 5, United States Code, 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. This rule affects a large number of agricultural producers who are dependent upon these provisions for financing farm storage and need to know the details as soon as possible because it affects their planting, marketing, and building decisions. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the **Federal Register**.

#### Federal Assistance Programs

The changes in this rule affect the following FSA programs as listed in the *Catalog of Federal Domestic Assistance*: 10.056—Farm Storage Facility Loans.

#### Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

#### E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the

use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### List of Subjects in 7 CFR Part 1436

Administrative practice and procedure, Loan programs—agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons discussed above, this rule amends 7 CFR part 1436 as follows:

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

■ 1. Revise the authority citation for part 1436 to read as follows:

**Authority:** 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714–714p.

#### § 1436.1 [Amended]

■ 2. Amend § 1436.1 by removing the word “state” and adding in its place the word “State”.

■ 3. Amend § 1436.2 as follows:

■ a. Amend paragraphs (a), (c), introductory text, (d) and (f) second sentence, by removing the word “shall” each time it appears and adding in its place the word “will” and

■ b. Revise paragraph (g) to read as set forth below.

#### § 1436.2 Administration.

\* \* \* \* \*

(g) The purpose of the Farm Storage Facility Loan program is to provide CCC funded loans for producers of grains, oilseeds, pulse crops, sugar, hay, renewable biomass, fruits and vegetables (including nuts), and other storable commodities, as determined by the Secretary, to construct or upgrade storage and handling facilities for the eligible facility loan commodities they produce.

■ 4. Amend § 1436.3 as follows:

■ a. Amend the undesignated introductory paragraph, by removing the word “shall” each time it appears and adding in its place the word “will”,

■ b. Add new definitions, in alphabetical order, for the terms “cold storage facility,” “commercial facility,” “commercial storage,” “hay,” “renewable biomass,” and “resale collateral value” as set forth below,

■ c. Revise the definitions of “collateral” and “facility loan commodity” to read as set forth below, and

■ d. Remove the definitions of “person,” “storage need requirement,” and “Uniform Commercial Code”.

#### § 1436.3 Definitions.

\* \* \* \* \*

*Collateral* means the storage structure; the drying, handling, and cold storage equipment; and any other equipment securing the loan.

*Cold storage facility* means a facility or rooms within a facility that are specifically designed and constructed for the cold temperature storage of perishable commodities. The temperature and humidity in these facilities must be able to be regulated to specified conditions required for the commodity requiring storage.

*Commercial facility* means any structure, used in connection with or by any commercial operation including, but not limited to, grain elevators, warehouses, dryers, processing plants, or cold storage facilities used for the storage and handling of any agricultural product, whether paid or unpaid. Any structure suitable for the storage of an agricultural product that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation.

*Commercial storage* means the storing of any agricultural product, whether paid or unpaid, for persons other than the owner of the structure, except for family members and tenants or landlords with a share in the eligible facility loan commodity requiring storage.

\* \* \* \* \*

*Facility loan commodity* means corn, grain sorghum, oats, wheat, barley, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, other oilseeds as determined and announced by CCC, dry peas, lentils, or chickpeas harvested as whole grain, peanuts, hay, renewable biomass, and fruits and vegetables (including nuts). Corn, grain sorghum, wheat, and barley are included whether harvested as whole grain or other than whole grain.

\* \* \* \* \*

*Hay* means a grass or legume that has been cut and stored. Commonly used grass mixtures include rye grass, timothy, brome, fescue, coastal Bermuda, orchard grass, and other native species, depending on the region. Forage legumes include alfalfa and clovers.

\* \* \* \* \*

*Renewable biomass* means any organic matter that is available on a renewable or recurring basis including renewable plant material such as feed grains or other agricultural commodities (including, but not limited to, soybeans and switchgrass), other plants and trees

(excluding old-growth timber), algae, crop residue (including, but not limited to, corn stover, various straws and hulls, and orchard prunings), other vegetative waste material (including, but not limited to, wood waste, wood residues, and food and yard waste) used for the production of energy in the form of heat, electricity, and liquid, solid, or gaseous fuels. Manure from any source is not included.

