

## Commodity Credit Corporation, USDA

## § 1436.2

for the sugar purchased under this program. A bioenergy producer must assume any storage costs accrued from date of contract to date of taking possession of the sugar.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof as specified by CCC that the sugar has been used in the bioenergy factory for the production of bioenergy and permit access for USDA to verify compliance.

### § 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]

## PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

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AUTHORITY: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714 through 714p.

SOURCE: 66 FR 4612, Jan. 18, 2001, unless otherwise noted.

### § 1436.1 Applicability.

(a) 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 in-

terests related to this activity may be governed by State law, CCC may adapt certain procedures relating to those issues that may vary between States.

(b) Unless specified otherwise in this part, for FSFL microloans, all provisions of this part apply.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41587, Aug. 18, 2009; 81 FR 25592, Apr. 29, 2016]

### § 1436.2 Administration.

(a) The Farm Storage Facility Loan Program will be administered under the general supervision of the Executive Vice President, CCC or designee and will 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 will take any action required by these regulations that has not been taken by the county committee. The FSA State committee will 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 will 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, will be void.

(g) The purpose of the Farm Storage Facility Loan Program is to provide CCC funded loans for producers of grains, oilseeds, pulse crops, sugar, hay, renewable biomass, fruits and vegetables (including nuts), aquaculture, butter, cheese, eggs, floriculture, honey, hops, maple sap, meat, milk, poultry, rye, yogurt, and other grains and storable commodities, as determined by the Secretary, to construct or upgrade storage and handling facilities for the eligible facility loan commodities they produce.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41587, Aug. 18, 2009; 81 FR 25592, Apr. 29, 2016]

#### § 1436.3 Definitions.

The following definitions will 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.

*Aquaculture*, for FSFL purposes, means any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans.

*ARS* means the Agricultural Research Service of the USDA.

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

*CCC* means the Commodity Credit Corporation.

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

ditions required for the commodity requiring storage.

*Collateral* means the facility and any real estate used to secure the loan.

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

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

*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.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency, including any designee.

*Facility* means any on-farm storage and handling facility or structure, storage and handling equipment, or storage and handling truck, for which a producer may receive FSFL financing to acquire or upgrade. Such facilities can be new or used, fixed or portable.

*Facility loan commodity* means corn, grain sorghum, oats, wheat, barley, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, other grains and oilseeds as determined and announced by CCC, dry peas, lentils, or chickpeas harvested as whole grain, peanuts, hay, renewable biomass, fruits and vegetables (including nuts), aquaculture, floriculture, hops, milk, rye, maple sap, honey, meat, poultry, eggs, cheese,

butter, yogurt, and other storable commodities as determined by the Secretary. Corn, grain sorghum, wheat, and barley are 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.

*FSA* means the Farm Service Agency of the USDA.

*FSFL* means Farm Storage Facility Loan.

*FSFL microloan* means a loan for which the producer's aggregate outstanding FSFL balance will be equal to or less than \$50,000 at the time of loan application and disbursement.

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

*NAP* means the Noninsured Crop Disaster Assistance Program.

*NEPA* means the National Environmental Policy Act.

*NIFA* means the National Institute of Food and Agriculture of the USDA.

*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.

*Off-farm paid labor* means any laborer that does not work for the applicant on a regular basis and who is not hired as a seasonal worker.

*OSHA* means the Occupational Safety and Health Administration of the U.S. Department of Labor.

*Portable equipment and storage structures* means non-affixed equipment and storage containers that are manufactured to be mounted, hitched, or transported with a farm vehicle, truck, or trailer and its primary function is to store or handle eligible facility loan commodities at different farm, market, or storage locations. Examples of portable equipment include, but are not limited to, bulk tanks, conveyors, au-

gers, scales, vacuums, pilers, scales, batch dryers, and storage containers.

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

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

*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 and handling truck* means a CCC-approved commodity storage truck or van designed to carry eligible commodities and may be equipped with a variety of mechanical refrigeration systems and will be used to store, handle, and move eligible commodities from the producer's farm location to market or storage.

