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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1436

RIN: 0560-AI35

Farm Storage Facility Loan (FSFL) Program; Portable Storage Facilities and Reduced Down Payment for FSFL Microloans

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) administers the FSFL Program on behalf of the Commodity Credit Corporation (CCC). This rule amends the FSFL Program regulations to add eligibility for portable storage structures, portable equipment, and storage and handling trucks, and to reduce the down payment and documentation requirements for a new “microloan” category of FSFLs up to \$50,000. These changes are intended to address the needs of smaller farms and specialty crop producers. This rule also includes technical and clarifying changes that are consistent with how the FSFL Program is already implemented, including specifying commodities that are already eligible for FSFLs but are not currently listed in the regulations, and changing the required life span of the storage facility from a minimum of 15 years to a minimum of the FSFL term, plus any extensions.

DATES: Effective: **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Toni Williams; phone (202) 720-2270.

Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background on the FSFL Program

The FSFL Program is a CCC program administered by FSA. As specified in the CCC Charter Act (15 U.S.C. 714b), the goal of the FSFL Program is to increase producer-owned storage capacity to alleviate national, regional, and local shortages in the storage of eligible commodities. FSFLs are available in amounts up to \$500,000 for terms not to exceed 12 years.

The FSFL Program provides low-cost financing for producers to build or upgrade on-farm storage and handling facilities. FSFLs can be used for items such as drying and cooling equipment, safety equipment, and new concrete foundations, as well as for storage buildings and grain bins. The FSFL Program benefits producers who lack local commercial storage options or have limited marketing options for their commodities at harvest time. This rule does not change the basic administrative structure and nature of the FSFL Program.

Having on-farm storage helps producers to sell their crop at a time when the market is favorable for them, rather than being forced to sell immediately after harvest or pay for commercial storage. Producers can use on-farm storage to store livestock feed grown on-farm, rather than buying feed. On-farm storage allows producers to better serve their customers that buy commodities throughout the year. FSFLs are for storage and handling facilities and equipment only; FSFLs are not made for crop production

equipment. For example, cold storage facilities to store aquaculture products are eligible for FSFLs, but not tanks in which to raise live aquaculture species.

Eligible commodities for which an FSFL is available include:

- Aquaculture;
- Floriculture;
- Fruits (including nuts) and vegetables;
- Harvested as whole grain: Corn, grain sorghum, rice, soybeans, oats, wheat, sugar, peanuts, barley, and minor oilseeds;
- Harvested as other-than-whole grain: Corn, grain sorghum, wheat, oats, and barley;
- Hay;
- Honey;
- Hops;
- Maple sap;
- Meat and poultry;
- Milk;
- Other grains (triticale, spelt, and buckwheat);
- Pulse crops (lentils, chickpeas, and dry peas);
- Renewable biomass;
- Rye;
- Eggs; and
- Cheese, butter and yogurt.

As part of the application process, FSFL borrowers must demonstrate a satisfactory credit history and an ability to repay the debt. All FSFLs are secured by the facility or equipment for which the FSFL is made. Each FSFL must be secured by a promissory note and security agreement. FSFLs greater than \$100,000 require additional security, which typically is a lien on the real estate parcel on which the structure is located or another form of security acceptable to USDA, such as a deed of trust or irrevocable letter of credit. As part of the application process, borrowers must demonstrate their need for storage capacity based on their historical production of eligible commodities.

Intended Impact of This Rule

As part of an ongoing effort to improve the effectiveness of our programs, FSA evaluated the needs of smaller farms and identified potential barriers to their eligibility for FSFLs. Smaller farms and specialty crop producers typically have limited commercial financing options to purchase or upgrade storage and handling facilities that would allow them to expand their business, and with limited capital reserves, may struggle to meet the down payment requirements for FSFLs. Beginning farmers sometimes do not have the production history to demonstrate the need for additional storage capacity. Specialty crop producers have a need for portable equipment such as storage trucks to store and deliver fresh commodities to farmers markets, and need financing to own rather than rent that equipment.

