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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1436

RIN 0560-AG00

Farm Storage Facility Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rule implementing the Commodity Credit Corporation's (CCC) Farm Storage Facility Loan Program (FSFLP). The program provides financing for producers to build or upgrade farm storage and handling facilities. On the basis of the comments and suggestions received, CCC is making several changes to the program provisions in the interim rule and is adding other provisions.

DATES: This rule is effective January 18, 2001.

ADDRESSES: Copies of the regulation are available from Price Support Division, Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250-0512.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, (202) 720-7935 or e-mail chris_kyer@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget. The Cost/Benefit Assessment is summarized below.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency is not required by 5

U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Chapter 8 of the Administrative Procedures Act)

The SBREFA generally requires that major rules be submitted to Congress for a 60-day review period before they may be made effective. This rule is considered major. However, section 808 of SBREFA (5 U.S.C. 808) provides that if good cause exists and public notice is impracticable, unnecessary, or contrary to the public purpose, a rule may be made effective immediately. CCC finds that because this rule affects the incomes of a large number of agricultural producers that it would be contrary to the public interest to delay this rule. Therefore, this rule is issued as final, effective immediately.

Environmental Evaluation

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

The Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act of 1995

A notice with request for comments on the information collection was part of the interim rule. An emergency information collection package has been approved by OMB and assigned OMB control number 0560-204. No comments were received from the public during the 60-day comment period regarding the information collection. A regular information collection package will be submitted to OMB.

Executive Order 12612

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

Cost-Benefit Assessment Summary

U.S. grain storage capacity steadily declined from 1987 to 1997. Storage capacity has increased modestly since its low in 1997, but not sufficiently to keep pace with growing production. Despite persistent harvest-time storage capacity shortfalls and the advantages of on-farm storage for producers, low commodity prices and reduced farm income will limit the ability of producers to significantly expand their on-farm storage. The FSFLP will encourage the construction of grain storage capacity in deficit areas and help farmers adapt to identity-preserved storage and handling requirements for genetically enhanced production. The program will also assist dairy and livestock feeders who need new or additional silage or green-chop storage. For these producers, additional storage capacity increases their ability to manage feed inventories and control feed costs. One direct benefit to

producers from the program will be reduced financing costs on facility construction. Interest savings for a grain farmer on the construction of a 15,000-bushel grain bin could total as much as \$5,417 under the program when compared with financing through some commercial banks. Interest savings for a dairy or livestock feeder could be as much as \$6,139 on a 2,000-ton bunker-type silage storage facility. Grain producers would also benefit from the potential for higher market returns on their crops because on-farm storage capacity creates pricing and hedging opportunities that can significantly increase marketing returns. The program is expected to expand on-farm grain storage by 746 million bushels and on-farm silage storage by 4.75 million tons over the next 5 years.

Background

The interim rule published in the **Federal Register** on May 11, 2000 (65 FR 30345) set out regulations to allow for loans to be made to assist producers in providing storage for certain agricultural commodities. The background provisions of that rule described, in addition, the statutory underpinnings of the program, those being provisions of the Commodity Credit Corporation Charter Act. One of those provisions is 15 U.S.C. 714c(b) (section 5(b) of that Act), which authorizes CCC to use its general powers to make available material and facilities required in connection with the production and marketing of agricultural commodities. Another is 15 U.S.C. 714b(h) (section 4(h) of the Act), which was incorrectly identified as section "4(f)" in the interim rule. The latter provides that the Corporation may make loans to grain producers needing storage facilities.

Comments regarding the provisions of the program were accepted until June 12, 2000. Comments were received from 272 entities or persons: 40 agricultural associations, six banks, one Commissioner of Agriculture, 19 FSA county committee members, 109 private agricultural companies or corporations representing storage structure manufacturers, distributors and construction contractors, one United States Senator, five grain storage elevator companies or cooperatives, 57 farmers, and 34 FSA State committee members or representatives.

Most of the comments addressed particular provisions in the interim rule. These are discussed below on a section-by-section basis, along with the changes that have been made to the interim rule. Changes to each section based on the experience of operating the program

under the interim rule are also discussed on a section-by-section basis.

Background section of the interim rule

There were 63 comments regarding the background section of the interim rule. Within the background section of the interim rule it was stated that section 5(b) of the CCC Charter Act gives CCC broad authority to make available materials and facilities required in connection with the production and marketing of agricultural commodities. Thus, it was stated that CCC would explore making available facility loans for the storage of commodities harvested as other than grain such as silage, alternative types of storage arrangements such as "condominium storage", or storage facilities for other agricultural products.