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

*USDA* means the United States Department of Agriculture.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41587, Aug. 18, 2009; 81 FR 25592, Apr. 29, 2016]

EDITORIAL NOTE: At 81 FR 25592, Apr. 29, 2016, §1436.3 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

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### § 1436.4 Application for loans.

(a) An application for an FSFL must be submitted to the administrative FSA county office that maintains the records of the farm or farms to which the applicant applies. If some or all of the land does not have farm records established, the application may be submitted to the FSA county office that services the county where the FSFL financed equipment or facility will be primarily located.

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

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

(d) Submitting an application does not ensure loan approval nor create any liability on behalf of CCC. Borrowers who authorize delivery, site preparation, or construction actions without an approved loan, do so at their own risk.

(e) The application must include documentation of the need for storage, or for FSFL microloans self-certification, as specified in §1436.9.

[74 FR 41587, Aug. 18, 2009, as amended at 81 FR 25593, Apr. 29, 2016]

### § 1436.5 Eligible borrowers.

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

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

(2) Demonstrates an ability to repay the debt arising under this program using a financial statement acceptable to CCC prepared within 90 days of the

date of application, as recommended to the approving committee by a FSA employee with FSA loan approval authority;

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

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

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

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

(7) Is in compliance with the U.S. Department of Agriculture (USDA) provisions for highly erodible land and wetlands conservation provisions according to 7 CFR part 12;

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

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

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

(11) Has not been convicted under Federal or State law of a disqualifying controlled substance violation or a

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crop insurance violation under 7 CFR part 718.

(b) For sugar facility loans:

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

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

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

### § 1436.6 Eligible storage or handling equipment.

(a) All eligible storage and handling facilities must be one of the following types:

(1) Conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least the entire term of the loan;

(2) Oxygen-limiting storage structures or remanufactured oxygen-limiting storage structures built to the original manufacturer's design specifications using original manufacturer's rebuild kits or kits from a supplier approved by the Deputy Administrator, Farm Programs, and other upright silo-type structures designed for whole grain storage or other than whole grain storage and with a useful life of at least the entire term of the loan;

(3) 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 the entire term of the loan;

(4) 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 the entire term of the loan;

(5) Structures suitable for storing hay that are built according to acceptable design guidelines from the National Institute of Food and Agriculture (NIFA) or land-grant universities and with a useful life of at least the entire term of the loan;

(6) Structures suitable for storing renewable biomass that are built according to acceptable industry guidelines and with a useful life of at least the entire term of the loan; or

(7) Bulk storage tanks, as approved by the Deputy Administrator, suitable for storing any eligible loan commodity, as determined appropriate by county committees and having a useful life of at least the entire term of the loan.

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

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

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

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

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

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

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

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

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

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

(3) Storage structures to be used as a commercial facility. Any facility that

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is in working proximity to any commercial storage operation will be considered to be part of a commercial storage operation.

(d) Loans for all eligible facility loan commodities, except sugar, may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least the entire term of the loan if the county committee determines there is a need for the capacity of the structure, but loans will not be approved solely for the replacement of worn out items such as motors, fans, or wiring.

(e) Loans for all eligible facility loan commodities, except sugar, may be approved for facilities provided the completed facility has a useful life of at least the entire term of the loan. The pre-owned facility must be purchased and moved to a new location. Eligible items for such a loan include costs such as bin rings or roof panels needed to make a purchased pre-owned structure useable, aeration systems, site preparation, construction off-farm paid labor cost, foundation material and off-farm paid labor. Ineligible items for such a loan include the cost of purchasing and moving the used structure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Weigh scales.

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

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

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

(i) A cold storage facility of wood pole and post construction, steel, or concrete, that is suitable for storing cold storage commodities produced by the borrower and having a useful life of at least the entire term of the loan;

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(ii) Walk-in prefabricated cold storage coolers that are suitable for storing the producer's cold storage commodities and having a useful life of at least the entire term of the loan;

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

(iv) Equipment to maintain or monitor the quality of commodities stored in a cold storage facility;

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

(3) FSFLs may be approved for financing additions or modifications to an existing storage facility having an expected useful life of at least the entire term of the loan if CCC determines there is a need for the capacity of the cold storage facility.

