

§ 1436.5

without an approved loan, do so at their own risk.

[74 FR 41587, Aug. 18, 2009]

§ 1436.5 Eligible borrowers.

(a) *Borrower* means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

(1) Has a satisfactory credit history according to the definition in §1436.3 and as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(2) Demonstrates an ability to repay the debt arising under this program using a financial statement acceptable to CCC prepared within 90 days of the date of application, as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(3) Has no disqualifying delinquent Federal debt under the Debt Collection Improvement Act of 1996;

(4) Is a producer of a facility loan commodity as determined by CCC;

(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) Is in compliance with the U.S. Department of Agriculture (USDA) provisions for highly erodible land and wet-

7 CFR Ch. XIV (1–1–10 Edition)

lands conservation provisions according to 7 CFR part 12;

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

(9) Annually provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and annually provides proof that the structures for which the loan is made has all peril structural insurance;

(10) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR parts 1500–1508; and

(11) Has not been convicted under Federal or State law of a disqualifying controlled substance violation or a crop insurance violation under 7 CFR part 718.

(b) For sugar facility loans:

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

[66 FR 4612, Jan. 18, 2001; 66 FR 17073, Mar. 29, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41588, Aug. 18, 2008]

§ 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:

(1) New conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least 15 years;

(2) New oxygen-limiting storage structures or remanufactured oxygen-limiting storage structures built to the

Commodity Credit Corporation, USDA

§ 1436.6

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

(3) New flat-type storage structures including a permanent concrete floor, designed for and primarily used to store facility loan commodities for the term of the loan and having a useful life of at least 15 years;

(4) New structures that are bunker-type, horizontal, or open silo structures designed for whole grain storage or other than whole grain storage and having a useful life of at least 15 years;

(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:

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

(2) Safety equipment as required by CCC and meeting OSHA requirements such as lighting, and inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored eligible facility loan commodity, 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 el-

igible facility loan commodity storage and handling equipment;

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the eligible facility loan commodity storage and handling equipment; and

(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:

(1) Portable grain drying equipment, portable handling 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) 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;

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

(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

(6) Portable or permanent weigh scales.

(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.

(e) Loans for all eligible facility loan commodities except sugar and fruits and vegetables may be approved for new storage and handling components of a pre-owned structure provided the

completed facility has a useful life of at least 15 years. The pre-owned structure must be purchased and moved to a new storage location. Eligible items for such a loan include costs such as new bin rings or roof panels needed to make a purchased pre-owned structure useable, new aeration systems, site preparation, construction off-farm paid labor cost, foundation material and off-farm paid labor. Ineligible items for such a loan include the cost of purchasing and moving the used structure.

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

(1) The loan amount may include costs associated with the purchase, installation, building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) New conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) New flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) New storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

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

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

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

(2) Sugar storage facility, loans 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 CCC determines there is a need for the capacity of the structure.

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

(i) Portable handling equipment and portable augers;

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

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

(iv) Structures that are not suitable for storing raw or refined sugar;

(v) Weigh scales.

(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,

Commodity Credit Corporation, USDA

§ 1436.8

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.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41588, Aug. 18, 2009]

§ 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.

[74 FR 41589, Aug. 18, 2009]

§ 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