There were 15 comments from elevators, agricultural associations, and cooperatives supporting a program to finance condominium-type storage arrangements. There were two respondents who did not favor such a program for on-farm type condominium storage because in their States, Ohio and Iowa, on-farm condominium storage would be subject to licensing requirements for public warehouses. Another respondent was against off-farm condominium storage because, in their opinion, on-farm storage works better for segregation of speciality crops.

Condominium-type grain storage is generally viewed as commercial off-farm storage offered by private companies or cooperatives where farmers can lease or purchase a set amount of shared storage space for a period of time. Farmers pay a set time purchase or lease fee for the storage and may subsequently pay an annual fee to cover the costs associated with the maintenance of the structure and grain maintenance and handling. In some cases, the condominium storage on a per-bushel basis may be less than the cost of constructing and owning on-farm grain storage structures. During years when the owner of the condominium storage may not use the entire quantity that is allocated to him, the storage owner may sublease or sell the space to another producer. This arrangement can result in giving condominium storage a value, which may be used by lenders as collateral to secure loans on condominium storage agreements. Condominium storage may allow the producer to market grain without further transportation or handling costs, and relief from the costs of owning and maintaining on-farm storage. Also a respondent pointed out that condominium storage loans if made to cooperatives could allow for a lessening of the administrative burden

of operating the program by allowing the storage needs of multiple producers to be dealt with in one large loan rather than in many small loans.

The primary disadvantage of condominium storage expressed by some farmers is the waiting time to deliver their grain to the elevator when they should be in the field harvesting grain because the condition of the crop and ideal harvesting conditions are always time sensitive. On-farm storage provides that flexibility. Also, farmers indicate that once grain is delivered to the elevator, they may lose marketing flexibility because to sell grain that is in elevator storage they may be required to pay additional handling fees. Despite the comments received supporting a loan program for condominium storage, the respondents provided little information as to how FSA should operate such a program. Inasmuch as the primary focus of the program was on-farm storage and helping producers cope with their restricted storage capacity, condominium storage might not mitigate the storage problem and might ultimately only benefit commercial facilities who already have alternate financing at their disposal. Because a program including condominium storage would differ considerably from the on-farm storage program, at issue are program provisions such as the term of the loan; loan security requirements; who should be the borrower, (the elevator or individual farmers); eligible types of storage structures and handling equipment; applicant eligibility requirements; the maximum loan amount; environmental law compliance for large commercial storage structures; and loan servicing provisions such as loan assumptions, foreclosure procedures, loan deferments and extensions. CCC has not prepared a cost benefit assessment regarding off-farm condominium storage and must do so to consider implementing such a program. Also, it should be pointed out that farmers wishing to receive loans for shared, on-farm storage may do so under the present program as long as they otherwise meet all of the eligibility and security requirements. Accordingly, for these reasons, CCC will not implement loans for condominium type storage at this time.

There were nine comments regarding the timeliness of the program announcement. Generally, the announcement of the program on May 11 was regarded as being too late to allow producers to apply, obtain approval, and to finish construction in time to store crops that will be harvested for the 2000 crop year. To

assist producers who took purchase actions based on the announcement of the program in the press on February 2, 2000, CCC provided that producers who made purchase decisions between February 2 and May 30, 2000, could apply and be approved for loans, if all other eligibility requirements were met. Furthermore, citing a critical need for storage in 19 States and recognizing the need to implement the program as soon as possible, CCC implemented the program under the interim rule effective on May 11, 2000. Additional relief in this regard would not be consistent with the nature of this program, which is designed to provide incentives rather than to make payments for past actions.

There were eight comments regarding the need for a program to finance the construction of storage for other agricultural products such as dry peas, lentils, peaches, cherries, pears, berries, vegetables, apples (including necessary cold storage equipment and cold storage supplies such as nitrogen), cotton seed, dry beans, straw, nuts, peanuts, rye, wood, wool, seed potatoes, grass seed, rice straw, livestock feed such as processed feed, cake, purchased feed, millet, and sugar. There were 16 comments supporting loans for structures to store dry hay. While CCC recognizes the support for such a program, CCC will not implement a program because of the lack of any USDA study indicating a critical need for a program to finance such storage for these commodities.

