

Rules and Regulations

Federal Register

Vol. 71, No. 120

Thursday, June 22, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560-AE50

Standards for Approval of Warehouses for Storage of CCC Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations covering the storage of commodities owned by the Commodity Credit Corporation (CCC). For the most part, these commodities are acquired under various mandatory marketing assistance and price support programs that benefit producers. This rule will consolidate the regulations for all commodities stored by CCC into one set of regulations. In addition, this rule will revise, in some instances, the substantive provisions that are in effect under the existing regulations.

DATES: Effective June 22, 2006.

FOR FURTHER INFORMATION CONTACT:

Howard Froehlich, 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 address:

Howard.Froehlich@wdc.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:

Discussion of the Final Rule

CCC acquires agricultural commodities in the administration of its

programs under various circumstances. For instance, under Title I of the Farm Security and Rural Investment Act of 2002, the CCC makes marketing assistance loans to producers that can lead to forfeiture of the commodities to CCC. To provide for the storage of various commodities it acquires, CCC may enter into storage agreements with private warehouse operators. 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 has regulations covering commodity storage at 7 CFR 1421.5551-1421.5559, part 1423, and 1427, subpart E. A proposed rule addressing consolidation of the approval regulations at one location in the Code of Federal Regulations and other technical and clarifying changes in the wording and structure of the regulation and other substantive changes was published in the **Federal Register** on November 20, 2003 (68 FR 65412). The comment period expired January 20, 2004, but was reopened and extended until March 11, 2004.

Comments on the Proposed Rule

Responses to the proposed rule were received from 18 interested parties as follows: Eight from cotton associations, cooperatives, merchandisers, or individuals; five from grain associations, cooperatives, warehouses, or individuals; one from a processed commodities warehouse operator; two from Federal government employees; one from a commission firm; and one from a certified public accountant (CPA). Most respondents made multiple comments. The specific comments received and the Agency response follows.

Cotton Flow

CCC received 19 comments addressing issues of loading cotton from warehouses (cotton flow) and arbitration of disputes arising from the cotton flow standard. Seven respondents favored a minimum cotton flow standard of 4.5 percent per week of approved capacity. One respondent opposed the 4.5 percent cotton flow standard and suggests a three percent standard instead. This issue was not addressed in previous

regulation; however, the cotton flow standard can have an impact on warehouse operators with a Cotton Storage Agreement (CSA). CCC has addressed this issue by including the 4.5 percent cotton flow standard and an arbitration clause in the CSA instead of in the regulations. Thus, the respondent's suggestion for a three percent standard was not adopted.

Outside Storage of Cotton

Five respondents supported section 1423.4(d)(4), which states that commodities shall not be subject to greater than normal risk of fire, flood, or other hazards. Two respondents opposed warehouse operators being allowed to store cotton in excess of their licensed warehouse capacity. Another respondent was in favor of establishing a licensed warehouse capacity for cotton prior to a "receiving" season, then not permitting a reduction of that capacity during the crop year. Section 1423.4 provides general requirements for warehouse operators storing CCC-interest commodities. CCC storage agreements require storage of commodities in approved space. Establishing a warehouse capacity based on a "receiving" season would be cumbersome for warehouse operators and difficult for CCC to monitor. Thus, the suggestion was not adopted.

Financial Statement Reports and Net Worth

CCC received 11 comments on removing the option of submitting a financial statement compilation report prepared by a commission or management firm. Seven comments were received supporting submission of compilation reports: four from grain warehouses or cooperatives, two from cotton associations, and one from a commission firm. One warehouse operator suggested that a report by the commission house accountant would be reliable because the commission house accountant "is very qualified in the grain industry" and "is top notch." Other comments opposed the proposed provision and suggested that, "cost would be a major factor for our budget," and "if it isn't broke don't fix it." The commission firm requested that CCC continue to accept compilation reports and submitted a list of employees servicing country elevator accounts, their education and years of experience,

as well as a list of the 77 country elevators that subscribe to their reporting services.

Four comments support the requirement that warehouse operators submit an audit or review financial statement prepared by an independent CPA or independent public accountant. The four comments are from a grain warehouse, grain association, a CPA, and cotton warehouse association. The grain warehouse operator states, "This is a great requirement. It will add credibility to grain elevator financial statements." The grain warehouse association supports disallowing compilation financial statements and suggests a phase-in period to provide time for warehouse operators to arrange for audit or review-level financial statements. The comments from the CPA suggested that compilation financial statements are untrustworthy because there was a "lack of independence with these clients" and that "management firms have control over every facet" of the country elevator's business. The response from the cotton warehouse association supports "requiring financial statements be reviewed or audited by a certified public accountant or an independent public accountant."

In response to comments received in favor of retaining the current regulation language, CCC will maintain the provisions which allow for the submission of financial reports prepared by a CPA or independent public accountant, a commission or management firm staff member. Because current regulations for the CCC storage agreements are inconsistent, § 1423.6 will be revised from the proposed regulation to allow CCC to revise its storage agreements to include language specific to each agreement.

