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§ 1421.16 Personal liability of the producers.

(a) When a producer obtains a commodity loan or requests a loan deficiency payment, the producer agrees:

(1) When signing Form CCC-666, Farm Stored Loan Quantity Certification, when applicable, Form CCC-677, Farm Storage Note and Security Agreement, and Form CCC-678, Warehouse Storage Note and Security Agreement, that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for the loan; or

(ii) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with §1421.20;

(2) When signing Form CCC-666 LDP, Loan Deficiency Payment Application and Certification, or CCC-709, Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes; and

(3) That violation of the terms and conditions of the Form CCC-677, Form CCC-678, Form CCC-666 LDP, or Form CCC-709, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible.

(b) The violations referred to in paragraph (a) of this section are defined as follows:

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments;

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authoriza-

tion from the county committee in accordance with §1421.20, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral; and

(3) Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee in accordance with §1421.20.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC-677, Form CCC-678, Form CCC-666 LDP, or Form CCC-709, as applicable, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity incorrectly certified or the loan quantity removed or disposed of for loan deficiency payment, the loan deficiency payment rate applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid; and

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(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm, except as provided for in §1421.17(b)(1); and

(iii) Feeding the loan collateral.

(3) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator, FSA, or a designee, within 60 calendar days from the date the determination is received, such determination shall be considered to have been approved.

(g) If, for any violation in accordance with paragraph (b) of this section, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call any or all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for 24 months after the date the violation is discovered. Depending on the severity of the violation, the county committee may deny future farm-stored loans and loan deficiency payments without pro-

duction evidence for an additional 12 month period.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (b), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraphs (d) or (e) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with §1421.25 and may not utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Producers who have been refused a farm-stored loan under provisions of this section may apply for a warehouse-stored loan.

(k)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(C) All other costs that CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts; and

(E) Liquidated damages assessed under paragraph (c) of this section.

(2) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by:

(i) The forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts; or

(ii) By repayment of such loan at the lower loan repayment rate as prescribed in §1421.25 and may not utilize

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the provisions of part 1401 of this chapter with respect to such loans.

(3) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with §1421.20, the value of the settlement for such collateral delivered to or removed by CCC shall be determined by CCC in accordance with §1421.22.

(l) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(m) If the amount disbursed under a loan or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(n) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(o) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

(p) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) may be waived as determined by CCC.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity that shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the loan percentage), as established by the State committee that shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-

storage loan shall be measured or certified in accordance with paragraph (e). Farm-stored loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, such reduced quantity shall be the mortgaged quantity on the note and security agreement for the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage that does not exceed a percentage established by CCC or may apply quality discounts to the loan rate, each year for each commodity on a Statewide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be reduced below the maximum loan percentage or the quality discounts should be applied to the basic county loan rate to provide CCC with adequate protection. Loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions; percentages established or loan rates adjusted for quality in accordance with this section shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages or the necessity to apply quality discounts shall include but are not limited to:

- (i) General crop conditions;
- (ii) Factors affecting quality peculiar to an area within the State; and
- (iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee when authorized on an individual farm, area,