There were 130 comments regarding the provision to restrict the program to specified facility loan commodities harvested as whole grain as set out, and specified, in the interim rule. Under that rule, eligible facility loan commodities were limited to wheat, rice, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, other oilseeds as determined and announced by CCC, corn, grain sorghum, oats, or barley harvested as whole grain. These commodities are the same commodities on which farmers can obtain CCC marketing assistance loans and loan deficiency payments. Generally, the respondents favored the financing of structures to store corn silage and other facility loan commodities that are commonly harvested as other than whole grain citing that dairy farmers are expanding their herds and need more upright silos for grains and forage to feed their animals, many farmers have been using temporary storage, and that it is more economical to store high moisture ground ear corn, high moisture shell corn, or corn silage to save on the cost of fuels for drying. Also, comments were

received concerning the provisions in the interim rule that limited financing to certain kinds of facilities—certain cribs or bins designed for whole grain storage, certain upright silo-type structures designed for whole grain storage and flat-type storage structures for which the primary use is to store whole grain commodities. Some respondents favored extending financing also to other structures such as upright silos and bunker-type storage structures that are horizontal and generally constructed of concrete. Bunker-type silos are generally easier and cheaper to construct than upright silos because they are usually constructed from precast reinforced concrete panels and may have more recovery value than poured cement structures.

The interim rule specifically sought comments on extending the program beyond whole grain storage. Given CCC's broad authority, under the CCC Charter Act, to make available materials and facilities in the production and marketing of "agricultural commodities" and the overwhelming sense of the comments received, it has been determined that CCC will extend the program beyond facilities designed only for whole grain storage. Accordingly, eligible "facility loan commodities" (that is, the kind of commodities for which the building of a storage facility can be allowed under the rule) will be extended to also include corn, grain sorghum, wheat, oats or barley that is harvested for non-whole-grain use. Accordingly, the rule will also be amended to specifically provide for financing structures that are designed for that purpose. Other commodities will not at this time be folded into the program definition of "facility loan commodities" so as to expand the program further. Such an expansion would at a minimum involve a large-scale increase in the complexity of the program given that many commodities can have special needs such as refrigeration. Thus, the administrative difficulties of the program would increase dramatically. Moreover, and more importantly, the storage crisis mentioned in the interim rule was a crisis in the storage of grain (and certain related) crops and an expansion of the program beyond those would disperse the effect of the program unless there was to be a much greater commitment of funds to the program. At this time, there does not appear to be a justification for that kind of additional expenditure. On the other hand, the limited expansion, for silage, will allow farmers who grow the covered crops to have the flexibility of addressing their

storage needs for all harvesting of their crop. This modest expansion should be workable, which, accordingly, closes the circle of storage needs for certain producers, does so without undue difficulty and should allow program expense to remain within reasonable bounds. Also, to the extent that silage facilities are available, such availability could remove the pressure that might otherwise exist in particular cases to make use of the storage available for whole grain harvesting of the same crop. In that sense, the expansion of eligibility will also tend to further the goals of the original interim rule. Further, this limitation of the program is also in accord with the special emphasis given in the Charter Act on grain crops as evidenced by Section 4(h) of that Act. Also for the sake of cohesiveness, the provisions in the rule dealing with eligible structures have also been amended to allow for bunker-silo type structures, in accord with the comments. Still further, certain clarifying changes have been made in the rules as regards pre-owned and manufactured structures.

There were six comments from banks regarding the need to implement a guaranteed farm storage facility loan program with an interest rate buy-down provision in addition to the direct loan program. Respondents cited the advantages of a guaranteed loan program such as easing the program administrative burden on already overburdened FSA employees, better use of taxpayer dollars, assisting more producers, and the level of good experience with banks that already participate in FSA's guaranteed loan program for FSA ownership and farm operating loans. While CCC recognizes the support for such a program, none of the respondents provided any information as to how CCC should operate such a program and an interest rate buy-down provision could prove to be very costly compared to the current program. Accordingly, CCC will not implement a guaranteed loan program at this time.

Section 1436.3 of the Interim Rule

There were no comments on this section, but the reference to a consent, disclaimer and subordination agreement was deleted and the definition of a severance agreement, and a subordination agreement were added to further clarify definitions. A definition of unsatisfactory credit history was added to provide guidance on eligibility determinations to approving county committees. The term "tribal venture" was added to the definition of a person to clarify that such ventures are eligible

for the program. Finally, a definition of the calculation for computing the storage need requirement was added to provide further clarification.

Section 1436.4 of the Interim Rule

In order to clarify what actions applicants may take before a loan can be approved, section 1436.4(b) was amended by identifying the actual actions producers may take.

Furthermore, the provision allowing producers who took actions between February 2, 2000 and May 30, 2000 to be considered for loans was removed because those producers should have been accommodated during the time the program was operated under the interim rule. That provision is, thus, no longer needed but its removal will not affect prior loans.