Three respondents requested that the net worth provisions for each type of storage agreement be included in the regulations. The three comments were from cotton warehouse associations, who expressed concern that "warehouse operators will not know their net worth requirements until they apply for a CSA and review its provisions." It is understandable that respondents and prospective CCC agreement holders would want to see net worth requirements in the regulations. However, because of the differences in warehousing of various commodities, having separate requirements for each agreement type in the regulations could lead to misunderstandings. When new warehouse operators request information on a CCC storage agreement, they are provided with a complete information package, which

includes the regulations, storage agreement, and other related information. Therefore, CCC finds it unnecessary to include the net worth requirements in the regulations, but CCC storage agreements will be revised to include minimum net worth requirements. Two of the three respondents suggesting the net worth provisions be included in the regulations also suggest that the "minimum net worth as stated in the current rule be continued." CCC's required net worth and the method of calculating net worth relate closely to the type of commodity program that each storage agreement supports and the industry served. The different methods for required net worth amounts can be more effectively dealt within in each storage agreement rather than in the regulations.

Two warehouse associations suggested that CCC include a provision in the regulation that CCC provide a 120-day public notice of changes to any provision of CCC storage agreements. Both respondents state that the 120-day time-period is similar to the time period required in the proposed rule for notice of cancellation of bonds or letters of credit. CCC disagrees with this recommendation because such a requirement would unnecessarily delay needed changes to agreements. Nonetheless, CCC acknowledges that when a major rewrite of a CCC storage agreement is planned a Notice will be published in the **Federal Register**. However, storing commodities for CCC is voluntary, and a warehouse operator always has the option of terminating the agreement.

CCC received two comments in support of the provision in the proposed rule that proposed removing the possibility of a warehouse operator obtaining legal liability insurance as an alternative to meeting minimum net worth requirements.

Comments on Other Sections

Two comments support the provisions regarding adequate firefighting equipment, and one comment suggested adding a provision making fire insurance mandatory for those warehouses with a CSA. Warehouse operators are not required to insure CCC-owned commodities. However, CCC storage agreements address the requirements of insuring warehouse-stored commodities pledged as collateral. Because an insurance provision is in CCC storage agreements, a provision in this regulation would be unnecessary and redundant; thus, the comment was not adopted. CCC will determine whether such insurance is

needed to protect its interest as a prudent lender depending on the facts and circumstances at the time the agreements are in force.

One comment specifically addressed proposed § 1423.4(b) and the requirement to use pre-numbered warehouse receipts. The respondent suggests "the language be further modified to state that warehouses may only use pre-assigned warehouse receipt numbers" to reflect the practice of numbering electronic receipts. CCC agrees with this suggestion and added wording in this rule to address electronic receipt practices.

Two comments addressed section 1423.4(d)(2) regarding the 120-day cancellation notice for leases. One respondent expressed concern that "some warehouse operators may not be able to negotiate such terms." Another respondent suggested that CCC "specify in the regulations the specific lease terms which are most important to securing approval." The 120-day notice is a CCC requirement designed to address CCC's operational needs under the Processed Commodities Storage Agreement (PCSA). Because not all operational needs of CCC programs are the same, CCC will not require a 120-day notice for all agreements as provided in the proposed rule, but will address each agreement's operational need within the terms and conditions of each agreement.

One respondent asked that wording in section 1423.8 be amended to more closely resemble the wording from the previous regulations. The previous regulation stated, "CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied." The wording of the proposed rule for this section stated, "* * * CCC may reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied * * *". The respondent stated, "This change represents a shift in the requirements burden of proof in a rejection situation and also relieves the CCC from any requirement that it approve a warehouse that has remedied its deficiencies." It was not CCC's intent to change to a new standard for reconsideration allowing CCC to refuse to act; therefore, CCC will maintain the word "will" in this final rule.

One respondent asked that § 1423.2(b) more clearly address temporary storage conditions. CCC has revised this section to only state in general terms the authority to administer this section. CCC will address its requirements to hold an agreement for prompt shipment

and short term handling of commodities within the applicable agreement.

Definitions

Several respondents asked that specific wording associated with cotton flow (receiving period, non-receiving period, staged, and satisfactory record of performance) be defined, that qualitative items (*e.g.* good state of repair, etc.) be moved from the definition of warehouse to another section, and whether electronic documents are considered "in writing." CCC has addressed the issue of cotton flow in its CSA and will not include related definitions in this regulation. CCC agrees that the qualitative items contained in the definition of a warehouse should be placed elsewhere and will now be included in section 1423.4, which will contain a more detailed requirement. And, CCC considers electronically-signed documents as if the document were signed "in writing."

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 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 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 (UMRA) 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 rulemaking for the subject matter of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

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 fully implemented for the public to conduct business with CCC electronically. Documents also may be obtained by mail or fax.

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—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

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 Reserved.
- 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, which are owned by CCC and, as may be required under parts 1421, 1427 and 1435 of this title, with respect to commodities pledged as security for a loan made by CCC. CCC may require that a warehouse enter into a storage agreement under this part to store such commodities. The execution of such a storage agreement by CCC does not constitute a commitment that CCC will use the warehouse.

