

Dated: June 29, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560-AF41

Dairy Recourse Loan Program for Commercial Dairy Processors

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: Beginning on January 1, 2000, the Commodity Credit Corporation (CCC) will make recourse loans to commercial processors of dairy products. The regulations currently in effect for this program are being revised and the public is invited to comment on the regulations as revised. The proposed rule includes changes that would make recourse loans available to dairy processors through a central location, as opposed to in-person applications taken at Farm Service Agency (FSA) State or county offices, allow the loan collateral to be based on a rolling, commingled inventory, versus an identity preserved inventory, and miscellaneous other changes which would provide for a more customer-friendly program. These changes are based on suggestions from the dairy processing industry through informal discussions held since the publication of the interim rule on July 18, 1996 at 61 FR 37616.

DATES: Comments on this rule must be received on or before September 7, 1999 to be assured of consideration.

Comments regarding the information collection requirements of the Paperwork Reduction Act must be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to Steve P. Gill, Warehouse and Inventory Division, United States Department of Agriculture (USDA), FSA, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250-0553 or E-mail: DAIRY@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Barry Klein at (202) 720-4647.

SUPPLEMENTARY INFORMATION:

Executive Order 12612

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

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed the proposed rule and determined the rule to be significant for the purposes of Executive Order 12866.

Cost-Benefit Assessment

The Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) proposes to revise the regulations governing the dairy recourse loan program (7 CFR 1430). This proposed rule would provide recourse loans to commercial processors of cheddar cheese, butter, and nonfat dry milk. The borrower would be fully liable to repay the amount of the loan, notwithstanding the value of the collateral in the event of default. The loan would mature no later than September 30 of the fiscal year in which the loan is made, but the collateral may be repledged for a new loan that matures before the end of the next fiscal year. The program would be primarily conducted electronically through a central location based on rolling, commingled collateral and be operated using CCC funds, facilities, and authorities.

There are currently about 180 plants in 32 States approved for USDA grading and producing at least one of the products eligible for loans. Consultations with current lenders suggest that the interest rates under the program would be attractive to all but the very best customers that they service. About 170 participants would be expected to participate with an average loan value of \$1.3 million.

The incremental costs have been calculated as initial costs and annual costs. Initial costs are those one-time costs that would occur in the first year only. Annual costs are those costs that occur periodically. The initial incremental cost savings associated with this rulemaking would be \$1.37 million realized by USDA in training and nonrecurring start-up costs. No incremental capital/start-up costs would be incurred by participants. The incremental annual costs to dairy

processors would be \$3,060, because of increased paperwork that would be required to become an Approved Dairy Processor (ADP). However, this would be more than offset by a \$1.17-million incremental annual cost savings because the proposal would allow for the collateralization of commingled inventory. USDA would realize incremental annual cost savings of approximately \$473,000 due primarily to administrative savings of centralized processing.

In summary, under the proposed rule, total initial cost savings in the first year would be \$1.37 million. Total recurring annual cost savings would be \$1.65 million.

The benefits of this proposed rule, in addition to the quantifiable cost savings discussed above, are associated with efficiency and effectiveness. Streamlining the participatory process, would likely increase program participation. That is, loan program participants would benefit from a less burdensome loan application and administration process. In addition, the commingling of inventory would allow processors to only have to show in inventory an amount and type of product equal to that pledged as loan collateral without uniquely having to identify specific product. USDA would benefit by administering the loan in a more efficient and effective manner.

USDA, however, is concerned that this program could have a significant impact on current lenders. More specifically, some banks that lend to dairy processors may be significantly affected. USDA requests documented quantifiable cost data on the extent to which their businesses would be affected.

Copies of the cost benefit assessment may be obtained from Barry Klein, Inventory Management Branch, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW, Washington DC 20250-0553, telephone (202) 720-2121.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rule making with respect to the matter of this rule.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

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

Environmental Evaluation

An Environmental Evaluation has been completed. It has been determined that this action will not have significant adverse effects on environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

Title: 7 CFR 1430, Dairy Products

OMB Number: 0560—NEW

Type of Request: Request for approval of a new information collection.

Abstract: USDA will collect information from loan applicants as the Secretary may require to ensure the borrower's ability to repay the loan and to secure the quantity and quality of loan collateral. The Recourse Loan Program for Commercial Dairy Processors will make recourse loans available to eligible dairy processors of eligible dairy products. Once approved, the dairy processor will pledge the commodity as collateral, and repay the loan principal, plus interest, by the maturity date. Dairy processors seeking participation in the program will have to meet minimum requirements by

providing information concerning the organizational, operational, and financial aspects of the operation, including information that the commodities being pledged are free and clear of liens, security interests, and other encumbrances. Applicants must provide a statement indicating that they will abide by the nondiscrimination and other provisions of the recourse loan program. Burden calculations have been rounded up to nearest quarter hour.

