

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560-AE50

Standards for Approval of Warehouses for CCC Interest Commodity Storage

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule is offered to revise regulations covering the storage of commodities in which the Commodity Credit Corporation (CCC) has an interest. For the most part, those commodities are acquired in connection with non-recourse commodity loan programs that benefit farmers. This rule will consolidate the regulations for all commodities stored by CCC into one set of regulations. In addition, this rule would, in some instances, revise the substantive provisions that are in effect under the existing regulations.

DATES: Comments on this rule, in order to be assured of consideration, must be received by January 20, 2004.

ADDRESSES: Comments and request for additional information should be directed to Howard Froehlich, Chief, Program Development Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250-0553, telephone (202) 720-7398, FAX (202) 690-3123, e-mail Howard_Froehlich@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant under Executive Order

12866 and has not, therefore, been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the national Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 780 must be exhausted before seeking judicial review.

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 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and CCC in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for the warehousing matters covered by this rule are not yet fully implemented for the public to conduct business with CCC electronically. Documents needed in this regard may be obtained by mail or FAX. Electronic implementation of the matters covered by this rule is under consideration.

Background

Under Title I of the Farm Security and Rural Investment Act of 2002, the Commodity Credit Corporation (CCC) makes marketing assistance loans to farmers that can lead to forfeiture of the commodities to CCC. Also, CCC can acquire commodities under other circumstances. Section 4(h) of the CCC Charter Act (7 U.S.C. 714b(h)) precludes CCC from acquiring real property for storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act (7 U.S.C. 714c) requires that in purchasing, selling, warehousing, transporting, or handling agricultural commodities, CCC shall use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

CCC enters into storage agreements with private warehouse operators to provide for the storage of various commodities it acquires. CCC has

regulations covering such storage at 7 CFR 1421.5551–1421.5559, part 1423, and 1427, subpart E. More specifically, those rules establish the standards a warehouse operator must meet to be approved to store CCC-interest commodities. This rule proposes to:

1. Consolidate the approval regulations at one location in the Code of Federal Regulations.
2. Revise the fire fighting equipment requirements in the approval regulations to specify that warehouses must meet local standards;
3. Reduce the financial information submission requirements for a warehouse seeking approval and delete the option of submitting a financial statement compilation report prepared by a management firm. All participating warehouses will now be required to submit an accountant's audit or review report. This will allow for standard filings and greater confidence in the independence of the analysis.
4. Reduce the number of alternatives and forms of financial assurance allowed to document the warehouse operator's compliance with minimum net worth requirements. This rule proposes to delete the option of a legal liability insurance policy as an alternative for calculated net worth deficiencies and requires net worth deficiencies be met with bonds, cash, negotiable securities, an irrevocable letter of credit, or other alternative instruments. Legal liability policies are rarely used and including that option in the regulations is an unnecessary complication and distraction.
5. Allow submission of irrevocable letters of credit from financial institutions subject to the Farm Credit Act of 1971. This change is in response to requests from warehouse operators that receive their financing through the Farm Credit Administration rather than through commercial banks insured by the Federal Deposit Insurance Corporation. This will allow greater flexibility, and conform regulations with industry practice, without compromising CCC's interests.
6. Make technical and clarifying changes in the wording and structure of the regulation and other substantive changes to specify fees applicable to examination of approved warehouses.

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Approval of warehouses, Dairy products, Feed grains, Oilseeds, Price support programs, Processed commodities, Surplus agricultural commodities.

For the reasons set forth in the preamble, 7 CFR part 1423 is revised to read as follows:

PART 1423—STANDARDS FOR APPROVAL OF WAREHOUSES FOR CCC INTEREST COMMODITY STORAGE

Sec.

- 1423.1 Applicability.
- 1423.2 Administration.
- 1423.3 Definitions.
- 1423.4 General requirements.
- 1423.5 Application requirements.
- 1423.6 Financial information documentation requirements.
- 1423.7 Net worth alternatives.
- 1423.8 Approval or rejection.
- 1423.9 Examination of warehouses.
- 1423.10 Exceptions for United States Warehouse Act licensed warehouses.
- 1423.11 Exemption from standards.
- 1423.12 Application, inspection, and annual agreement fees.
- 1423.13 Appeals, suspensions, and debarment.

Authority: 15 U.S.C. 714b and 714c.

§ 1423.1 Applicability.

(a) This part sets forth the terms and conditions for approval of a warehouse operator by the Commodity Credit Corporation (CCC) to store and handle CCC interest commodities.

(b) A warehouse must be approved by CCC and a storage agreement must be in effect between CCC and the warehouse operator before CCC will consider storing or store CCC interest commodities in this warehouse. The approval of a warehouse by CCC or the completion of a storage agreement on behalf of CCC does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make such a commitment.

(c) By entering into a storage agreement with CCC, the warehouse operator agrees to perform and comply with the terms and conditions prescribed in the storage agreement.

