

DECISION



17231
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200103

DATE: March 5, 1981

MATTER OF: Insurance of CCC-owned commodities stored in commercial warehouses

DIGEST: In light of broad powers granted Commodity Credit Corporation (CCC) in section 4 of Commodity Credit Corporation Charter Act, 15 U.S.C. 714b, CCC is not required as a matter of law to contract for uninsured storage of CCC-owned commodities stored in commercial warehouses.

GAO does not have authority to render opinions binding on CCC in light of broad powers granted CCC in section 4 of Commodity Credit Corporation Charter Act, 15 U.S.C. 714b.

By letter of August 18, 1980, the Inspector General (IG), United States Department of Agriculture (USDA), requested our opinion on the propriety of the Commodity Credit Corporation (CCC) paying for hazard insurance on CCC-owned and stored commodities. Subsequent to the IG's letter, we received comments from the General Counsel, United States Department of Agriculture, setting out the basis for his conclusion that CCC has the requisite authority to pay for hazard insurance on CCC-owned commodities stored in commercial warehouses.

Whether CCC should self-insure against the loss of commodities it owns and stores was the subject of our report of January 10, 1975, entitled "Deduction in Federal Expenditures Possible Through Commodity Credit Corporation's Assumption of Insured Warehousing Risk" (RED-75-320). In that report, we concluded that had CCC self-insured, savings of \$17.1 million could have been realized for the 5-year period ending June 30, 1972. Accordingly, we recommended that the CCC "eliminate hazard insurance coverage on grain for which it pays storage charges and obtain commensurate reductions in storage rates."

In response to our audit recommendation, CCC discontinued the requirement that commercial warehousemen carry insurance

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on CCC-owned commodities. Nonetheless, the Uniform Grain Storage Agreement (UGSA) and the Uniform Rice Storage Agreement used during the 1977-1978 through 1979-1980 contract years provided "that if the warehouseman's rate for storage of uninsured CCC-owned grain is the same or more than his insured rate, the warehouseman shall be obligated to carry insurance on such CCC-owned grain * * *." Section 14a(iv) of UGSA.

Recently, the IG performed a follow-up audit to our earlier work and found that despite CCC's decision not to require insurance on its commodities, CCC continued to pay for hazard insurance, estimated at \$950,000 from July 1, 1978 to June 30, 1979. The IG was critical of CCC's failure to amend UGSA to state that CCC will not pay for insurance on CCC-owned grains and of CCC's failure to obtain uninsured storage rates that are less than the warehousemen's insured storage rates. As a result, in May 1980, the Corporation announced that warehousemen who desired to store CCC-owned grain under the UGSA should submit uninsured storage rates lower than their insured storage rates. In addition, the UGSA was amended to provide that the CCC would not pay insured storage rates for CCC-owned commodities.

As a result of the numerous complaints against the new policy, CCC decided to abandon it. In support of this decision, the General Counsel, USDA, advised CCC that it "is not required, as a matter of law, to contract, under its 1980-1981 uniform storage agreements, for uninsured storage of the commodities it owns." The considerations underlying the General Counsel's advice can be capsulized as follows:

--First, the Commodity Credit Corporation Charter Act (Charter Act), Pub. L. 80-806, 2, 62 Stat. 1070 (1948), reposed broad authority in CCC to determine the character and necessity of its expenditures and obligations.

--Second, deviation from the customary warehousing practice of storing commodities on an insured basis is not justified in light of the Charter Act's mandate that CCC should accept the trade practices in the warehousing business to the extent

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they are consistent with the CCC's purposes and the effective and efficient conduct of its business.

--Third, since significant savings are not likely to result from uninsured storage of CCC-owned commodities, the reasons for the Government's policy of self-insurance are not applicable.

We agree that CCC is not required as a matter of law to contract for uninsured storage of commodities it owns. The CCC is a body corporate, created by Congress to maintain and support farm income and prices and to assist in maintaining and distributing adequate supplies of agricultural commodities. 15 U.S.C. 714 (1976). Section 4 of the Charter Act, as amended, 15 U.S.C. 714b, grants the CCC broad powers to act independently of the laws regulating the expenditures of Federal agencies generally. Among other powers granted, the CCC--

"(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid;

"(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the corporation or the accounts of its fiscal officers;

* * * * *

"(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally." 15 U.S.C. 714b.

Putting aside for the moment our agreement with USDA's General Counsel that the CCC is not required as a matter of

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law to contract for uninsured rates, it is nevertheless important to note that the Government's practice of self-insurance is one of policy, not law. 55 Comp. Gen. 1321, 1323 (1976); 21 Comp. Gen. 928, 931 (1942). The policy arose because it was felt that the magnitude of the Government's resources and the wide dispersion of the type and geographical location of the risks made self-insurance generally more advantageous to the Government than would the procurement of commercial insurance. 58 Comp. Gen. 14, 16 (1978); 55 Comp. Gen. 1321, 1323 (1976). Where savings will not be realized or where services not otherwise available can be obtained by purchasing insurance, we have fashioned exceptions, recognizing the inapplicability of the rule's rationale to the particular circumstances before us. 55 Comp. Gen. 1321, 1323 (1976).

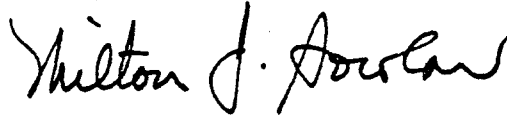
We have considered USDA's General Counsel's second and third arguments advanced against the adoption of a policy of self-insurance. The crux of these arguments is, we believe, that no significant savings will inure to the CCC and that, in the absence of such savings, "the effective and efficient conduct of [CCC's] business" does not justify a departure from the customary trade practice of storing commodities on an insured basis. We observe that the essential predicate of this argument is factual and, as such, we are not in a position to comment on the merits of the data supporting these arguments without an audit evaluation. However, since we agree with USDA's General Counsel's conclusion that the broad powers vested in CCC include the power to acquire insurance on CCC-owned and stored commodities, we need not further discuss these two remaining issues. 1/

The Inspector General also asked whether our opinions are binding on the Commodity Credit Corporation. The short answer is that CCC is not bound by our decisions because

1/ Should the IG and the CCC continue to disagree on the desirability of adopting a policy of self-insurance, the IG may wish to highlight the disagreement to Congress through the reporting procedures established in the Inspector Generals Act of 1978, 5 U.S.C. App. I §5 (Supp. III 1979).

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section 4 of the Charter Act, as amended, 15 U.S.C. 714b, vests the CCC, not our Office, with the authority to determine the character and necessity for its obligations and expenditures and to settle and adjust its accounts. Of course, our Office has the right and the duty to report to Congress any activity or expenditure by the CCC which we regard as illegal. See, e.g., 31 U.S.C. 851.



Acting Comptroller General
of the United States