Estimate of Respondent Burden: Public reporting burden for the collection of information is estimated to average .75 hours per response.

Respondents: Domestic processors of cheese, butter and nonfat dry milk, who apply for a loan under this program.

Estimated Number of Respondents: 170.

Estimated Number of Responses per Respondent: 2 responses per year.

Estimated Total Annual Burden Hours on Respondents: 255 hours.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; or (c) ways to enhance the quality, utility, and clarity of the information technology. Comments may be sent to the Desk Officer for Agriculture; Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Barry Klein, Inventory Management Branch, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW, Washington DC 20250-0553, (202)720-2121.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB regarding the information collection is most likely to be considered if OMB receives it within 30 days of the publication. This does not affect the deadline for the public to comment to the USDA on the substance of the proposed rule.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Background

The Federal Agriculture Improvement and Reform Act of 1996, terminates the Milk Price Support Program as of December 31, 1999, and institutes a Dairy Recourse Loan Program to begin on January 1, 2000, to assist processors to manage inventories of eligible dairy products and ensure a greater degree of price stability for the dairy industry. The current regulations, found at 7 CFR Part 1430, are being revised prior to implementation of the program on January 1, 2000, to facilitate suggestions from several potential users of this program. The suggestions received centered around the dairy industry's desire for a program most closely reflecting their traditional way of receiving financial services. Processors with multi-plant locations were most concerned with having a centralized location to do business. All parties were concerned with our requirement to identity-preserve (IP) the loan collateral, and the problems with re-qualifying for multiple loans throughout the year. This proposed rule therefore includes changes that will make recourse loans available to dairy processors through a central location, as opposed to in-person applications taken at FSA State or county offices, allow the loan collateral to be based on a rolling, commingled inventory, versus an identity preserved inventory, establish a system for pre-approval as an ADP, and make miscellaneous other changes which would provide for a more customer-friendly program that reflects common lending practices.

The provisions of 7 U.S.C. 1308c limit the ability of certain foreign persons to obtain loans on commodities they produce. That provision applies to this program, but as a practical matter its scope would appear to be limited to cases where the processor obtaining the loan is also the party that produced the milk. Rules for the application of 1308c appear in 7 CFR part 1400. Further, as provided for in 31 U.S.C. 3720B the proposed rules provide that persons who are delinquent on other federal debts will be ineligible for loans under this program. Also, dairy products, to be eligible for this program, will have to meet certain quality standards set out in the regulations and the regulations provide that the loan applicants will have to provide security for the loans in the form of encumbrances on the eligible product, future inventories, and proceeds.

The objectives of the Dairy Recourse Loan program are to assist processors with the management of eligible dairy product inventories and to assure a

greater degree of price stability for the dairy industry during the year. Because of the interest rate at 1 percent above CCC's cost of borrowing, the number of dairy recourse loan program participants is estimated to range around 170, a relatively high proportion of those potentially eligible. There are 180 plants in 32 States approved for USDA grading and producing at least one of the products eligible for loans. Only 45 days have been set for comment as that period should provide sufficient time for comments and will help assure that the program is implemented in a timely manner. Accordingly, it has been determined that a longer comment period is unnecessary and contrary to the public interest.

List of Subjects in 7 CFR Part 1430

Dairy products, Loan programs, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR part 1430 as follows:

PART 1430—DAIRY PRODUCTS

1. The authority citation for part 1430 continues to read as follows:

Authority: 7 U.S.C. 7252; and 15 U.S.C. 714b and 714c.

2. Subpart C is revised to read as follows:

Subpart C—Dairy Recourse Loan Program for Commercial Processors of Dairy Products

Sec.	
1430.400	Applicability.
1430.401	Administration.
1430.402	Definitions.
1430.403	General eligibility rules.
1430.404	Application and recertification process.
1430.405	Approval process.
1460.406	Withdrawal and termination of approval.
1430.407	Interest and loan rates.
1430.408	Product eligibility requirements.
1430.409	Storage facility requirements.
1430.410	Availability, disbursement, priority and maturity of loans.
1430.411	Loan maintenance.
1430.412	Loan maturity.
1430.413	Loan liquidation.
1430.414	Maintenance and inspection of records.
1430.415	False certification.
1430.416	Reconsideration and appeal.
1430.417	OMB Control Numbers.

§ 1430.400 Applicability.