Section 1436.5 of the Interim Rule

There were five comments regarding the provision in section 1436.5(a)(5) that requires an eligible borrower to provide proof of crop insurance. Generally, the respondents, three farmers, one FSA State Executive Director, and the American Farm Bureau Federation, questioned the value of crop insurance in furthering an applicant's repayment ability when crop losses occur, the additional cost an applicant may incur just to obtain a farm storage facility loan and the subsequent costs to maintain the insurance during the term of the loan. CCC will not change the requirement except that, based on the comments, we will not require insurance on crops that are determined to be economically insignificant by CCC. A definition for a crop of economic significance was added to the definitions section 1436.3 and the provision was clarified in 1436.5(a)(5).

There was one comment regarding the requirement for applicant compliance with the Debt Collection Improvement Act of 1996. Because this is a statutory requirement, CCC cannot change the requirement. Section 1436.5(a)(2) was amended, however, to further clarify the provision dealing with compliance with the Debt Collection Improvement Act.

There were several comments regarding section 1436.5(a)(4), which requires that in order for an applicant to be eligible for a loan, the applicant must demonstrate a need for an increase in storage capacity. This does not allow farmers with adequate existing capacity to be eligible for a loan to add or replace handling and drying equipment or to upgrade existing storage space. Based on this comment, and because CCC encourages the proper handling and maintenance of stored commodities, section 1436.5(a)(4) and section

1436.6(b)(1) have been amended to allow loans for handling and drying equipment, and for loans to upgrade existing storage capacity without increasing storage capacity. We also amended section 1436.5(a)(1) to make reference to the definition of satisfactory credit history and to make reference to a current financial statement. Finally, section 1436.5(a)(10) was added to require that borrowers may not have been convicted under Federal or State law of certain controlled substance violations in order to conform to the rule according to 7 CFR Part 718.

Section 1436.6 of the Interim Rule

A comment from the Pennsylvania FSA State committee questioned the definition of commercial purpose. Commercial purpose is defined as the storage and handling of grain, whether paid or unpaid, for persons other than the applicant. According to the respondent and other State offices, this definition hinders family operations where family members store their commodities together. Recognizing this problem, CCC amended the definition of a commercial operation in section 1436.3 to exempt immediate family members from this requirement.

Two respondents questioned the requirement that the program only allows loans to be made on new storage structures. One stated that pre-owned equipment should be considered to be eligible if CCC's interest is protected. Another suggested that 1436.6(a)(2) be changed to "new oxygen limiting or used oxygen limiting storage built to original manufacturer's design specifications using original manufacturer's rebuild kits, and other upright silo type structures, designed for whole grain storage and having a useful life of at least 10 years." Based on this comment, as indicated, CCC amended section 1436.6 to allow for loans on remanufactured structures, built to original manufacturer's design specifications using original manufacturer's rebuild kits. Section 1436.6(b)(2) was amended to clarify that CCC may require safety equipment meeting OSHA standards. Section 1436.6(e) was added to provide that new storage and handling components of purchased pre-owned structures may be eligible for loan.

Section 1436.7 of the Interim Rule

There were several comments regarding the term of the loan, which is 7 years. It was suggested that the term be flexible at 7, 10, or 15 years depending on repayment ability. CCC will not change the term of the loan because at 7 years the term is longer

than most commercial banks will offer and should be of sufficient length to allow the program goals to be met without jeopardizing repayment because of changed circumstances.

Section 1436.8 of the Interim Rule

There were 25 comments regarding this section, which provides for security for loans. Respondents generally cited a concern with the requirement in section 1436.8(b) that a lien on the real estate on which the farm storage facility is located will be required on all loans in the form of a real estate mortgage, deed of trust, or other security instrument approved by the CCC. Respondents were concerned that the requirement for what could be considered to be small loans was excessive and would create an unnecessary burden on loan applicants. CCC has responded to this concern by generally dropping the real estate lien requirement for loans with a principal amount less than \$50,000. It was also recommended that all facility loans be cross collateralized when the facility is constructed on real estate where there is a direct FSA farm loan program mortgage in existence. Accordingly, section 1436.8(b) was amended to provide that a real estate lien will not be required for loans of \$50,000 or less unless CCC determines through analysis of the applicant's financial condition that additional security in the form of a lien on real estate is necessary to protect CCC's interest in the collateral. Also, section 1436.8(b) has been clarified to provide that for loans exceeding \$50,000, a junior lien position on the entire real estate parcel underlying the storage facility may be acceptable as long as CCC's security interest is sufficiently protected. Also section 1436.8(b) was amended to define when a loan is considered to be adequately secured and to specify that a title opinion or title insurance is required for loans exceeding \$50,000. Section 1436.8(g) was amended to clarify fees that shall be paid by CCC or the applicant in connection with completing the loan transaction.