The changes in the rule are primarily intended to help smaller farms and specialty crop producers who have not previously participated in the FSFL Program. Traditional

grain producers and large farm operations who have historically been the key customers for the FSFL Program may also benefit if they have a need for portable equipment and portable storage such as portable grain handling equipment and scales, which were not previously eligible for FSFL.

Reduced Down Payment and Documentation Requirements for FSFL Microloans

This rule defines “FSFL microloan” as a new category of the FSFL program. An FSFL microloan is a loan for which the producer’s total outstanding balance for all of their outstanding FSFLs is less than or equal to \$50,000 at the time of loan application and disbursement. This rule defines the down payment and documentation requirements for an FSFL microloan. Some of the requirements for the FSFL microloan category are different from the existing requirements that will continue to apply to all loans greater than \$50,000. Producers can have more than one FSFL outstanding at a time, so the definition is based on the “aggregate” or total outstanding balance to the borrower. For example, a new FSFL of \$50,000 would be an FSFL microloan if the producer didn’t have any other outstanding FSFLs. A producer with an outstanding balance of \$20,000 on an existing FSFL could get an additional FSFL for \$30,000 and that second FSFL would be considered an FSFL microloan. However, if the second FSFL was for \$40,000, then it would not be considered an FSFL microloan because the aggregate total of the two FSFLs would be \$60,000, which exceeds the \$50,000 FSFL microloan aggregate outstanding balance threshold.

The \$50,000 limit for FSFL microloans is consistent with the FSA Farm Loan Programs Microloan Program limit established as specified in section 5106 of the

Agricultural Act of 2014 (Pub. L. 113-79, referred to as the 2014 Farm Bill), amending the Consolidated Farm and Rural Development Act of 1972 (Pub. L. 92-419) (7 U.S.C. 1943), to set the limit of \$50,000 for the total microloan indebtedness outstanding at any one time to any single borrower.

This rule specifies a smaller down payment for FSFL microloans than for loans over \$50,000 and also specifies different documentation requirements. The smaller down payment requirement for FSFL microloans is intended to help small farm operations, such as beginning farmers, niche and non-traditional farm operations. Currently, the FSFL minimum down payment requirement of the net cost of the storage facility is 15 percent, which may be a difficult requirement for small farms or new farm operations. The rule establishes the down payment requirement for an FSFL microloan at 5 percent of the net cost of the eligible storage facility (costs that may be included in the net cost are specified in § 1436.9(b)) for producers who have no more than \$50,000 in total outstanding FSFL indebtedness when the FSFL microloan is made and disbursed. For example, on a \$35,000 FSFL to purchase a bulk milk storage tank, the minimum down payment required under these new rules would now be \$1,750 instead of \$5,250.

For FSFL applications in the new microloan category, this rule also does not require that producers demonstrate storage needs based on 3 years of production history. Instead, the producer applying for an FSFL microloan will have the option to self-certify the farm's storage needs at the time of application, and will not be required to file acreage reporting on an FSA-578 to qualify for an FSFL microloan. (Many producers will need to continue to file an FSA-578 to establish eligibility for other FSA programs.) This distinction for FSFL microloans as compared to regular FSFLs allows applicants for

FSFL microloans to self-certify their commodity storage and handling needs. The change is intended to assist smaller start-up farm operations, which may not be able to meet the existing 3-year production requirement. The self-certified information will be used by FSA county- and State-level personnel to determine FSFL eligibility and feasibility. The requirement to document 3 years of production history to justify storage needs will remain for non-microloan FSFLs to borrowers with an aggregate outstanding FSFL indebtedness above \$50,000. FSFL microloans will be for a term of 3, 5 or 7 years, with the loan term selected by the producer at the time of application. The loan term for used equipment will be 3 or 5 years.

Portable Storage and Handling Equipment, and Storage and Handling Trucks

This rule expands the FSFL program to include new and used portable storage and handling equipment and storage and handling trucks. Portable or used storage and handling equipment have not previously been eligible for an FSFL. This rule adds definitions for “portable storage and handling equipment” and “storage and handling trucks.” This rule revises the definition of “collateral” to include these new types of equipment. Approval requirements for portable storage and handling equipment and those requirements for storage and handling trucks will be specified in the FSA Handbook.