As provided in § 142 of the Federal Agriculture Improvement and Reform Act of 1996, (7 U.S.C. 7252), this part sets forth the terms and conditions an Approved Dairy Processor (ADP) must meet to obtain dairy recourse loans from

the Commodity Credit Corporation (CCC) for eligible dairy products produced after September 30, 1998. An ADP meeting these terms and conditions may obtain recourse loans for any eligible dairy product. Additional terms and conditions are set forth in the loan application and the note and security agreement which an ADP must execute to receive a loan.

§ 1430.401 Administration.

(a) On behalf of CCC, the Farm Service Agency, (FSA) will administer the provisions of this part under the general direction and supervision of the FSA Deputy Administrator for Commodity Operations (DACO).

(b) The DACO or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the loan program.

§ 1430.402 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this part.

Appeal means a written request by an ADP asking the next level reviewing authority to review a decision.

Approved Dairy Processor (ADP) means a dairy processor of eligible dairy products that is approved by CCC to participate in the dairy recourse loan program.

Approved storage means storage structure of sound construction, in good state of repair, not subject to greater than normal risk of fire, flood or other hazards and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.

Beneficial interest means that the dairy processor retains control, title, and risk of loss in the eligible dairy products, including the right to make all decisions regarding the tender of such eligible dairy product to CCC for loan.

CCC means the Commodity Credit Corporation.

Eligible dairy products means Cheddar cheese of acceptable quality, U.S. Grade A, or higher, not to exceed 38.5 percent moisture; butter of acceptable quality, U.S. Grade A, or higher, and nonfat dry milk of acceptable quality, U.S. Extra Grade, not to exceed 3.5 percent moisture. Only dairy products processed exclusively from milk produced in the United States shall be eligible for loan.

Final decision means the program decision rendered by the DACO upon written request of the ADP. A decision that is otherwise final shall remain final

unless the decision is timely appealed to the National Appeals Division.

Fiscal year means the 12-month period from October 1 through September 30.

FSA means the Farm Service Agency, USDA.

Inventory means a rolling, commingled inventory of the same quantity and quality as those dairy products originally put up as collateral to acquire the recourse loan.

Loan maturity date means September 30 of the fiscal year in which the loan was granted.

Loan process means the method by which application is made by a dairy processor requesting ADP status; ADP requests a dairy recourse loan; and CCC administers the loan program.

Loan rate means the applicable rate announced by the Secretary, prior to January 1, 2000, and prior to October 1 in each of the following years, at which loans will be offered for Cheddar cheese, butter, and nonfat dry milk, which shall, as determined by the Secretary, reflect a milk equivalent value of \$9.90 per hundredweight of milk containing 3.67 percent butterfat.

Note and security agreement means a promissory note and financing statement setting forth the specific terms and conditions of an approved loan.

Recourse loan means a loan that requires repayment of the full amount of principal and interest.

USDA means the United States Department of Agriculture.

§ 1430.403 General eligibility rules.

For a dairy processor to obtain ADP status to participate in a dairy recourse loan program, a dairy processor must do all of the following:

(a) Submit a completed application indicating commodity for which it seeks approval;

(b) Have beneficial interest in the commodity that is tendered to CCC for a loan and for the duration of the loan;

(c) Furnish CCC such certification as CCC considers necessary to verify compliance with quantitative limitations;

(d) Provide eligible dairy products to CCC free and clear of liens or encumbrances, or, if approved by CCC, waivers of those liens and encumbrances; and

(e) Provide documentation to CCC, as requested, that the dairy processor is a:

(1) Citizen of, or legal resident alien in, the United States; or

(2) Farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are

citizens of, or legal resident aliens, in the United States.

§ 1430.404 Application and recertification process.

(a) A dairy processor must submit an application package for approval to CCC in order to gain ADP status to participate in the dairy recourse loan program. An application package must include, unless otherwise approved by CCC:

(1) A completed application for status as an ADP; and

(2) A balance sheet and any supporting notes and schedules requested by CCC, dated within the last year, prepared for the dairy processor that:

(i) is accompanied by a letter from an independent Certified Public Accountant, certifying that the balance sheet was prepared in accordance with generally accepted accounting principles;

(ii) shows satisfactory levels of solvency and liquidity, as determined by CCC;

(iii) is evidence of resolutions made by the dairy processor stating that it will abide by provisions of this part and other related CCC policies; and

(iv) includes other information as requested by CCC concerning the organizational, operational, financial or any other aspect of the dairy processor requested by CCC related to the dairy processor's proposed methods of conducting CCC loan business.

(b) An ADP must fulfill all requirements of § 1430.404(a) each fiscal year.