(d) Warehouse operators who are under agreement with CCC shall meet the terms and conditions of these regulations.

§ 1423.2 Administration.

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

(b) The Deputy Administrator or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet requirements does not adversely affect the operation of the program, and may set such additional requirements as will facilitate the operation of the program.

§ 1423.3 Definitions.

Agreement means agreements covering storage and handling of any such commodity the Secretary of Agriculture may determine appropriate for storage.

CCC interest commodities means commodities either pledged as collateral for a CCC commodity loan or owned by CCC.

KCCO means the FSA, Kansas City Commodity Office.

Warehouse means a building, structure, or other protected enclosure, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.

Warehouse operator means an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity.

§ 1423.4 General requirements.

(a) Unless otherwise provided in this part, approved warehouse operators shall have:

(1) A current and valid license for the kind of storage operation for which the warehouse operator seeks approval if such a license is required by State or local laws or regulations;

(2) A minimum and required net worth in such amount as is specified by CCC or as otherwise meets the requirements of § 1423.7;

(3) Sufficient funds to meet ordinary operating expenses;

(4) Corrected any deficiencies in the performance of any previous storage agreement with CCC; and

(5) Accurate and complete inventory and operating records.

(b) Approved warehouses may only use pre-numbered warehouse receipts meeting the information requirements in the applicable commodity's CCC loan program regulations and requirements and may only use pre-numbered scale tickets, if applicable; or other documents as CCC may prescribe.

(c) In addition, the warehouse must have:

(1) Adequate and operable fire fighting equipment as required by the state and local fire authorities for the type of warehouse and stored commodity;

(2) A work force and equipment available to provide adequate storage and handling services as specified in the applicable agreement or as otherwise determined by CCC;

(3) Necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to provide proper storage and handling

services. This includes officials and supervisory employees of the warehouse operator in charge of warehouse operations;

(4) A satisfactory record of integrity, judgment, and performance as determined by CCC; provided further that owners, officials, and supervisory employees of the warehouse operator in charge of warehouse operations must also have such a satisfactory record; and

(5) No record, either itself or among its owners, officials, and supervisory employees, of suspension or debarment under applicable Federal suspension and debarment regulations.

(d) Unless otherwise provided in this part, each approved warehouse used to store or handle CCC interest commodities, shall:

(1) Be under the control of the warehouse operator at all times;

(2) If leased, furnish a copy of the written lease agreement to CCC with the application. The lease agreement must be renewable and must provide that the lease holder cannot cancel the agreement without giving at least 120 days notice to the warehouse operator. All leases are subject to CCC approval;

(3) At all times meet the conditions for approval; and

(4) Not be subject to greater than normal risk of fire, flood, or other hazards, as determined by CCC.

§ 1423.5 Application requirements.

(a) *Documents required.* To apply for approval under this part, a warehouse operator shall submit to CCC the following:

(1) An application as prescribed by CCC for the applicable commodity storage agreement;

(2) Evidence of compliance with § 1423.4;

(3) Current financial information sufficient to meet the requirements of § 1423.6;

(4) For State licensed or non-licensed warehouse operators, a sample copy of the warehouse operator's warehouse receipts or electronic warehouse receipt record descriptor when applicable; and

(5) Such other documents or information as CCC may require.

(b) *Examination required.* Before approval, a warehouse must be examined by a person designated by CCC to determine whether it meets the standards for approval for the storage or handling of commodities under this part.

§ 1423.6 Financial information documentation requirements.

(a) To be approved to store CCC-interest commodities, warehouse operators shall submit the following to CCC:

(1) An audit or review report by an independent Certified Public Accountant or an independent public accountant. The report must be prepared in accordance with standards established by the American Institute of Certified Public Accountants according to generally accepted auditing principles including the accountant's certifications, assurances, opinions, comments, and notes with respect to such audit or review report. The report must also include a:

(i) Balance sheet;

(ii) Statement of income (profit and loss);

(iii) Statement of retained earnings; and

(iv) Statement of cash flows.

(2) Such other information as CCC may require.

(b) Financial statements submitted:

(1) May be submitted on other forms than required in paragraph (a) of this section when so approved by CCC;

(2) Shall show the financial condition of the warehouse operator no earlier than ninety (90) days before the date of the warehouse operator's application, or such other date as CCC may prescribe, and must indicate any material changes that have occurred in the interim; and

(3) Shall be updated and resubmitted annually and at such other times as CCC may require; and

(c) Subject to CCC approval, the financial reporting requirements set forth in paragraphs (a) and (b) of this section may be met by one of the following:

(1) Appraisals of the value of fixed assets in excess of the book value when prepared by independent appraisers acceptable to and approved by CCC.