(4) FSFLs will not be made for structures or equipment that are not suitable for facility loan commodities that require cold storage.

(h) Storage and handling trucks for facility loan commodities are authorized according to guidelines established by the Deputy Administrator. Storage and handling trucks may include, but are not limited to, cold storage reefer trucks, grain haulers, and may also include storage trucks with a chassis unit. The Deputy Administrator, Farm Programs, or a State Committee may rescind this provision on a Statewide basis if it is determined that allowing loans for storage and handling trucks has increased loan defaults and is not in the best interest of CCC.

(i) The loan collateral must be used for the purpose for which it was delivered, erected, constructed, assembled, or installed for the entire term of the loan.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002; 74 FR 41588, Aug. 18, 2009; 76 FR 4805, Jan. 27, 2011; 81 FR 25593, Apr. 29, 2016]

### § 1436.7 Loan term.

(a) For eligible facility loan commodities other than sugar, the term of the loan will not exceed 12 years, based on the total loan principal and loan request type, from the date a promissory note and security agreement is com-

pleted on both the partial and final loan disbursement. As determined by the Deputy Administrator, used equipment FSFLs may have a loan term of 3 or 5 years. The applicant will choose a loan term, based on the loan request type at the time of submitting the loan application and total cost estimates. Available loan terms are 3, 5, 7, 10, or 12 years; available terms for a specific loan will be based on the loan principal and facility or equipment type.

(b) The Deputy Administrator has the discretion and authority to extend loan terms for 1 or 2 years, on a case by case basis. Loan term extensions will only be granted after a written request is received from the producer before loan term expires and when determined appropriate by Deputy Administrator to assist borrowers with additional loan servicing options. Producers and participants who have already agreed to the loan term (maturity date) have no right to an extension of the loan term. The borrower agrees to the loan term through the Promissory Note at the time of distribution. The Deputy Administrator's refusal to exercise discretion to consider an extension will not be considered an adverse decision or a failure to act under any law or regulation and, therefore, is not appealable. Participants are not entitled to extensions or the consideration of a request for extension.

(c) For a sugar-related loan:

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

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

[74 FR 41589, Aug. 18, 2009, as amended at 81 FR 25594, Apr. 29, 2016]

### § 1436.8 Security for loan.

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

(1) The promissory note and security agreement must grant CCC a security interest in the collateral and must be

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perfected in the manner specified in the laws of the State where the collateral is located.

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

(3) CCC will hold title in accordance to applicable State laws and motor vehicle administration title provisions, to all eligible equipment, structures, components and storage and handling trucks acquired using loan proceeds under this part.

(b) For loan amounts equal to or less than \$100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than \$100,000, CCC will not require a severance agreement from the holder of any prior lien on the real estate parcel on which the facility is located. However, the Deputy Administrator, Farm Programs, or a State Committee may, at their discretion, require a severance agreement for loan amounts greater than \$50,000 or less than \$100,000 for all FSFLs in the State, if deemed necessary to protect the interests of CCC. If no severance agreement is provided, then the borrower must:

(1) Agree to increase the down payment on the facility loan from 15 percent to 20 percent, except for an FSFL microloan; or

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

(c) For loan amounts equal to or less than \$100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than \$100,000, CCC will not require a lien on the real estate parcel on which the facility is located. However, the Deputy Administrator, Farm Programs or a State Committee may, at their discretion, require a lien in the form of a real estate mortgage,

deed of trust, or other security instrument approved by USDA's Office of the General Counsel for loans greater than \$50,000 or less than \$100,000 for all FSFLs in the State, if deemed necessary to protect the interests of CCC. Liens are required for all loans greater than \$100,000. All liens must meet the following conditions:

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

(2) The real estate security for the loan must be at least equal to the loan amount; and