*Resale collateral value* means collateral that can be sold and moved to a new location for which compensation equal to the outstanding loan value can be expected.

\* \* \* \* \*

■ 5. Revise § 1436.4 to read as follows:

#### § 1436.4 Application for loans.

(a) An application for a loan must be submitted:

(1) For all loans, except loans for renewable biomass storage facilities and cold storage facilities for fruits and vegetables, to the administrative county office that maintains the records of the farm or farms to which the application applies. With State office approval, loans may be made or serviced by a county office other than the administrative county office.

(2) For loans for renewable biomass storage facilities and cold storage facilities for fruits and vegetables, to the administrative county FSA office that maintains the records of the farm or farms to which the application applies, if the facility will be located on land that has farm records established at the county office. If the commodities will be produced on land that does not have farm records established at the county office, the application must be submitted to the county FSA office that services the county where the facility will be located.

(b) Upon request, the applicant must furnish information and documents as the State or county committee deems reasonably necessary to support the application. This may include financial statements, receipts, bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of access.

(c) For sugar storage facility loans, a loan application must be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications must be submitted to the county office serving the headquarters location of the sugar processor.

(d) Submitting an application does not ensure loan approval nor create any liability on behalf of CCC. Borrowers who authorize delivery, site

preparation, or construction actions without an approved loan, do so at their own risk.

■ 6. Amend § 1436.5 as follows:

- a. Amend paragraph (a)(4) by adding the words “as determined” immediately before the words “by CCC;”
- b. Revise paragraphs (a)(5) and (a)(6) to read as set forth below,
- c. Amend paragraph (a)(7) by removing the acronym “USDA” and adding, in its place the words “the U.S. Department of Agriculture (USDA)”,
- d. Amend paragraph (a)(11) by adding the words “or a crop insurance violation” immediately after the word “violation,” and
- e. In paragraph (b), introductory text, remove the word “related”.

**§ 1436.5 Eligible borrowers.**

(a) \* \* \*

(5) Demonstrates a need for increased storage capacity as determined by CCC if the applicant is applying for a loan for a storage structure. The Deputy Administrator, Farm Programs, may issue a waiver, if requested, on a case by case basis if a crop share landlord or tenant requests to construct a structure to store commodities produced on the farm but only one of the two wishes to accept loan liability;

(6) Annually provides proof of crop insurance offered under the Federal Crop Insurance Program for insurable crops of economic significance on all farms operated by the borrower in the county where the storage facility is located. Crop insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, if available, is required on all the commodities stored in the FSFL-funded facility, whether economically significant or not; crop insurance under the Federal Crop Insurance Program may not be available for certain renewable biomass commodities;

\* \* \* \* \*

■ 7. Amend § 1436.6 as follows:

- a. Revise paragraphs (a), introductory text, and (a)(2) to read as set forth below,
- b. In paragraph (a)(1) remove the number “10” and add, in its place, the number “15”,
- c. In paragraph (a)(3) remove the number “10” and add, in its place, the number “15” and remove the word “and” at the end,
- d. In paragraph (a)(4) remove the number “10” and add, in its place, the number “15” and remove the period at the end and add, in its place, a semicolon.
- e. Add new paragraphs (a)(5) and (a)(6) to read as set forth below,
- f. Revise paragraph (b) introductory text to read as set forth below,