In § 1436.6, “Eligible storage and handling equipment,” this rule adds new provisions for new and used portable storage and handling equipment. Portable storage and handling equipment includes components such as, but not limited to: Conveyors, augers, vacuums, pilers, scales, batch dryers, storage containers, and other necessary

equipment used to handle and maintain eligible commodities being stored. The new provisions ensure efficient operation of the storage and handling of eligible commodities and provides affordable financing so producers can obtain the necessary equipment. For example, if the producer's eligible commodities are fruits and vegetables that sell in farmers markets, the producer will be able to use the FSFL to purchase equipment to weigh vegetables, forklifts to handle the fruits and vegetables, and portable storage containers to store fruits and vegetables for short or extended periods of time. Eligible portable storage facilities include manufactured storage containers that may be used when transported, hitched, or mounted on a trailer or truck for the purpose of storing and handling eligible commodities. All storage and handling trucks must be registered with the applicable State Motor Vehicle Administration (MVA) and all State and local MVA laws, insurance, and title provisions must be adhered to before loan disbursement. The minimum requirement for insurance will require that the producer must obtain insurance equal to the value of the security at the time of loan closing and maintain that insurance for the term of the loan. The insurance obtained by the applicant should be the standard insurance policy for the locality in which the property is located and CCC will be listed as loss payee.

Portable handling equipment for eligible storage commodities will allow a producer to use equipment for more than one storage facility located on the farm. Portable handling equipment includes, but is not limited to, hydraulic self-propelled fork lifts, wheel loaders, grippers, skid steers, front-end loader attachments, or 3-point hitch lifts. Portable handling equipment for eligible storage commodities is often less

expensive than affixed equipment, which is especially beneficial to smaller farm operations that may have lower gross incomes available to repay FSFLs.

FSA will add certain details and examples in program related handbooks, that will further explain requirements for types of eligible portable equipment that are being added by this rule. The promise to pay and security requirements for FSFL microloans and other types of FSFL will be outlined in the Promissory Note and Security Agreement, which FSA will provide to the borrower before loan closing. Requirements for how and where to apply for a loan are not changing, and are specified in § 1436.4, “Application for Loans.” Additionally, in order to protect FSA’s security interest, throughout the loan term, the Promissory Note and Security Agreement will specify that FSA must have access, which is consistent with the requirement in § 1436.15(e), to the portable collateral to ensure the equipment is being used for its intended purpose and required compliance inspections.

The specific procedures for portable collateral liens, which are applicable to State and local laws for perfecting liens, and allowing FSA physical access to inspect portable collateral to ensure the collateral is being used for its intended purpose will be specified in FSA program related handbooks and in the Promissory Note and Security Agreement. For example, CCC seals with identifiable numbers may be placed on the FSFL portable collateral and storage and handling trucks, and a CCC lien will be recorded at the State or county courthouse for the collateral and with the State MVA for storage and handling trucks, according to State and local laws. This is consistent with current FSFL practice for liens on other types of storage facilities and equipment when the FSFL is \$100,000 or less: There is a lien on the collateral (the building or equipment), but no additional

security required. Most FSFLs for portable equipment and storage and handling trucks, in general, are expected to be under \$100,000, have a maximum of four axles, and have a gross vehicle weight rating of 60,000 lbs. or less.

New and used portable equipment determined to be eligible for an FSFL by the FSA Deputy Administrator for Farm Programs include, but are not limited to, bulk tanks, conveyors, augers, scales, vacuums, pilers, scales, batch dryers, and storage containers. The FSFL request for portable storage and handling equipment will be processed using the existing FSFL process; FSA county office reviewers will review FSFL applications to determine the producer's on-farm production and storage and handling needs for eligible commodities. Loans associated with portable storage and handling equipment and storage and handling trucks may be applied for under an FSFL microloan or regular FSFL request. However, loans for defined used storage and handling equipment or trucks may not have a loan term greater than 5 years.