Section 1436.9 of the Interim Rule

There were 12 comments regarding this section, which explains how the amount of the loan is determined. Generally, the respondents cited a concern with the maximum amount of the loan, which is \$100,000 per loan and the maximum aggregate outstanding loan balance, which is \$100,000 per borrower. Respondents told FSA that \$100,000 is not enough in many cases to finance the storage structures and handling equipment needed by some farmers to adequately store facility loan

commodities. One respondent stated that, "Facilities and equipment can cost \$500,000 or greater." An example of farm operations that may be adversely affected by this requirement are large family-run operations that have formed family partnerships. The family conducts business as a general partnership; however, generally, FSA recognizes for commodity programs that each member of the partnership can be a separate "person" for program payment purposes so long as certain conditions are met. For the purposes of the farm storage facility loan program under the interim rule, however, CCC limited the loan at \$100,000 to the partnership since the loan limit was \$100,000 per loan in all cases. As this limit may adversely impact some farmers contrary to normal principles that guide farm programs, section 1436.9 has been amended to change the maximum loan to \$100,000 for each eligible borrower signing the loan note and security agreement and remove the limit of one loan per borrower per fiscal year. This will also allow more than one farmer to enter into a joint loan to share a storage structure with another and to receive a larger loan than one farmer acting alone. Section 1436.9 was also amended to remove the limit of one loan per borrower per fiscal year because the loan amount limit of \$100,000 accomplishes the same thing as a limit on the number of loans a borrower may obtain.

Section 1436.10 of the Interim Rule

There were 13 comments regarding section 1436.10, which set out the down payment requirements for the program. The down payment amount is 25 percent of the total cost of the items eligible for loan. Respondents think that 25 percent is too high and that the requirement places undue burden on loan applicants to provide cash at a time when grain prices are low and cash flow problems exist. CCC recognizes this burden and has changed the requirement to 15 percent of the cost of the items eligible for loan. Also, CCC will allow fees such as attorney fees and archaeological study fees to be considered as an eligible net cost item (items that may be figured into the calculation of the total amount for which the loan may be made) and amended section 1436.9(b) to reflect the change. Finally, section 1436.10(b) was amended to clarify that farmers may obtain a loan for the down payment amount from another lending source.

Section 1436.11 of the Interim Rule

This section provides generally that the loan will be disbursed when all

construction is complete, final cost data has been submitted, and the facility has been inspected and determined to be satisfactory by CCC. Four respondents addressed this portion of the rule and in one case the respondent suggested that the monies should be dispersed upon loan approval. Another suggested that the monies be dispersed upon delivery of the materials and a completion of the labor. Others suggested that the loan disbursements should always be jointly payable to both the borrower and the contractor or supplier, and that, in any event, CCC should always obtain a written release of liability from the contractor or supplier. The rule will continue allow the checks to be made payable to the borrower alone in certain cases as there does appear to be circumstance in which such payments could be made in that manner with sufficient security. However, the rule has been amended, in accord with the comments, to specify that in all cases a written release of liability from the contractors or suppliers involved will be required before loan funds are disbursed. These provisions should allow sufficient flexibility to handle all circumstances as might arise. Also, a provision was added to this section to specify that loan proceeds cannot be assigned. This will also reduce program complexity and allow for certainty in program administration.

Section 1436.12 of the Interim Rule

There were five comments regarding the interest rate for loans, which is the rate in effect on the date the loan is approved that is equivalent to Treasury securities of comparable maturity. Generally, respondents thought that the interest rate should be the lowest rate in effect at the time of application, approval, or disbursement. The rate allowed by the interim rule appears to be to a fair rate, which will allow the accomplishment of the program goals and the terms of the rule, as provided for in the interim rule, will allow for certainty in the administration of loans. In the event that an applicant is dissatisfied with the rate, the applicant can withdraw from the program.

Section 1436.13 of the Interim Rule

There were five comments regarding section 1436.13, which provides provisions regarding repayment of the loan. Four comments focused on the term of the loan while one comment suggested discontinuance of the requirement to offset commodity loan or LDP proceeds towards facility loan installments before the installment is due or the borrower is delinquent. CCC will discontinue that requirement and

amended section 1436.13(d) accordingly. Section 1436.13(c) was further amended to set out procedures that will be used in the event an installment is not paid.

Section 1436.15 of the Interim Rule

There was one comment regarding section 1436.15, which provides maintenance provisions for a program loan. The respondent suggested removing the requirement for an annual check by CCC of the loan collateral because FSA salary funds do not allow for "extreme" expenditures. CCC feels the requirement is reasonable and can be fulfilled with available resources.

Section 1436.16 of the Interim Rule

There were no comments regarding this section, but provisions have been added to this section for foreclosure, liquidation, and bankruptcy actions to help insure accomplishment of the goals of the program.