- g. Amend paragraph (b)(3) to remove the word “grain” and add, in its place, the words “eligible facility loan commodity”;
- h. Amend paragraph (b)(4) to remove the word “grain” and add, in its place, the words “eligible facility loan commodity” and remove the word “and” at the end,
- i. Amend paragraph (b)(5) to remove the word “grain” and add, in its place, the words “eligible facility loan commodity” and remove the period at the end and add, in its place “; and”,
- j. Add new paragraph (b)(6) to read as set forth below,
- k. Revise paragraphs (c), introductory text, (c)(3), and (c)(5) to read as set forth below,
- l. Revise paragraph (d) to read as set forth below,
- m. Amend paragraph (e) in the first sentence to add the words “for all eligible facility loan commodities except sugar and fruits and vegetables” immediately after the word “Loans” and remove the number “10” and add, in its place, the number “15”,
- n. Add introductory text to paragraph (f) to read as set forth below,
- o. Remove paragraph (f)(1),
- p. Redesignate paragraph (f)(2) as paragraph (f)(1) and amend newly designated paragraph (f)(1) in the first sentence, by removing the words “For sugar-related loans, the” and adding, in their place, the word “The”,
- q. Redesignate paragraph (f)(4) as paragraph (f)(2) and remove the words “For sugar-related loans,” and add, in their place, the words “Sugar storage facility”;
- r. Revise paragraph (f)(3) introductory text to read as set forth below, and
- s. Add paragraph (g) to read as set forth below.

**§ 1436.6 Eligible storage or handling equipment.**

(a) For all eligible facility loan commodities, except sugar and fruits and vegetables, 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. The loan collateral must be used for the purpose for which it was delivered, erected, constructed, assembled, or installed for the entire term of the loan. Eligible storage and handling facilities include the following:

\* \* \* \* \*

(2) New oxygen-limiting storage structures or remanufactured oxygen-

limiting storage structures built to the original manufacturer’s design specifications using original manufacturer’s rebuild kits or kits from a supplier approved by the Deputy Administrator, Farm Programs, and other upright silo-type structures designed for whole grain storage or other than whole grain storage and with a useful life of at least 15 years; and

\* \* \* \* \*

(5) New structures suitable for storing hay that are built according to acceptable design guidelines from the Cooperative State Research, Education, and Extension Services (CSREES) or land-grant universities and with a useful life of at least 15 years; and

(6) New structures suitable for storing renewable biomass that are built according to acceptable industry guidelines and with a useful life of at least 15 years.

(b) For all eligible facility loan commodities, except sugar and fruits and vegetables, the calculation of the loan amount may include costs associated with building, improving, or renovating an eligible storage or handling facility, including:

\* \* \* \* \*

(6) Flooring appropriate for storing hay and renewable biomass suitable for the region where the facility is located and designed according to acceptable guidelines from CSREES or land-grant universities.

(c) For all eligible facility loan commodities, except sugar and fruits and vegetables, no loans will be made for installation or related costs of:

\* \* \* \* \*

(3) Used structures or handling equipment, not including remanufactured oxygen-limiting storage structures built to the manufacturer’s original design specifications as specified in paragraph (a)(2) of this section;

\* \* \* \* \*

(5) Storage structures to be used as a commercial facility. Any facility that is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation; and

\* \* \* \* \*

(d) Loans for all eligible facility loan commodities, except sugar and fruits and vegetables, may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if the county committee determines there is a need for the capacity of the structure, but loans will not be approved solely for the replacement of



worn out items such as motors, fans, or wiring.

\* \* \* \* \*

(f) The provisions of this paragraph apply only to sugar storage facility loans.

\* \* \* \* \*

(3) No sugar storage facility loans will be made for:

\* \* \* \* \*

(g) The provisions of this paragraph apply only to fruit and vegetable cold storage facility loans.

(1) For cold storage facility loans, the loan amount may include costs associated with the purchase, installation, building, improving, remodeling, or renovating an eligible storage or handling facility. Costs associated with the construction of a permanently installed cold storage facility include, but are not limited to, the following: An insulated cement slab floor, insulation for walls and ceiling (including, but not limited to, loose fill cellulose, foam insulation sheets, sprayed-on and foam-in-place materials), and a vapor barrier.