(b) By entering into a storage agreement with CCC, the warehouse operator agrees to comply with the terms and conditions of the storage agreement.

§ 1423.2 Administration.

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

§ 1423.3 Definitions.

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

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 must maintain 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 and maintain accurate and complete inventory and operating records.

(b) Approved warehouse operators may only use pre-numbered warehouse receipts, or pre-assigned ranges of numbers for electronic warehouse receipts as set forth in the agreement, and may only use pre-numbered scale tickets, if applicable, as CCC may approve.

(c) In addition, the warehouse operator must:

(1) Be in compliance with state and local laws regarding fire safety;

(2) Furnish a copy of any written lease agreement to CCC with the application. All leases are subject to CCC approval; and

(3) Have sufficient employees and management with technical qualifications and skills in the warehousing business regarding the commodities subject to the agreement.

(d) Unless otherwise provided in this part, each approved warehouse shall:

(1) Be maintained under the control of the warehouse operator;

(2) Be maintained in a good state of repair; and

(3) Maintain adequate equipment to receive, handle, store, preserve and deliver the applicable commodity.

§ 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. Except for rejections due to the requirements of § 1423.4(c)(5), 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 request with the Deputy Administrator. Appeals shall be as prescribed in part 780 of this title.

§ 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 Reserved.

§ 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.

§ 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 part 780 of this title, 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 June 7, 2006.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6-9834 Filed 6-21-06; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

RIN 1904-AB56

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Direct final rule.

SUMMARY: The Department of Energy (DOE) is issuing a direct final rule to amend the regulations for the Weatherization Assistance Program for Low-Income Persons to incorporate statutory changes resulting from the passage of the Energy Policy Act of 2005. In this direct final rule, DOE defines renewable energy systems eligible for funding in the Weatherization Assistance Program, establishes criteria for performance and

quality standards for eligible renewable energy systems, establishes procedures for submission of and action on manufacturer petitions for Secretarial determinations of eligibility of renewable energy technologies and systems, and establishes a ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

DATES: This direct final rule is effective August 21, 2006, unless adverse or critical comments are received by July 24, 2006. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 1904-AB56, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-Mail:*

Weatherization.rules@ee.doe.gov.

Include RIN 1904-AB56 in the subject line of the message.

- *Mail:* Weatherization Assistance Program, U.S. Department of Energy, Mail Stop EE-2K, 5E-066, 1000 Independence Avenue, SW., Washington, DC 20585.

You may obtain electronic copies of this rulemaking and review comments received by DOE by visiting the DOE Freedom of Information Reading Room, Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Weatherization Assistance Program, U.S. Department of Energy, Mail Stop EE-2K, 5E-066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0771.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Amendments to the Weatherization Assistance Program

III. Final Action

IV. Procedural Requirements

V. The Catalog of Federal Domestic Assistance

VI. Approval of the Office of the Secretary

I. Introduction

The Department of Energy (DOE) amends the program regulations for the Weatherization Assistance Program for Low-Income Persons. The program is authorized by Title IV, Part A, of the Energy Conservation and Production Act, 42 U.S.C. 6861 *et seq.* The amendments made by this direct final rule are necessitated by certain changes in the Weatherization Assistance Program mandated in the Energy Policy

Act of 2005 (Pub. L. 109-58) (EPACT 2005). Specifically, section 206 of EPACT 2005 amended section 415(c) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)) to provide funding to low-income persons for renewable energy systems and to set a new ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

In this direct final rule, DOE defines renewable energy systems eligible for funding in the Weatherization Assistance Program, establishes criteria for performance and quality standards for eligible renewable energy systems, establishes procedures for submission of and action on manufacturer petitions for Secretarial determinations of eligibility of renewable energy technologies and systems, and establishes a ceiling for funding of renewable energy systems in the Weatherization Assistance Program.

DOE is today amending the program regulations to include specific requirements mandated by EPACT 2005. DOE is not now proposing any additions to the forms of renewable energy included in the definition of "renewable energy system." Nor is DOE proposing renewable energy system performance and quality standards beyond those included in EPACT 2005. Thus, DOE views these amendments to be noncontroversial and appropriate for direct final rulemaking (see III. Final Action for information on this procedure).

II. Amendments to the Weatherization Assistance Program

This section of the preamble provides a section-by-section description of the amendments made by this direct final rule.

Section 440.1 (Purpose and Scope). DOE amends 10 CFR 440.1 to explicitly state that the program's goals include the use of renewable energy systems and technologies. While DOE considered renewable energy systems and technologies to be eligible for funding under the program prior to the passage of EPACT 2005, Congress has clarified the scope and treatment of such systems by providing specific definitions and criteria to be used in assessing eligibility and by expanding funding opportunities for renewable energy systems.

Section 440.3 (Definitions). DOE amends 10 CFR 440.3, the definitions section, to add definitions of the terms "biomass" and "renewable energy system." These definitions are taken from section 206 of EPACT 2005, which amends 42 U.S.C. 6865(c) to include the definitions in a new subsection (6).

Section 440.18 (Allowable Expenditures). DOE amends 10 CFR