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

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

(e) Real estate liens, with prior CCC approval, may cover land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage and the acreage is not subject to any other liens or mortgages that are superior to CCC's lien interest and

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

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

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

(h) For all farm storage facility loans, except sugar loans, the borrower must pay the cost of loan closings by



attorneys, title opinions, title insurance, title searches, filing, and recording all real estate liens, fixture filings, appraisals if requested by the borrower, and all subordinations. CCC will pay costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(i) For loan amounts equal to or less than \$100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than \$100,000, and secured by collateral without any resale value, as determined by CCC, additional security will not be required. However, the Deputy Administrator, Farm Programs or a State Committee may, at their discretion, for all FSFLs in the State, require additional security for loan amounts greater than \$50,000 or less than \$100,000 that are secured by collateral without any resale value if deemed necessary to protect the interests of the CCC.

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

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

[74 FR 41589, Aug. 18, 2009, as amended at 79 FR 13192, Mar. 10, 2014; 81 FR 25594, Apr. 29, 2016]

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

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

(b) The net cost for all facilities:

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

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

(c) The maximum total principal amount of the FSFL, except for FSFL microloans, is 85 percent of the net cost of the applicant's needed facility, not to exceed \$500,000 per loan. For FSFL microloans the maximum total principal amount of the farm storage facility loan is 95 percent of the net costs of the applicant's needed storage, handling facility, including drying and handling equipment, or storage and handling trucks, not to exceed an aggregate outstanding balance of \$50,000.

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

(1) For facility loan commodities, except sugar, cold storage commodities, maple sap, and milk:

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

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

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

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

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

(2) For sugar storage facility loans,

(i) Identify past processing volume and marketing allotments;

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

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

(3) For cold storage facilities:

(i) Multiply the average of the applicant's share of production or of acres farmed for the most recent 3 years for each eligible commodity requiring cold storage at the proposed facility;

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

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

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

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

(4) For all eligible facility loan commodities, except sugar, if acreage data is not practicable or available for State and County Committees or authorized FSA staff to determine the storage need, specifically, but not limited to, maple sap, eggs, butter, cheese, yogurt, milk, meat and poultry, a reasonable production yield, such as ERS or NASS data may be used to determine the

storage capacity need. A reasonable production yield may also be used for newly acquired farms, specialty farming, changes in cropping operations, prevented planted acres, or for facility loan commodities being grown for the first time.

(5) For FSFL microloans if the FSA State and county committees determine that self-certification is practicable based on the applicant's farm operation, then CCC may allow applicants to self-certify to the storage capacity need. The Deputy Administrator, Farm Programs, or an FSA State committee may rescind the FSFL microloan provision on a State-wide basis if it is determined that allowing FSFL microloans has increased the likelihood of loan defaults and is not in the best interest of CCC.

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

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

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

(h) The Farm storage facility loan approval period, which is the time-frame, from approval until expiration, during which the facility must be completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility for all eligible facility loan commodities except sugar, will expire 6 months after the date of approval unless extended in writing for an additional 6 months by the FSA State Committee. A second 6 month extension, for a total of 18

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months from the original approval date, may be approved by the FSA State Committee. This authority will not be re-delegated. Sugar storage facility loan approvals will expire 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

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

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

[74 FR 41590, Aug. 18, 2009, as amended at 76 FR 4805, Jan. 27, 2011; 81 FR 25595, Apr. 29, 2016]

### § 1436.10 Down payment.

(a) A minimum down payment representing the difference between the net cost of the facility and the amount of the loan determined in accordance with §1436.9 will be made by the loan applicant to the supplier or contractor before either the partial or final loan disbursements.

(b) The down payment must 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.

(d) The minimum down payment for an FSFL will be 5 percent for an FSFL microloan and 15 percent for all other FSFLs, with the down payment to be calculated as a percentage of net cost as specified in §1436.9. As specified in §1436.8, a larger down payment may be required to meet security requirements.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41590, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016]

### § 1436.11 Disbursements and assignments.

(a) At the request of the borrower, one partial disbursement of loan principal and one final loan disbursement will be available. The partial loan disbursement will be made to facilitate

the purchase and construction of an eligible facility and will be made after the approved applicant has completed construction on part of the structure. County FSA personnel will inspect and verify the amount of construction completed.