(2) Eligible facilities include, but are not limited to, the following:

(i) A new cold storage facility of wood pole and post construction, steel, or concrete, that is suitable for storing the fruits and vegetables produced by the borrower and with a useful life of at least 15 years;

(ii) New walk-in prefabricated permanently installed cold storage coolers that are suitable for storing the producer's fruits and vegetables and with a useful life of at least 15 years;

(iii) Permanently affixed equipment necessary for a cold storage facility such as refrigeration units or system and circulation fans;

(iv) Permanently installed equipment to maintain or monitor the quality of produce stored in a cold storage facility;

(v) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of a cold storage facility.

(3) For cold storage facility loans, loans may be approved for financing additions or modifications to an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

(4) No cold storage facility loans will be made for:

(i) Portable structures;

(ii) Portable handling and cooling equipment;

(iii) Used or pre-owned structures, or cooling and handling equipment; or

(iv) Structures that are not suitable for a fruit or vegetable cold storage facility.

■ 8. Revise § 1436.7 to read as set forth below:

**§ 1436.7 Loan term.**

(a) For eligible facility loan commodities other than sugar, the term of the loan will be 7, 10, or 12 years, based on the total loan principal, from the date a promissory note and security agreement is completed on both the partial and final loan disbursements. The applicant will choose, if applicable, a loan term when submitting the loan application and total cost estimates.

(1) For a loan with the principal of \$100,000 or less, the term is 7 years.

(2) For loans from \$100,000.01 through \$250,000, the borrower will choose a term of 7 or 10 years.

(3) For loans from \$250,000.01 through \$500,000, the borrower will choose a loan term of 7, 10, or 12 years.

(b) No extensions of the loan term will be granted. The loan balance and all related costs are due at the end of the loan term.

(c) For a sugar-related loan:

(1) CCC, at its discretion, may authorize a maximum loan term of 15 years. The minimum loan term of a sugar-related loan is 7 years.

(2) The loan balance and costs are due at the end of the loan term, which will be established on the date the promissory note and security agreement is executed.

■ 9. Revise § 1436.8 to read as follows:

**§ 1436.8 Security for loan.**

(a) Except as agreed to by CCC, all loans must be secured by a promissory note and security agreement covering the farm storage facility and such other assurances as CCC may demand, subject to the following:

(1) The promissory note and security agreement must grant CCC a security interest in the collateral and must be perfected in the manner specified in the laws of the State where the collateral is located.

(2) CCC's security interest in the collateral must be the sole security interest in such collateral except for prior liens on the underlying real estate that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the real estate will attach to the collateral, a severance agreement must be obtained in writing from each holder of such a lien, including all government or USDA agencies. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) For any loan amounts of \$50,000 or less, CCC will not require a severance

agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located, if the borrower:

(1) Agrees to increase the down payment on the storage facility loan from 15 percent to 20 percent; or

(2) Provides other security such as an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

(c) For loan amounts exceeding \$50,000, or when the aggregate outstanding balance will exceed \$50,000 or for loans in which the approving county or State committee determines, as a result of financial analysis, that additional security is required, a lien on the real estate parcel on which the farm storage facility is located is required in the form of a real estate mortgage, deed of trust, or other security instrument approved by USDA's Office of the General Counsel, provided further that:

(1) CCC's interest in the real estate must be superior to all other liens, except a loan may be secured by a junior lien on real estate when the loan is adequately secured and a severance agreement is obtained from prior lien holders.

(2) A loan will be considered to be adequately secured when the real estate security for the loan is at least equal to the loan amount.

(3) If the real estate is covered by a prior lien, a lien waiver may be obtained by means of a subordination agreement approved for use in the State by USDA's Office of the General Counsel. CCC will not require such an agreement from any agency of USDA.

(d) Title insurance or a title opinion is required for loans secured by real estate.