Section 1436.17 of the Interim Rule

There were two comments regarding the provision to require compliance with the National Environmental Policy Act. The provision requires that an environmental evaluation be conducted by CCC for each loan application. In most cases, this will require a farm visit to assess the impact of the proposed storage construction project on the environment and on historic and archaeological resources. Respondents generally indicated that the environmental assessment goes far beyond the intent and scope of a program designed to benefit farmers hard-pressed for storage capacity and in need of additional opportunities to enhance marketing returns. Respondents also pointed out that the requirement for compliance with local land use laws should be adequate for environmental compliance as well and that the interim rule states that the program as a whole will have no significant impact on the quality of the human environment. While CCC recognizes that the environmental review may delay loan approvals, this provision should help assure the maximum overall benefit from the expenditures to be made in this important program in conjunction with other programs, including conservation programs, operated by the participant.

Section 1436.18

Section 1436.18 was added to provide appeal provisions.

Additional editorial changes have also been made.

List of Subjects in 7 CFR Part 1436

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

Accordingly, for the reasons set forth in the preamble, 7 CFR part 1436 is revised to read as follows:

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

Sec.

- 1436.1 Applicability
- 1436.2 Administration
- 1436.3 Definitions
- 1436.4 Availability of loans
- 1436.5 Eligible borrowers
- 1436.6 Eligible storage or handling equipment
- 1436.7 Term of loan
- 1436.8 Security for loan
- 1436.9 Loan amount and loan application approvals
- 1436.10 Down payment
- 1436.11 Disbursements and assignments
- 1436.12 Interest and fees
- 1436.13 Loan installments, delinquency, and acceleration of maturity date
- 1436.14 Taxes
- 1436.15 Maintenance, liability, insurance, and inspections
- 1436.16 Foreclosure, liquidation, assumptions, sale or conveyance, bankruptcy
- 1436.17 Environmental compliance
- 1436.18 Appeals

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

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS**§ 1436.1 Applicability.**

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

§ 1436.2 Administration.

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

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

(c) The FSA State committee shall take any action required by these

regulations that has not been taken by the county committee. The FSA State committee shall also:

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

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

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

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

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

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

§ 1436.3 Definitions.

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

Aggregate outstanding balance means the sum of the outstanding balances of all loans disbursed under this part to each borrower signing the note and security agreement.

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

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

Crop of economic significance means any insurable facility loan commodity

that contributes 10 percent or more of the total expected value of all crops grown by the loan applicant except if the expected liability under the catastrophic level of crop insurance for a crop is equal to or less than the administrative fee for the crop, that crop shall not be economically significant.

Facility loan commodity means wheat, rice, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, other oilseeds as determined and announced by CCC, corn, grain sorghum, oats, or barley harvested as whole grain except that corn, grain sorghum, oats, wheat, or barley shall be included whether harvested as whole grain or other than whole grain.

Financing statement means the appropriate document that gives legal notice of a security interest in personal property when properly filed or recorded.

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

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

Satisfactory credit history means a history of repaying debts as they came due unless the failure to repay or tardiness in payment was due to circumstance beyond the applicant's control as determined by CCC upon proof submitted by the applicant.

Severance agreement means an agreement under which a party may consent to the security interest of another in property thereby allowing the severance of a fixture from the real estate.

Storage need requirement means the result of up to the average of the most recent 3 years available planted acreage from the applicant's share of the applicable farm operation for each facility loan commodity requiring storage at the proposed storage location multiplied by the applicable crop yield as determined reasonable by the county committee, multiplied by two, and less the available existing storage capacity. If there is no acreage data available, including prevented planted acres, or the data is not applicable relative to the storage need, a reasonable acreage projection may be made for newly

acquired farms, changes in cropping operations, or for facility loan commodity crops being grown for the first time.

Subordination agreement means any agreement under which a party may subordinate a security interest in property to the interest of another party.

Uniform Commercial Code means the laws generally known by that name covering commercial transactions such as sales, negotiable instruments, and secured transactions.

§ 1436.4 Availability of loans.

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

(b) Producers who authorize delivery, site preparation, or construction actions without an approved loan, do so at their own risk and without creating any liability on behalf of CCC.

§ 1436.5 Eligible borrowers.

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

(1) Has a satisfactory credit history 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 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;

(6) 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;

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

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

(8) 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;

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

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

§ 1436.6 Eligible storage or handling equipment.

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

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

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

(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 10 years.