(c) An ADP shall furnish information to CCC within 30 calendar days relating to any:

(1) Change to the ADP's name, address, phone number, or related data shown on the Application for Approval of Approved Dairy Processor; and

(2) Additional information CCC may request related to the ADP's continued approval.

§ 1430.405 Approval process.

(a) CCC shall, in accordance with the provisions of this subpart, determine the eligibility of a dairy processor seeking to participate in the dairy recourse loan program.

(b) Once approved, an ADP is eligible to participate in the program unless and until approval is suspended or terminated by CCC so long as all eligibility criteria continue to be met. There shall be an affirmative duty to notify CCC of all material changes in the ADP's circumstances or operations.

§ 1430.406 Withdrawal and termination of approval.

(a) CCC may withdraw its approval of an ADP and preclude an ADP from obtaining loans when CCC determines the ADP has not:

(1) Operated according to the ADP's application for approval or its last recertification submission;

(2) Complied with applicable regulations;

(3) Corrected deficiencies of the ADP's operation as noted by CCC; or

(4) Complied with any of its agreements with CCC.

(b) An ADP whose approval has been withdrawn may be reinstated when CCC determines the ADP has complied with all requirements for approval.

(c) CCC may terminate an ADP's approval at any time by giving the ADP written notice of the termination.

(d) An ADP may make a written request for CCC to voluntarily terminate its participation in the loan program when ADP does not have any dairy recourse loans outstanding.

§ 1430.407 Interest and loan rates.

(a) Interest that accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

(b) In the event of default by an ADP, interest shall continue to accrue with additional penalties as provided by statute being assessed.

(c) The Secretary will announce before January 1, 2000, and thereafter, before October 1 of each fiscal year, the loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of \$9.90 per hundredweight of milk containing 3.67 percent butterfat or based on other such prices as may be required by law.

§ 1430.408 Product eligibility requirements.

(a) An eligible ADP is eligible for a recourse loan on eligible dairy products it owns subject to the following additional requirements:

(1) The total quantity of eligible dairy product which an ADP may pledge for loan is the amount in inventory not to exceed the quantity processed by the ADP during the previous or current fiscal year in which the loan request is made; and

(2) The eligible dairy products must be processed exclusively from domestically-produced milk and milk products;

(b) Eligible dairy products pledged as collateral must be free of any contamination by either natural or manmade substances, must not contain chemicals or other substances which are

poisonous or harmful to humans or animals and must meet such other quality standards as may be set by CCC.

§ 1430.409 Storage facility requirements.

(a) Eligible dairy products will be stored in approved storage facility as defined in § 1430.402.

(b) CCC shall at any time, have the right to inspect loan collateral and the storage facilities in which the loan collateral is stored.

§ 1430.410 Availability, disbursement, priority and maturity of loans.

(a) No loan proceeds may be disbursed for dairy products until they have actually been produced and are determined by CCC to be eligible to be pledged as loan collateral.

(b) To obtain a recourse loan on eligible dairy products, an ADP must:

(1) File such loan application request as CCC prescribes;

(2) Execute a note and security agreement as CCC prescribes;

(3) Be responsible for all costs incurred in moving eligible dairy products to an approved storage facility, if moving is necessary; and

(c) Delinquent Federal debtors shall be ineligible for dairy recourse loans under this part.

(d) The security interests obtained by the CCC as a result of the execution of a security agreement by an ADP shall be superior to all statutory and common law liens on the collateral.

(e) The regulations the Secretary issues governing offsets and withholding set forth as part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart. Likewise, the provisions of part 1400 of this chapter relating to the eligibility of foreign persons for certain benefits apply to this program and can affect an ADP's eligibility for loans.

(f) CCC shall file a security interest in the loan collateral, and the dairy processor shall grant CCC a security interest in the loan collateral, future inventory and any proceeds obtained from the sale of the dairy products.

(g) Loans will mature on, and must be satisfied by September 30, unless the loan is extended by the Secretary for an additional period.

§ 1430.411 Loan maintenance.

(a) The ADP shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement;

(2) Be responsible for storage costs through loan maturity; and

(3) Be responsible for maintaining the quality and quantity of the loan collateral through date of repayment

and reimburse CCC for loss in quantity or quality of the loan collateral.

(b) If CCC determines that the actual eligible quantity serving as collateral for a recourse loan is less than the loan quantity because of incorrect certification by the ADP or unauthorized removal, CCC may charge liquidated damages and/or call all loans of the ADP. In such cases, the approval of an ADP for future loans shall be withdrawn and current loan shall be considered due and owing.