(e) Real estate liens, with prior CCC approval, may cover 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 the acreage is not subject to any other liens or mortgages that are superior to CCC's lien interest and

(2) The acreage is of adequate size and value at the time of the application as determined by the county committee to adequately secure and insure repayment of the loan.

(f) A borrower, in lieu of such liens required by this section, may provide an irrevocable letter of credit, bond, or other form of security, as approved by CCC.

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

(h) For all farm storage facility loans, except sugar loans, the borrower must pay the cost of loan closings by attorneys, title opinions, title insurance, title searches, filing, and recording all real estate liens, fixture filings, appraisals if requested by the borrower, and all subordinations. CCC will pay costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(i) All loans of \$50,000 or less that are secured with collateral with no resale value, as determined by CCC, may require additional security.

(j) For sugar storage facility loans, in addition to other requirements in this section, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if deemed necessary by CCC to adequately secure the loan. A sugar storage facility loan will generally be considered to be adequately secured when the CCC-determined value of security for the loan is equal to at least 125 percent of the loan amount.

(k) For sugar storage facility loans, paragraph (h) of this section is not applicable. However, the borrower must pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, and filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

■ 10. Revise § 1436.9 to read as follows:

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

(a) The cost on which the loan will 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, -ton or, -cubic foot cost established by the FSA State committee.

(b) The net cost for all storage facilities and handling equipment:

(1) May include the following: All real estate lien related fees paid by the borrower, including attorney fees, except for filing fees; environmental and historic review fees including archaeological study fees; the facility purchase price; sales tax; shipping; delivery charges; site preparation costs; installation cost; material and labor for concrete pads and foundations; material and labor for electrical wiring; electrical motors; off-farm paid labor; on-farm site preparation and construction equipment costs not to exceed commercial rates

approved by the county committee; and new on-farm material approved by the county committee.

(2) May not include secondhand material or any other item determined by the approving authority to be ineligible for loan.

(c) The maximum total principal amount of the farm storage facility loan is 85 percent of the net cost of the applicant's needed storage or handling facility, including equipment, not to exceed \$500,000 per loan.

(d) The storage need requirement for eligible facility loan commodities will be determined as follows:

(1) For facility loan commodities, except sugar and fruits and vegetables:

(i) Multiply the average of the applicant's share of the acres farmed for the most recent three years for each type of facility loan commodity requiring suitable storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Multiply by two (for 2 years production); and

(iv) Subtract existing storage capacity in the units of measurement, such as bushels, tons, or cubic feet, for the type of storage needed to determine remaining storage need.

(v) Compare capacity of proposed facility with storage need (calculated as specified in paragraphs (d)(1)(i)–(iv) of this section) to determine if applicant is eligible for additional storage.

(2) For sugar storage facility loans, (i) Identify past processing volume and marketing allotments;

(ii) Use the processor's projection of processing volume, available storage capacity, volume not to be marketed due to marketing allotment, and other appropriate factors affecting the processor's storage need to estimate the storage need requirement, and

(iii) Compare capacity of proposed facility with storage need (estimated as specified in paragraphs (d)(2)(i)–(ii) of this section) to determine if additional storage is required.

(3) For cold storage facilities for fruits and vegetables:

(i) Multiply the average of the applicant's share of the acres farmed for the most recent three years for each eligible fruit and vegetable commodity requiring cold storage at the proposed facility;

(ii) By a yield determined reasonable by the county committee;

(iii) Determine cold storage needed (calculated as specified in paragraphs (d)(3)(i)–(ii) of this section) with the assistance of CSREES, land-grant university, or ARS publications; and

(iv) Subtract existing cold storage capacity to determine remaining storage need.

(v) Compare capacity of proposed cold storage facility with cold storage need (calculated as specified in paragraphs (d)(3)(i)–(iv) of this section) to determine if applicant is eligible for additional cold storage.

(4) For all eligible facility loan commodities, except sugar, if acreage data is not available, including prevented planted acres, or data is not applicable to the storage need, a reasonable acreage projection may be made for newly acquired farms, changes in cropping operations, or in facility loan commodity crops being grown for the first time.