FSFL Terms and Extensions

This rule provides flexibility to the FSA Deputy Administrator for Farm Programs to establish new loan terms, for commodities other than sugar, not to exceed 12 years based on the FSFL principal and request type. With the addition of FSFLs for portable storage and handling equipment and trucks, new or used, and the new provisions for FSFL microloans, we anticipate that the FSFL Program will make a greater number of FSFLs with smaller loan amounts than in the past. Shorter loan terms of 3 or 5 years for example, may be more appropriate for these smaller FSFLs and more specifically, for used portable storage and handling equipment and trucks; in the past, producers have

requested a shorter loan term, but that option had not previously been available. For example, producers have asked FSA for shorter loan terms on FSFLs with larger loan amounts so that their real estate collateral does not have a lien for many years.

Prior to this rule, the regulations have specified that no extensions of the loan term (refinancing to extend the maturity date) are possible, and that the FSFL must be repaid in full at the end of the loan term. In order to permit consideration of external factors that may warrant discretion to extend the loan term, this rule allows extensions when, at the discretion of the Deputy Administrator, unforeseen weather events, unexpected changes to a farming operation (such as unexpected or unplanned departure of a member or partner), unexpected low commodity prices, or other matters, as determined appropriate by the Deputy Administrator, adversely impact the borrower's ability to repay the FSFL by the end of the loan's term. The borrower agrees to the loan term (maturity date of the loan) through the Promissory Note at the time of loan distribution. Borrowers who have already agreed to a loan's term have no right to an extension or even the consideration of a request for extension; however, the regulation will permit the Deputy Administrator to exercise discretion to consider a request to extend a loan's term. This will allow FSA to better manage potentially delinquent debt in the portfolio. It is expected that extensions would be for 1 or 2 years, to be decided on a case by case basis.

Although the rule will now allow the Deputy Administrator the discretion to consider extension requests, if the Deputy Administrator chooses not to consider the extension request, then there are no appeal rights because the borrower is not entitled to an extension at any time. However, if the Deputy Administration does consider an

extension request and makes a decision to deny the extension or grant a shorter than requested extension, then the borrower may appeal that determination.

Miscellaneous and Clarifying Changes

In addition to the substantive provisions discussed above, this rule makes a number of clarifying and housekeeping changes to make the rules clear and consistent with how the FSFL Program is currently implemented.

This rule adds a definition for “facility” to specify that a facility includes any on-farm storage and handling facility or structure, storage and handling equipment, or storage and handling truck.

This rule adds a definition for “off farm paid labor.” This definition is needed to clarify that paying workers who are not regular or seasonal employees, but are only hired to construct or install the storage facility, is an eligible FSFL expense.

This rule specifies the full list of currently eligible commodities in the definition of “facility loan commodity.” The CCC Charter Act, in 15 U.S.C. 714b, authorizes CCC to make FSFLs to grain producers needing grain storage facilities in areas where the Secretary determines a deficiency of such storage exists. The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, referred to as the 2008 Farm Bill) provides discretionary authority to the Secretary to add additional storable commodities to the list of eligible crops for the FSFL Program. FSA’s intent for adding new FSFL commodities is to provide increased access to capital to smaller and specialty producers to purchase and erect storage, drying, and handling facilities for their commodities.

FSA has used this authority, as delegated by the Secretary, to add eligible commodities through notices to the field and handbook changes.

This rule therefore changes the definition of “facility loan commodity” to add the discretionary additional commodities that are already eligible for FSFLs, but are not listed in the regulations. These commodities include specialty grains (triticale, spelt, and buckwheat), floriculture (flowers and ornamental plants), honey, maple sap, hops, rye, milk, cheese, butter, yogurt, meat, poultry, eggs, and aquaculture. A conforming change is made in § 1436.2, “Administration,” to include the additional eligible commodities. In multiple sections, specific references to fruits, vegetables, and grains are removed, since many other types of commodities are eligible for the FSFL Program.