(c) ADP may, at any time before maturity of the loan, redeem all or any part of the loan collateral by paying CCC the loan principal plus interest applicable to the quantity of dairy product redeemed.

§ 1430.412 Loan maturity.

(a) ADP must pay CCC the principal plus interest due and redeem his collateral no later than the loan maturity date.

(b) CCC may, on demand, call all outstanding CCC loans made to an ADP whose approval has been withdrawn or terminated. When loans are called, CCC will provide at least 10 calendar days written notice to the ADP. Dairy recourse loans must be repaid by the date specified by CCC. If redemption is not made by the date specified, title to the encumbered commodity shall vest in CCC and CCC shall have no obligation to pay the commodity's market value above the principal amount of such loans. Any deficiency that remains after the disposition of the collateral shall continue to be a debt of the ADP and may be collected in any manner allowed by law.

(c) CCC may at any time accelerate the date of repayment of the loan indebtedness, including interest. CCC will give the ADP notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

§ 1430.413 Loan liquidation.

(a) If an ADP does not pay to CCC the total amount due in accordance with the terms of the loan, late payment charges in addition to interest on the ADP's indebtedness shall accrue at the rate specified in part 1403 of this chapter and shall accrue until the debt is paid.

(b) Upon notice:

(1) CCC may, with or without removing the collateral from storage, sell such collateral at either a public or private sale; or

(2) the ADP must deliver loan collateral in or to a CCC-approved storage facility at the expense of the ADP, provided further that for these purposes:

(i) CCC-approved storage will include only those storage facilities which:

(A) Meet CCC standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (part 1423 of this chapter); and

(B) Have entered into a storage contract with CCC.

(ii) If the eligible dairy product is delivered in or to an ineligible storage facility, the ADP shall be responsible for all costs incurred in moving the eligible dairy products to a CCC-approved storage facility.

(c) If the proceeds from CCC sale of collateral are:

(1) Less than the amount of principal, interest, and any other expenses incurred by the CCC then the ADP is liable for the deficiency; or

(2) Greater than the amount of principal, interest, and any other expenses incurred by the CCC then the amount in excess shall be paid to the processor or, if applicable, to any secured creditor of the processor.

(d) CCC shall at all times, have the right to inspect CCC-owned eligible dairy products and the storage facilities in which the eligible dairy product is stored.

(e) Regardless of whether CCC inspected the eligible dairy product or storage facility, the ADP is liable to CCC for any damages or loss CCC suffers if CCC does not recover the full value of the principal and interest on the loan, plus any incidental expenses incurred.

§ 1430.414 Maintenance and inspection of records.

CCC, as well as any other U.S. Government agency, shall have the right of access to the premises of the ADP in order to inspect, examine, and make copies of the books, records, accounts, and other written data as the examining agency deems necessary to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the ADP for not less than 3 years from the loan disbursement date. Destruction of records after such time shall be at the ADP's own risk.

§ 1430.415 False certification.

Any ADP making a false certification will subject the ADP and the principal making such certification, to liability or prosecution under any applicable federal civil and criminal statutes. This remedy shall be in addition to all others that may apply.

§ 1430.416 Reconsideration and appeal.

(a) An ADP may seek reconsideration of a decision made under this subpart

by filing a written request for reconsideration with USDA, FSA, Deputy Administrator for Commodity Operations, STOP 0550, 1400 Independence Avenue, SW, Washington, DC, 20250-0550. The request should state the basis upon which the ADP relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations; or

(2) All material facts were not properly considered in such decision.

(b) A request for reconsideration of a decision shall be filed within 30 days after written notice of the decision which is the subject of the request is mailed or otherwise made available to the ADP. A request for reconsideration shall be considered to have been timely filed if postmarked or privately mailed within 30 days of the decision. A party seeking review of a decision may, at the discretion of the Deputy Administrator, be granted an additional 30 days in which to file a request for reconsideration if requested within 30 days of the decision. A decision shall become final and nonreviewable unless reconsideration is timely sought.

(c) A request for reconsideration may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (b) of this section if, in the judgment of the Deputy Administrator, the circumstances warrant such action.

(d) Subject to the remedies provided above and the provisions of part 11 of this chapter, an ADP may appeal a final decision and request review of determinations made under this subpart by filing a written request for appeal with USDA, National Appeals Division, STOP 7000, 1400 Independence Avenue, SW, Washington, DC 20250-7000. See part 780 of this title.

§ 1430.417 OMB control numbers.

The information collection requirements for these regulations have been submitted to OMB for approval.

Signed at Washington, DC, on July 13, 1999.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

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