(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 will be prorated. Only costs associated with the applicant's needed storage capacity will be considered eligible for loan under this part.

(f) Any borrower with an outstanding loan must use the financed structure only for the storage of eligible facility loan commodities. If a borrower uses such structure for other purposes such as office space or display area, the loan amount will be adjusted for the ineligible space as determined by CCC.

(g) The FSA county committee may approve applications, if loan funds are available, up to the maximum approval amount unless the Deputy Administrator, Farm Programs, or the FSA State committee establishes a lower limit for county committee approval authority.

(h) Farm storage facility loan approvals, for all eligible facility loan commodities except sugar, will expire 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. A second 4 month extension, for a total of 12 months from the original approval date, may be approved by the FSA State Committee. This authority will not be re-delegated. Sugar storage facility loan approvals will expire 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(i) For sugar storage facility loans, paragraphs (c) and (g) of this section do not apply.

(j) For sugar storage facility loans, the agency approval officials may only approve loans, subject to available funds.

**§ 1436.10 [Amended]**

■ 11. Amend § 1436.10 as follows:

■ a. In paragraph (a), remove the word “shall” and add, in its place, the word “will” and remove the words “before the loan is disbursed” and add, in their

place, the words “before either the partial or final loan disbursements” and

■ b. In paragraph (b), remove the word “shall” and add, in its place, the word “must.”

■ 12. Revise § 1436.11 to read as follows:

**§ 1436.11 Disbursements and assignments.**

(a) At the request of the borrower, one partial disbursement of loan principal and one final loan disbursement will be available. The partial loan disbursement will be made to facilitate the purchase and construction of an eligible facility and will be made after the approved applicant has completed construction on part of the structure. County FSA personnel will inspect and verify the amount of construction completed.

(1) The amount of the partial loan disbursement will be determined by CCC and made after the borrower provides acceptable documentation for that portion of the completed construction to the County Committee.

(2) Security required for the amount of the partial loan disbursement will be required before the partial loan disbursement is finalized.

(3) The final disbursement of the loan by CCC will be made after the farm storage facility has been completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(4) All additional security needed to fully secure both the partial and final loan disbursements must be received before the final loan disbursement.

(b) Both the partial and final loan disbursements 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. If deemed appropriate by CCC, the partial and final disbursement may have separate notes and separate security instruments.

(c) Both the partial and final loan disbursement will be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower solely where CCC determines, based upon information made available to CCC by the borrower, that the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility and that all applicable liens, security interests, or other encumbrances have been released.

(d) A release of liability will be required from all contractors and suppliers providing goods and services to the loan applicant.

(e) Loan proceeds cannot be assigned.

(f) For sugar storage facility loans, only one disbursement will be made and such disbursement will be regarded as a final disbursement.

■ 13. Revise § 1436.12 to read as follows:

**§ 1436.12 Interest and fees.**

(a) Loans will bear interest at the rate equivalent, as determined by CCC, to the rate of interest charged on Treasury securities of comparable term and maturity on the date the loan is initially approved.

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

(c) Each borrower on a loan application must pay a non-refundable application fee in such amount determined appropriate by CCC; the fee will be not less than \$100 per borrower. The loan application fee is determined based on the cost of the fees associated with the loan, including, but not limited to, the cost to CCC for lien searches, security filings, and credit reports.

(d) For sugar storage facility loans, paragraph (c) of this section does not apply.

■ 14. Amend § 1436.13 as follows:

■ a. In paragraph (a), in the second sentence, remove the words “the loan,” and add, in their place, the words “each of the partial and final loan disbursements,”

■ b. In paragraph (b), in the second sentence, remove the word “Repayment shall” and add, in its place, the words “Each payment will”.

■ c. Revise paragraph (c) to read as set forth below,

■ d. In paragraph (d), remove the word “shall” and add, in its place, the word “will”.