(b) 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 grain, such as cleaners, moisture testers, and heat detectors;

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

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

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

(1) Portable grain drying equipment, 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;

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

(5) Storage structures to be used for commercial purposes. Commercial purpose is defined as the storage and handling of grain, whether paid or unpaid, for persons other than the loan applicant, except for family members as defined in 7 CFR Part 718, and tenants or landlords sharing in the crop requiring storage. Any facility that is in working proximity to any commercial storage operation shall be considered to be part of a commercial storage operation; and

(6) Portable or permanent weigh scales.

(d) Loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 10 years if the county committee determines there is a need for the capacity of the structure, but not for the sole replacement of worn out items such as motors, fans, or wiring.

(e) Loans 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 10 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.

§ 1436.7 Term of loan.

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

§ 1436.8 Security for loan.

(a) Except as agreed to by CCC, all loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified in the laws of the state where the collateral is located. CCC's security interest in the collateral shall constitute the sole security interest in such collateral except for prior liens on the underlying realty that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the realty 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 loan amounts exceeding \$50,000, or where the aggregate outstanding loan balance will exceed \$50,000 or for loans where the approving 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 will be required in the form of a real estate mortgage, deed of trust, or other security instrument approved by the United States Department of Agriculture's Office of General Counsel. CCC's interest in the real estate shall be superior to all other liens and is the first lien that secures the amount of the loan. 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. 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

General Counsel. CCC will not require such an agreement from any agency of the Department of Agriculture. Loans 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.

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

(d) Real estate liens 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

(2) the acreage has sufficient value based on the fair market value of the acreage at the time of the application as determined by the county committee, to insure repayment of the loan.

(e) Notwithstanding the preceding subsections of this section, a borrower, in lieu of such liens as are otherwise required by those subsections, may provide a letter of credit, bond, or other form of security, as approved by CCC.

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

(g) The cost of loan closings by attorneys, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings and later subordinations will be paid by the borrower. CCC shall pay such costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

§ 1436.9 Loan amount and loan application approvals.

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

(b) The net cost for storage facilities and handling equipment 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. The net cost shall not include secondhand material or any other item that is determined by the approving authority to be ineligible for loan.

(c) The maximum principal amount of any farm storage facility loan shall be 85 percent of the net cost of the applicant's needed storage or handling equipment not to exceed \$100,000 for each borrower signing the note and security agreement. Unless otherwise approved by CCC, borrowers shall be considered to be separate persons or borrowers for purposes of applying the preceding sentence only to the extent that they would normally be considered a separate person under the rules set out in 7 CFR part 1400.

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

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

(f) When a flat storage structure has space that is not used primarily for facility loan commodity storage, such as office space, the loan amount shall 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 FSA State committee establishes a lower limit for county committee approval authority.

(h) Loan approvals will expire 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(i) CCC may at any time refuse to make new loans.

§ 1436.10 Down payment.

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

(b) The down payment shall be in cash unless some other form of payment is approved by CCC. The down payment may be obtained by the borrower from another lending source.

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

§ 1436.11 Disbursement and assignments.

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

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

(c) Disbursement may be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower only if CCC determines 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 contractors and suppliers providing goods and services to the loan applicant.

(e) Loan proceeds cannot be assigned.

§ 1436.12 Interest and fees.

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

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

(c) The loan applicant shall pay a non-refundable application fee in such amount determined appropriate by CCC, which fee may not in any case be less than \$45.

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

(a) Equal installments of principal plus interest will be amortized over the loan term for purposes of setting a payment schedule. Installments are due and payable not later than the last day of each 12-month period of the loan, until the principal plus interest has been paid in full.

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

(c) The following actions will be taken when installments are not paid on the due date: A demand for payment shall be mailed to the debtor after the due date has passed. If the installment is not paid within 30 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, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals unless

other action is needed to protect the interests of CCC. If the debtor files an appeal according to § 1436.18 of this part, collection action shall cease until the appeal process is complete, however, any payments due the debtor may be withheld and, depending on the outcome of the appeal, may later be offset and applied to reduce the indebtedness. In lieu of a foreclosure on the collateral 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. Alternately, CCC may implement such other collection procedures as it deems appropriate.

(d) A claim shall be established against a borrower for any amounts remaining due after liquidation of the loan.

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

(f) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity that the borrower participates in, either directly or indirectly, as determined by CCC.

(2) Against related persons or entities, irrespective of the debtors share, when CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the debt.

(g) The loan may be paid in full or in part without penalty at any time before maturity.

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

§ 1436.14 Taxes.

The borrower must pay, when due, all real and personal property taxes that may affect CCC's security interest in all collateral securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral securing a loan made in accordance with this part, and if CCC does so, the borrower shall reimburse CCC for such payment, and if unpaid by

the borrower, such debt shall become due immediately.

§ 1436.15 Maintenance, liability, insurance, and inspections.

