

## Commodity Credit Corporation, USDA

## § 1434.15

determined in paragraph (a) of this section, a producer may re-offer as loan collateral any eligible honey that has been offered previously for a CCC loan and the loan has been repaid at principal plus interest only.

(f) If, after a loan is made, CCC determines that the producer or the honey collateral is not in compliance with any of the provisions of this part, the producer shall refund the total amount disbursed under loan and charges plus interest, including late payment interest as provided in part 1403 of this title.

[66 FR 15177, Mar. 15, 2001, as amended at 67 FR 64481, Oct. 18, 2002]

### § 1434.11 Fees and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC. The loan service fee shall be the smaller of one-half of 1 percent (.005) times the gross loan amount or \$45 per loan plus \$3 for each storage structure over one.

(b) Interest that accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

### § 1434.12 Liens.

(a) CCC's security interest in the honey pledged as collateral is first and superior to all other security interests.

(b) The county office shall file or record, as required by State law, all financing statements needed to perfect a security interest in honey pledged as collateral for a loan. The cost of filing and recording shall be for the account of CCC.

(c) If there are any other security interests, liens, or encumbrances on the honey, CCC shall obtain waivers that fully protect the interest of CCC even though the security interests, liens, or encumbrances are satisfied from the loan proceeds. No additional security interests, liens, or encumbrances shall be placed on the honey after the loan is approved.

### § 1434.13 Transfer of producer's interest prohibited.

Absent written approval from CCC, the producer shall not transfer either the remaining interest in, or right to redeem, the honey pledged as collateral for a loan on honey nor shall anyone acquire such interest or right. Subject to the provisions of §1434.17, a producer

who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval from the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office.

### § 1434.14 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

### § 1434.15 Personal liability of the producer.

(a) When applying for an individual or joint loan or loan deficiency payment, each producer agrees:

(1) When signing Form CCC-633 (Honey), Honey Loan Certification and Worksheet and Form CCC-677, Farm Storage Note and Security Agreement, that the producer will:

(i) Provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest; and

(ii) Not remove or dispose of any amount of the loan quantity without prior written approval from CCC in accordance with this section.

(2) That violation of the terms and conditions of this part and Form CCC-677 will cause harm or damage to CCC in that funds may be disbursed to the producer for a loan quantity that is not actually in existence or for a quantity for which the producer is not eligible.

(b) For the purposes of this section, violations include any failure to comply with this part or the loan agreement, including but not limited to any incorrect certification or:

(1) Unauthorized removal of honey, which shall include, but is not limited to, the movement of any loan quantity of honey from the storage structure in the commodity was stored 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 authorization

**§ 1434.15**

**7 CFR Ch. XIV (1-1-08 Edition)**

from the county committee in accordance with §1434.14;

(2) Any unauthorized disposition, which shall include, but is not limited to, the conversion of any loan quantity pledged as collateral for a loan without prior written authorization from the county committee in accordance with this section.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct that is in violation of this section. Accordingly, if the county committee determines that the producer has engaged in any such violation, liquidated damages shall be assessed in addition to any loan refund and other charges that may be due. The amount of such damages shall be computed using the quantity of honey that is involved in the violation and the following formula. 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 for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note 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.

(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 involved in the violation plus charges and interest; and

(2) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan for all of the honey under loan, plus charges and 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, and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section 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; and (iii) Consumption of loan collateral.

(g) If there is any violation of the loan agreement or this part, the loan may be terminated in which case there must be a full refund of the loan plus interest and costs.

(h) If the county committee determines that the producer has violated this part or the loan agreement, 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)(1) If a producer:

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

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

(A) The amount of the loan;

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

(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;

(E) Late payment interest as may be provided for in part 1403 of this title; and

(F) Liquidated damages assessed under paragraph (c) of this section; and

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

(j) A producer shall be personally liable for any damages resulting from honey removed by CCC, containing mercurial compounds or other substances poisonous to humans, animals, or food commodities that are contaminated.

(k) If the amount disbursed under a loan or in settlement thereof exceeds the amount authorized under this part, the producer shall be personally liable for repayment of such excess and charges, plus interest, and for any other sanction as may be allowed by law.

(l) 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.

(m) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the loan note. Further, each producer who is a party to a joint loan will be jointly and severally liable for any violation of the terms and conditions of the note and security agreement, and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the honey, or loan proceeds, after execution of the note and security agreement by CCC.

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

(o) Remedies set out in this section are in addition to remedies the CCC

will have through its security interest on honey that secures the repayment of the loan made on the honey.

(p) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.

**§ 1434.16 Release of the honey pledged as collateral for a loan.**

(a)(1) A producer shall not move or dispose of any honey pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(2) A producer may at any time obtain a release of all or part of the honey remaining as loan collateral by paying to CCC the amount of the loan and any charges that had been made by CCC to the producer with respect to the quantity of the honey released, plus interest.

(3) When the proceeds of a sale of honey are needed to repay all or part of a loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to any loan indebtedness if full payment of such amounts is not received by the county office.

(b) The note and security agreement shall not be released until all loan liability has been satisfied in full.

(c) After satisfaction of a loan, CCC shall release CCC's security interest in the honey at the producer's request. The producer shall be responsible for payment of any fee for such release if such fee can be determined.

**§ 1434.17 Liquidation of loans.**

(a) The producer is required to repay the loan on or before maturity by payment of the amount of loan, plus any charges, plus interest.