(2) A parent company of a wholly-owned subsidiary when the warehouse operator's financial position is separately identified on all applicable consolidated statements, or

(3) A guaranty agreement from:

(i) A parent company submitted on behalf of a wholly-owned subsidiary, or

(ii) An entity with substantial interest in the warehouse operator when applicable financial statements are prepared at the audit level.

§ 1423.7 Net worth alternatives.

Warehouse operators with net worth equal to or greater than the minimum net worth required, but less than the total net worth for the commodity involved in the particular agreement, may satisfy the net worth deficiency by furnishing one of the following:

(a) A bond which:

(1) Is executed by a surety approved by the U.S. Department of the Treasury so long as the surety maintains someone

authorized to accept service of legal process in the State where the warehouse is located.

(2) Is executed on either a bond form obtained from CCC, or which is furnished under State law or operational rules for non-governmental supervisory agencies, if approved by CCC, so long as CCC determines that such alternative bond:

(i) Provides adequate protection to CCC;

(ii) Has been executed by a surety approved by the U.S. Department of the Treasury or has an acceptable blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond; and

(iii) Is effective for at least 1 year and cannot be canceled without a one hundred twenty (120) days notice to CCC. Excess coverage on a bond for one warehouse will not be accepted by CCC against insufficient bond coverage on other warehouses;

(b) Cash and negotiable securities. Any such cash or negotiable securities accepted by CCC will be returned to the warehouse operator when the period for which coverage was required has ended and CCC determines there is no liability under the storage agreement;

(c) An irrevocable letter of credit meeting CCC requirements that is effective for at least 1 year and cannot be canceled without a one hundred twenty (120) days notice to CCC. The issuing bank must be a commercial bank insured by the Federal Deposit Insurance Corporation or a financial institution subject to the Farm Credit Act of 1971, Public Law 92-181, 85 Stat. 583; or

(d) Other alternative instruments and forms of financial assurance as the Deputy Administrator determines appropriate to secure the warehouse operator's compliance with this section.

§ 1423.8 Approval or rejection.

(a) CCC will notify warehouse operators approved under this part in writing. Approval does not relieve the warehouse operator of any obligation under any agreement to CCC or any other agency of the United States, and does not obligate CCC to use the warehouse.

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the cause(s) for rejection. Except for rejections due to the requirements of § 1423.4(c)(5), CCC may reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been

remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request with the Deputy Administrator. Appeals shall be as prescribed in 7 CFR part 780.

§ 1423.9 Examination of warehouses.

Before approval, and while a storage agreement is in effect, a warehouse must be examined by a person designated by CCC periodically to determine compliance with this part. CCC or any other agency of USDA shall, at any time, have the right to inspect the warehouse storage facilities and any applicable records. Inspection or examination by CCC does not absolve the warehouse operator of any failure to comply with this part that CCC does not discover. Failure to allow access to facilities as required under this paragraph will result in rejection or revocation of approval.

§ 1423.10 Exceptions for United States Warehouse Act licensed warehouses.

The financial requirements, net worth alternatives, and examination provisions of this part do not apply to any warehouse operator approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act (USWA) for such commodities. A special examination shall be made of such warehouse whenever CCC determines such action is necessary.

§ 1423.11 Exemption from standards.

The Deputy Administrator may temporarily exempt the standards of this part for approval of warehouses to store CCC-interest commodities where such exemption is considered necessary to protect the interests of CCC and when necessary to carry out CCC programs.

§ 1423.12 Application, inspection, and annual agreement fees.

Each warehouse operator not licensed under USWA shall pay to CCC an application fee, as well as inspection fees, and annual agreement fees, for each warehouse approved by CCC or for which approval is sought. The terms and conditions of such fees will be set forth in the applicable agreement.

(a) The application and inspection fees shall be the inspection fee applicable to the commodity announced by FSA for USWA warehouse operators; and

(b) The annual agreement fee shall be fifty (50) percent of the applicable USWA annual license fee.

§ 1423.13 Appeals, suspensions, and debarment.

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the Deputy Administrator. Appeals shall be as prescribed in 7 CFR part 780, and under such regulations, the warehouse operator shall be considered as a "participant."

(b) Suspension and debarment actions taken under this part shall be conducted in accordance with part 1407 of this chapter. After expiration of the suspension or debarment period, a warehouse operator may, at any time, apply for approval under this part.

Signed at Washington, DC, on November 14, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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BILLING CODE 3410-05-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AH32

Minor Changes to Decommissioning Trust Fund Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is amending its regulations related to decommissioning trust fund provisions to correct typographical errors and make minor changes to a final rule promulgated by the NRC in December of 2002. This action adds clarifying language to amendments regarding notification requirements, investment prohibitions, and the option for licensees to retain their existing license conditions.

DATES: Comments on the proposed rule must be received on or before December 22, 2003.

ADDRESSES: You may submit comments by any one of the following methods.

Please include the following number (RIN 3150-AH32) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail cag@nrc.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-1978; e-mail bjr@nrc.gov.