(a) The borrower must maintain the loan collateral in a condition suitable for the storage of one or more of the facility loan commodities. For purpose of this section the term "loan collateral" shall mean any property of any kind that was built or improved, or acquired using a loan made under this part.

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

(c) CCC may conduct annual collateral inspections to insure compliance with this part. The borrower must consent to such inspection as a term of the loan and failure to supply such access shall put the borrower into default.

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

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

§ 1436.16 Foreclosure, liquidation, assumptions, sale or conveyance, bankruptcy.

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and payable under this part as follows:

(1) If a demand for payment is not received by the due date acceptable to CCC, CCC may call the loan and initiate foreclosure proceedings by issuing a liquidation letter to the borrower.

(2) The debtor may voluntarily agree to allow removal of the collateral to facilitate sale by signing an agreement for sale. If the debtor objects to removal of collateral, the law of the state where the collateral exists will be used to foreclose on the property.

(3) For loans with movable collateral and no real estate lien, CCC may sell the collateral for the best price obtainable. Sales proceeds shall be distributed in the following order:

(i) To CCC to satisfy the debtor's indebtedness including all costs associated with selling the collateral.

(ii) Payment to junior lien holders if approved by USDA's Office of the General Counsel and then to the borrower or other persons as determined appropriate by that office.

(4) For loans with nonmovable collateral, as determined by CCC, and no real estate lien, CCC may establish a claim according to 7 CFR part 1403.

(5) For loans secured with a real estate lien, CCC may obtain an appraisal of the property. Sales proceeds shall be distributed in the following order:

(i) To CCC to satisfy the debtor's indebtedness including all costs associated with selling the collateral and the appraisal.

(ii) To junior lien holders if approved by USDA's Office of the General Counsel; or

(iii) To the borrower or other persons as determined appropriate by that office.

(b) Assumption by another borrower of a farm storage facility loan is permitted subject to county committee approval and the subsequent borrower's ability to show a satisfactory credit history. An assumption of the loan may be approved when the collateral is sold by CCC to an otherwise eligible borrower, the current borrower will convey the collateral or property securing the loan to another eligible borrower, or the borrower is dead, incompetent, or missing and an eligible borrower wants to assume the loan.

(1) Requests for approval of assumptions shall be made to the county committee by the borrower, the borrower's successors, or representatives of the borrower. If approval is granted, the borrower's successors or representatives shall execute a new farm storage facility note and security agreement for the balance of the term of the loan.

(2) The principal amount of the loan shall include the unpaid amount of the loan, interest computed to the date of assumption, all past due installments, and any other charges that may be required.

(c) The borrower may voluntarily convey the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities or other property securing a loan without repaying the loan in full, the borrower shall obtain approval for the sale or conveyance from the FSA county committee with the understanding that sale proceeds shall be paid to satisfy the borrowers indebtedness to CCC.

(d) Remedies provided for in this section shall, unless CCC determines otherwise, be subject to the

administrative appeals provided for elsewhere in this part, including those that are found at § 1436.13.

§ 1436.17 Environmental compliance.

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

(b) If it is determined that a proposed action or group of proposed actions will not result in any adverse impact, the action will be considered as being categorically excluded for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508.

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

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

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

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

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

§ 1436.18 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except for provisions for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with parts 11 and 780 of this title.

Signed at Washington, DC, on January 10, 2001.

George Arredondo,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–1332 Filed 1–17–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 719

48 CFR Parts 931 and 970

RIN 1990–AA27

Contractor Legal Management Requirements; Department of Energy Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy (Department) is establishing new regulations covering contractor legal management requirements. Conforming amendments are also made to the Department of Energy Acquisition Regulation (DEAR). The new regulation covers legal costs to be reimbursed by the Department to its contractors at government owned or leased facilities with contracts exceeding \$100,000,000. An Appendix to the regulation provides additional guidance to contractors.

EFFECTIVE DATE: This final rule is effective February 20, 2001.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Disposition of Comments.
- III. Procedural Requirements.
 - A. Review Under Executive Order 12866.
 - B. Review Under Executive Order 12988.
 - C. Review Under the Regulatory Flexibility Act.
 - D. Review Under the Paperwork Reduction Act.
 - E. Review Under the National Environmental Policy Act.
 - F. Review Under Executive Order 13132.
 - G. Review Under the Unfunded Mandates Reform Act of 1995.
 - H. Review Under the Treasury and General Government Appropriations Act of 1999.
 - I. Congressional Notification.

I. Background

This final rulemaking creates a new part 719, in Chapter 10 of the Code of Federal Regulations, establishing regulations to monitor and control legal costs and to provide guidance to aid contractors and Department personnel in making determinations regarding the