This rule amends the regulations in § 1436.9, “Loan Amount and Loan Application Approvals,” to change the expiration of the 4 month FSFL approval period to 6 months, which was already implemented administratively. As part of the FSFL application process, the county committee determination form is provided to the applicant as part of the application package; on that form, it specifies the 6 month expiration date of the approval and specifies that loan funds will not be disbursed, except for any partial loan disbursement as allowed under the regulation, until the structure has been constructed, assembled, or installed and inspected. As indicated in the county committee determination form and this rule, as amended, 6 months is the timeframe, from approval to expiration, during which the facility must be completely and fully delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved the facility. As specified in § 1436.9(a), the cost on which the FSFL is based is the net cost of the eligible facility, accessories, and services; those costs are not known

until the FSFL construction or acquisition project is completed. Changing the expiration of the approval period to 6 months helps producers who have difficulty completing their FSFL project in 4 months. For various reasons, such as weather conditions, equipment delivery, or construction scheduling, FSA determined it usually takes more than 4 months for an FSFL construction project to be completed or equipment to be installed. Over a 2-year period, FSA piloted an FSFL approval change from 4 months to 6 months and confirmed the change was beneficial to producers and FSA staff. FSFL producers may also request an additional FSFL approval extension beyond 6 months, if it is determined necessary for the producer to complete the FSFL construction project. For example, if the FSFL request was approved on January 4 and was recorded as having an FSFL loan approval expiration date of July 4, then the producer would need to finish the FSFL project and have receipts from all the suppliers by July 4th. However, the producer may request an additional 6 months for a loan approval extension in June, before the loan approval window expires. After approval by the State or County Office Committee, the loan approval period in this example would be extended to January 4 of the following year.

Current FSFL provisions require that the storage facility or equipment must have a useful life of at least 15 years. That may not be a realistic requirement for portable equipment, so this rule changes the requirement for all FSFL storage and handling equipment, trucks and structures to have a useful life of at least the term of the loan and any authorized loan term extensions.

This rule revises the provisions in § 1436.1, “Applicability,” to specify that unless otherwise specified in the regulation all of the provisions of 7 CFR part 1436 apply to

FSFL microloans. This rule also revises the provisions in § 1436.4, “Application for Loans,” to specify where the FSFL application must be submitted.

Availability of FSFL for Aquaculture

Aquaculture is one of the eligible commodities added to the definition of “facility loan commodity.” Aquaculture species, for FSFL purposes, are defined as any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans. Aquaculture species are perishable commodities and their quality can only be maintained for a limited period of time. The FSFL program provides cold storage facilities which may extend this period of time. The aquaculture storage capacity will be determined based on production for 1 year. All applicable State laws must be followed by the producer for storing aquaculture in the FSFL storage facility.

Pending a completed Environmental Assessment (EA), consistent with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), and the Clean Water Act, FSA will consider whether the FSFL program could authorize holding or storage structures that will have uptake or discharge water that comes from natural sources, tributaries, coastal and ocean waters, or perennial waterways. FSA is currently making preparations to have the Environmental Assessment (EA) completed. Once the EA is completed, the findings will be posted on the FSA website at <https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index>. A notice of the EA availability will be published in the Federal Register. Any substantive change to FSFL policy for aquaculture FSFL as a result of the EA will be made through future rulemaking.

Flexibility in Implementation

This rule provides flexibility for the FSA Deputy Administrator, Farm Programs, or a State Committee to rescind authorization for self-certification of storage needs for FSFL microloans or provisions authorizing eligibility of portable collateral, such as storage and handling equipment and storage and handling trucks when it is determined such actions are having an adverse effect on the financial integrity of the FSFL Program. For example, if the FSFL default rate rises for smaller FSFLs or storage and handling equipment and trucks, specifically, portable facility FSFLs, FSA would have the ability to remove or implement additional administrative provisions, such as requiring additional security at a determined threshold, but not less than \$50,000, to protect CCC's financial interest at the State or the national level. The authority can only be exercised at the State or national level; it cannot be used to disapprove or to add documentation requirements for individual FSFLs.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves loans, in addition, the regulations for this program are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44

U.S.C. chapter 35), as specified in section 1601(c) of the 2008 Farm Bill, which allows that the regulations be promulgated and administered without regard to the notice and comment requirements in 5 U.S.C. 553.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, noted above, one of the exceptions is that section 553 does not apply to rulemaking that involves a matter relating to loans. Therefore, because this rule relates to loans, the 30 day effective period requirement in section 553 does not apply. This final rule is effective when published in the Federal Register. This will allow us to provide greater access to capital for small farms as soon as possible before the 2016 planting or harvesting season.