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

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

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

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

(b) Both the partial and final loan disbursements will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan. If deemed appropriate by CCC, the partial and final disbursement may have separate notes and separate security instruments.

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

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

(e) Loan proceeds cannot be assigned.

(f) For sugar storage facility loans, only one disbursement will be made

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and such disbursement will be regarded as a final disbursement.

[74 FR 41591, Aug. 18, 2009, as amended at 81 FR 25595, Apr. 29, 2016]

### § 1436.12 Interest and fees.

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

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

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

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

[73 FR 41591, Aug. 18, 2009]

### § 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 each of the partial and final loan disbursements, 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. Each payment will be applied first to accrued interest and then to principal.

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

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

(2) If the installment is not paid within 30 calendar days of the due date or if a new due date acceptable to CCC has not been established based on a financial plan submitted by the debtor, CCC may send two subsequent written

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demands at approximately 30 calendar day intervals unless CCC needs to take other action to protect the interests of CCC.

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

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

(d) A claim will 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 facility including, but not limited to, elevators, warehouses, dryers, processing plants, or retail or wholesale cold storage facilities.

(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 debtor's, share, when CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their

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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 will release CCC's security interest in the collateral.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009]

### § 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 or land securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral or land securing a loan made in accordance with this part, and if CCC does so, the borrower will reimburse CCC for such payment, and if unpaid by the borrower, such debt will become due immediately.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009]

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

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

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

(d) Facilities 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 insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC will have rights to enter, leave, and return to the property 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 will constitute a loan default for which the remaining balance of the loan will become immediately due and payable.

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

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002; 74 FR 41591, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016]

### § 1436.16 Foreclosure, liquidation, assumptions, sales or conveyance, or 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 will 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 non-movable or non-salable 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

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of the property. Sales proceeds will 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 must 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 must 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 will 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 securing a loan without repaying the loan in full, the borrower must obtain approval for the sale or conveyance from the FSA county committee with the understanding that sale proceeds must be paid to satisfy the borrower's indebtedness to CCC.

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

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(1) Find an eligible borrower or entity to assume the loan as specified in paragraph (b) of this section,

(2) Repay the loan, or

(3) Undergo new financial analysis, as approved and determined by CCC, to ensure CCC's interests are protected and that the current borrower is in a position to continue making the scheduled loan payments.

(e) Remedies provided for in this section will, unless CCC determines otherwise, be subject to the administrative appeals provided for elsewhere in this part, including those that are found at § 1436.13.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016]

### § 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.

### § 1436.19 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan will directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. FSFL borrowers are subject to the non-discrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the

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applicant in good faith, exercises any rights under the Consumer Protection Act. FSFL is subject to the non-discrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.

[67 FR 54939, Aug. 26, 2002. Redesignated at 67 FR 65690, Oct. 28, 2002; 74 FR 41592, Aug. 18, 2009]

**PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM**

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- 1437.505 Application for payment for the tropical region.

AUTHORITY: 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

SOURCE: 67 FR 12448, Mar. 19, 2002, unless otherwise noted.

**Subpart A—General Provisions**

**§ 1437.1 Applicability.**

(a) The purpose of the Noninsured Crop Disaster Assistance Program (NAP) is to help manage and reduce production risks faced by producers of eligible commercial crops or other agricultural commodities during a coverage period. NAP reduces financial losses that occur when natural disasters (damaging weather or adverse natural occurrence that is an eligible cause of loss) cause a loss of expected production or actual value for value loss crops, or where producers are prevented from planting an eligible crop because of an eligible cause of loss in a coverage period.

(b) The provisions in this part are applicable to eligible producers and eligible crops for which catastrophic coverage under section 508(b) or additional coverage of sections 508(c) or 508(h)