

Commodity Credit Corporation, USDA

§ 1435.105

sugar as collateral for a supplemental loan. Such supplemental loan must:

- (1) Be requested by the processor during the following October;
- (2) Be made at the loan rate in effect at the time the first loan was made; and
- (3) Mature in 9 months less the number of months that the first loan was in effect.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.104 Loan maintenance.

(a) All processors receiving loans shall:

- (1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;
- (2) Pay interest on the principal at a rate determined in part 1405 of this chapter.

(b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.

(1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.

(2) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.

(3) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.

(d)(1) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume

any loss in quantity or quality of the loan collateral.

(2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.

(3) Sugar and in-process sugar pledged as loan collateral need not be stored identity preserved.

(4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding collateral being sold. Any such approval shall not:

- (i) Constitute a release of CCC's security interest in the loan collateral; or
- (ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, subject to applicable premiums and discounts based on the difference between specifications reported on the sugar loan certification report and actual loadout characteristics.

(c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane

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sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.

(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, before the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar;

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the next business day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including

interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(i) If a processor's nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

(j) The CCC rates for the storage of forfeited sugar to approved warehouses for each crop year of 2008 through 2011 will be at least:

(1) For refined sugar, 15 cents per hundredweight of refined sugar per month; and

(2) For raw cane sugar, 10 cents per hundredweight of raw cane sugar per month.

(3) For 2012 and subsequent crop years, rates for the storage of forfeited sugar will revert to those used before June 18, 2008.

(4) For sugar located in space not approved by CCC for storage, the payment rate will be zero until such time as the processor delivers such sugar to a CCC-approved warehouse.

[67 FR 54928, Aug. 26, 2002, as amended at 74 FR 15364, Apr. 6, 2009]

§ 1435.106 Miscellaneous provisions.

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.