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866 and, therefore, OMB did not review this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by any law to publish a proposed rule for public comments for this rulemaking.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR 799). Previous changes to the FSFL Program were analyzed and evaluated in a Programmatic Environmental Assessment and subsequent Finding of No Significant Impact (74 FR 71674) after the 2008 Farm Bill. FSA has determined that the provisions defined herein will not have a significant impact on the quality of the human environment either individually or cumulatively. Therefore, no Environmental Assessment or

Environmental Impact Statement will be prepared for these regulatory changes. To consider additional FSFL provisions for aquaculture beyond those included in this rule, an Environmental Assessment is being prepared to determine if any significant adverse impacts would be anticipated.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor will this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, or tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 the UMRA.

SBREFA Congressional Review

This rule is not a major rule under SBREFA (Pub. L. 104-121). Therefore, there is no requirement to delay the effective date for 60 days from the date of publication to allow for Congressional review. This rule is effective on the date of publication in the Federal Register.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program in the Catalog of Federal Domestic Assistance to which this rule applies is the Farm Storage Facility Loans--10.056.

Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that the regulations for the programs in Title I of the 2008 Farm Bill be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1436

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

For the reasons discussed above, CCC amends 7 CFR part 1436 as follows:

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

1. The authority for part 1436 continues to read as follows:

Authority: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714–714p.

2. In § 1436.1, designate the text as paragraph (a) and add paragraph (b) to read as follows:

§ 1436.1 Applicability.

* * * *

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

2. In § 1436.2, revise paragraph (g) to read as follows:

§ 1436.2 Administration.

* * * *

(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.

3. Amend § 1436.3 as follows:

- a. Add in alphabetical order definitions for “Aquaculture,” “ARS,” and “CCC;”
- b. Revise the definition of “Collateral;”
- c. In the definition of “Commercial facility,” remove the words “means any structure” and add the words “means any facility” in their place;
- d. Add in alphabetical order definitions for “Deputy Administrator” and “Facility;”
- e. Revise the definition of “Facility loan commodity;” and

f. Add in alphabetical order definitions for , “FSA”, “FSFL”, “FSFL microloan”, “NAP”, “NEPA”, “NIFA”, “Off-farm paid labor”, “OSHA”, “Portable equipment and storage structures”, “Storage and handling truck”, and “USDA.”

The additions and revisions read as follows:

§ 1436.3 Definitions.

* * * * *

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.

* * * * *

CCC means the Commodity Credit Corporation.

* * * * *

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

* * * * *

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

ERS means the Economic Research Service, which is an agency of U.S. Department of Agriculture that is a primary source of economic information and research in the U. S. Department of Agriculture.

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.

* * * * *

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.

* * * * *

NAP means the Noninsured Crop Disaster Assistance Program.

NASS means the National Agricultural Statistics Service, which is an agency of U.S. Department of Agriculture that is a primary source of statistical information in the U. S. Department of Agriculture.

NEPA means the National Environmental Policy Act.

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

* * * * *

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

* * * * *

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.

* * * * *

Term of loan means the duration, in years, of a loan payable in a fixed number of equal installments as specified in section 1436.7. The terms for an FSFL are 3, 5, 7, 10, or 12 years.

USDA means the United States Department of Agriculture.

4. Amend § 1436.4 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 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.