■ e. In paragraph (e), remove the word “operation” and add, in its place, the word “facility” and remove the words “dryers or processing plants.” and add, in their place, the words “dryers, processing plants, or retail or wholesale cold storage facilities.”.

■ f. In paragraph (f)(2), remove the word “debtors” and add, in its place, the word “debtor’s,” and

■ g. In paragraph (h), remove the word “shall” and add, in its place, the word “will”.

**§ 1436.13 Loan installments, delinquency, and acceleration of maturity date.**

\* \* \* \* \*

(c) When installments are not paid on the due date:

(1) CCC will generally mail a demand for payment to the debtor after the due date has passed.

(2) If the installment is not paid within 30 calendar days of the due date

or if a new due date acceptable to CCC has not been established based on a financial plan submitted by the debtor, CCC may send two subsequent written demands at approximately 30 calendar day intervals unless CCC needs to take other action to protect the interests of CCC.

(3) If the debtor files an appeal according to § 1436.18, CCC will generally cease collection action until the appeal process is complete, however, CCC may withhold any payments due the debtor and, depending on the outcome of the appeal, any payments due the debtor may later be offset and applied to reduce the indebtedness.

(4) In lieu of a foreclosure on the collateral or the land securing a loan in the case of a delinquency, CCC may permit a rescheduling of the debt or other measures consistent with the collection of other debts under the provisions of part 1403 of this chapter. Any rescheduling or alternate repayment arrangements will be permitted only with prior approval from the Deputy Administrator, Farm Programs. Alternately, CCC may implement such other collection procedures as it deems appropriate.

\* \* \* \* \*

**§ 1436.14 [Amended]**

■ 15. Amend § 1436.14 by adding the words “or land” immediately after the word “collateral” both times it appears and in the second sentence, remove the word “shall” both times it appears, and add, in its place, the word “will”.

■ 16. Amend § 1436.15 as follows:

■ a. In paragraphs (a), (b), (c), and (e), remove the word “shall” each time it appears and add, in its place, the word “will” and

■ b. Revise paragraph (f) to read as set forth below:

**§ 1436.15 Maintenance, liability, insurance, and inspections.**

\* \* \* \* \*

(f) For sugar storage facility loans, in addition to the requirements of paragraph (d) of this section, sugar processors must also insure the contents of storage structures used as collateral for a sugar storage facility loan against all perils.

■ 17. Amend § 1436.16 as follows:

■ a. Revise the section heading to read as set forth below,

■ b. In paragraph (a)(2), second sentence, remove the word “state” and add, in its place, the word “State”.

■ c. In paragraph (a)(3), introductory paragraph, second sentence, remove the word “shall” and add, in its place, the word “will”.

- d. In paragraph (a)(4), remove the word “nonmovable” and add, in its place, the words “non-movable or non-salable”;
- e. In paragraph (a)(5), introductory text, second sentence, remove the word “shall” and add, in its place, the word “will”;
- f. In paragraph (b)(1) remove the word “shall” both times it appears and add, in its place, the word “must”;
- g. In paragraph (b)(2), remove the word “shall” and add, in its place, the word “will”;
- h. In paragraph (c), second sentence, remove the word “shall” both times it appears and add, in its place, the word “must” and remove the word “borrowers” and add, in its place, the word “borrower’s”
- i. Redesignate paragraph (d) as paragraph (e);
- j. Add new paragraph (d) to read as set forth below, and
- k. In redesignated paragraph (e) remove the word “shall” and add, in its place, the word “will”.

**§ 1436.16 Foreclosure, liquidation, assumptions, sales or conveyance, or bankruptcy.**

\* \* \* \* \*

(d) If any significant changes are made to the legal or operating status of the farming operation with an outstanding Farm Storage Facility Loan, the borrower must do one of the following:

- (1) Find an eligible borrower or entity to assume the loan as specified in paragraph (b) of this section,
- (2) Repay the loan, or
- (3) Undergo new financial analysis, as approved and determined by CCC, to ensure CCC’s interests are protected and that the current borrower is in a position to continue making the scheduled loan payments.

