

Commodity Credit Corporation, USDA

§ 1423.8

§ 1423.5 Application requirements.

To apply for approval under this part, a warehouse operator shall submit to CCC the following:

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

(b) Evidence of compliance with § 1423.4;

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

(d) 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

(e) Such other documents or information as CCC may require to make a determination that the warehouse operator can comply with the provisions of this part.

§ 1423.6 Financial information documentation requirements.

To be approved under this part, a warehouse operator shall submit a current financial statement at the time of application, and annually thereafter, as provided for in the applicable storage agreement.

§ 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 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 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, 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. Such 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. CCC will 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

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request with the Deputy Administrator. Appeals shall be as prescribed in part 780 of this title.

[71 FR 35773, June 22, 2006, as amended at 71 FR 42017, July 25, 2006]

§ 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 if the warehouse operator is licensed under the U.S. Warehouse Act (USWA) for such commodities, but an examination under this part will be made of such a warehouse whenever CCC determines such action is necessary to protect its interests.

§ 1423.11 Delivery and shipping standards for cotton warehouses.

(a) Unless prevented from doing so by severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, acts of civil or military authority, non-availability of transportation facilities or any cause beyond the control of the warehouse operator that renders performance impossible, the warehouse operator will:

- (1) Deliver stored cotton without unnecessary delay.
- (2) Be considered to have delivered cotton without unnecessary delay if, for the week in question, the warehouse operator has made available for shipment at least 4.5 percent of their applicable storage capacity in effect during the relevant week of shipment.

(b) The warehouse operator shall provide a written report to CCC on a weekly basis. The reporting week shall be the seven day period starting at midnight following the close of business on each Saturday and ending at midnight after close of business of the following Saturday. Before close of business of the first business day of the following week, the warehouse operator will provide following information to CCC:

(1) Bales made available for shipment (BMAS) during such week. BMAS is defined as any cotton bales that:

(i) Have been delivered, or are scheduled and ready for delivery during such week; and

(ii) Were scheduled and ready for delivery in a previous week, but were not picked up by the shipper and remain available for immediate loading and another shipping date has not been established, or such bales are not subject to a restocking fee as provided in the warehouse operator's public tariff.

(2) Active shipping orders, by week; and

(3) Applicable storage capacity that is the higher of CCC approved capacity or the maximum number of bales stored at any time during the applicable crop year.

(c) The warehouse operator may resolve any claim for noncompliance from any entity other than CCC with the cotton shipping standard in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. In no case will CCC provide assistance or representation to parties involved in arbitration proceedings arising with respect to activities authorized under the Cotton Storage Agreement.

[71 FR 51426, Aug. 30, 2006]

§ 1423.12 Application, inspection, and annual agreement fees.

Each warehouse operator not licensed under USWA shall pay to CCC a fee or fees, including an application fee, inspection fee, and an annual agreement fee 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.