* * * * *

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

5. Amend § 1436.6 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b) introductory text, remove the words “and fruits and vegetables”;
- c. Revise paragraph (b)(1);
- d. In paragraph (c) introductory text, remove the words “and fruits and vegetables”;
- e. Remove paragraphs (c)(1), (3), and (6);
- f. Redesignate paragraphs (c)(2), (4), and (5) as paragraphs (c)(1) through (3), respectively;
- g. In newly redesignated paragraph (c)(2), add the word “or” at the end;
- h. In newly redesignated paragraph (c)(3), remove “; and” and add a period in its place;
- i. Revise paragraphs (d) and (e);

j. In paragraph (f)(1)(i), remove the words “New conventional-type” and add the words “Conventional-type” in their place;

k. In paragraph (f)(1)(ii), remove the words “New flat-type” and add the words “Flat-type” in their place;

l. In paragraph (f)(1)(iii), remove the words “New storage” and add the word “Storage” in their place;

m. Remove paragraphs (f)(3)(i) and (iii);

n. Redesignate paragraphs (f)(3)(ii), (iv), and (v) as paragraphs (f)(3)(i), (ii), and (iii), respectively;

o. In newly redesignated paragraph (f)(3)(ii), add the word “or” at the end;

p. In paragraph (g) introductory text, remove the words “fruit and vegetable”;

q. In paragraph (g)(1), in the second sentence, remove the words “permanently installed”;

r. Revise paragraphs (g)(2)(i) through (iv) and (g)(3) and (4); and

s. Add paragraphs (h) and (i).

The revisions and additions read as follows:

§ 1436.6 Eligible storage and 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) * * *

(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;

* * * * *

(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.

* * * * *

(g) * * *

(2) * * *

(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;

(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;

* * * * *

(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.

6. Amend § 1436.7 by revising paragraphs (a) and (b) to read as follows:

§ 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 completed 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.

* * * * *

7. Amend § 1436.8 as follows:

- a. In paragraph (a) introductory text, remove the words “farm storage”;
- b. In paragraph (a)(2), in the last sentence, remove the word “storage”;
- c. Add paragraph (a)(3);
- d. In paragraph (b) introductory text, in the first sentence, remove the word “storage”;
- e. Revise paragraph (b)(1); and
- f. In paragraph (c) introductory text, in the first sentence, remove the words “farm storage”.

The addition and revision read as follows

§ 1436.8 Security for loan.

(a) * * *

(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) * * *

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

* * * * *

8. Amend § 1436.9 as follows:

- a. Revise paragraph (b) introductory text;
- b. In paragraph (b)(1), remove “new” and add “recently required” in its place;
- c. Revise paragraph (c);

d. In paragraph (d)(1) introductory text, remove “sugar and fruits and vegetables” and add “sugar, cold storage commodities, maple sap, and milk” in their place;

e. In paragraph (d)(3) introductory text, remove “for fruits and vegetables”;

f. Revise paragraphs (d)(3)(i) and (d)(4);

g. Add paragraph (d)(5); and

h. Revise paragraph (h).

The revisions and addition read as follows:

§ 1436.9 Loan amount and loan application approvals.

* * * * *

(b) The net cost for all facilities:

* * * * *

(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) * * *

(3) * * *

(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;

* * * * *

(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 Statewide 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.

* * * * *

(h) The Farm storage facility loan approval period, which is the timeframe, 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 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.

* * * * *

9. Amend § 1436.10 as follows:

- a. In paragraph (a), remove the word “storage”; and
- b. Add paragraph (d).

The addition reads as follows:

§ 1436.10 Down payment.

* * * * *

(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.

§ 1436.11 [Amended]

10. Amend § 1436.11(a)(3) by removing the words “farm storage”.

11. Amend § 1436.15 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b), remove the word “loan” both times it appears;
- c. In paragraph (d), remove the words “Structures must” and add the words “Facilities must” in their place, and remove the words “structure” and “structural”;
- c. In paragraph (e), remove the words “of ingress and egress” add the words “to enter, leave, and return to the property” in their place.

The revision reads as follows:

§ 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.

§ 1436.16 [Amended]

12. Amend § 1436.16(c) by removing the words “or other property”.

Val Dolcini,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation.
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