\* \* \* \* \*

**1436.19 [Amended]**

- 18. Amend § 1436.19 as follows:
  - a. In paragraph (a), first sentence, by removing the word “shall” and adding, in its place, the word “will” and by adding the sentence “FSFL borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.” at the end and
  - b. In paragraph (b), by removing the words “national origin, sex, marital status, or” and adding, in their place, the words “national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or” and by adding at the end the sentence “FSFL is subject to the nondiscrimination provisions

applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.”

Signed in Washington, DC, on August 11, 2009.

**Jonathan W. Coppess,**  
*Executive Vice President, Commodity Credit Corporation and Administrator, Farm Service Agency.*

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**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Parts 313 and 315**

**[Docket No. 090429810-91212-02]**

**RIN 0610-AA65**

**Revisions to the Trade Adjustment Assistance for Firms Program Regulations and Implementation Regulations for the Community Trade Adjustment Assistance Program**

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** On May 5, 2009, the Economic Development Administration (‘EDA’) published a notice of proposed rulemaking to reflect the amendments made to the Trade Act of 1974, as amended, by the Trade and Globalization Adjustment Assistance Act of 2009 (‘TGAAA’), which was included as subtitle I within the American Recovery and Reinvestment Act of 2009. The notice of proposed rulemaking provided a public comment period from May 5, 2009 through June 4, 2009. The TGAAA provides that the Secretary of Commerce must establish the Community Trade Adjustment Assistance Program by August 1, 2009, under which EDA would provide technical assistance under section 274 of the Trade Act to communities impacted by trade to facilitate the economic adjustment of those communities. The TGAAA amendments to the Trade Act took effect on May 17, 2009, 90 days after enactment. As a result of the enactment of the TGAAA, EDA promulgates this final rule to provide regulations to implement the Community Trade Adjustment Assistance Program and makes specific changes to the Trade Adjustment Assistance for Firms Program regulations.

**DATES:** This rule is effective as of August 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jamie Lipsey, Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-4687.

**SUPPLEMENTARY INFORMATION:**

**Background**

EDA published a notice of proposed rulemaking (the ‘NPRM’) in the **Federal Register** (74 FR 20647) on May 5, 2009. The NPRM reflects the amendments made to the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (the ‘Trade Act’), by the Trade and Globalization Adjustment Assistance Act of 2009 (the ‘TGAAA’), which was included as subtitle I to the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, 123 Stat. 115, at 367). The TGAAA authorized the Trade Adjustment Assistance for Communities (‘Community TAA’) Program and made amendments to certain provisions affecting the Trade Adjustment Assistance for Firms (‘TAAF’) Program, which EDA currently administers through a network of 11 University-affiliated and non-profit Trade Adjustment Assistance Centers (each, a ‘TAAC’) located throughout the nation.

This final rule promulgates the Community TAA Program regulations and makes specific changes to the TAAF Program regulations, both of which implement the amendments to the Trade Act made by the TGAAA. It also reflects EDA’s current practices and policies in administering the TAAF Program that have evolved since the promulgation of EDA’s current regulations. Chapter 3 of title II of the Trade Act authorizes the TAAF Program, under which technical assistance is provided to Firms that have lost domestic sales and employment due to increased imports of similar or competitive goods. Chapter 4 of title II of the Trade Act establishes the Community TAA Program, which is designed to help local economies adjust to changing trade patterns through the coordination of Federal, State, and local resources and the creation and implementation of community-based development strategies to help address trade impacts.

Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in EDA’s regulations set out in 13 CFR chapter III (see, e.g., 13 CFR 300.3, 303.2, 315.2, and 315.15). A complete discussion of the changes made to EDA’s regulations was provided in the NPRM and is not repeated here.