

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1434**

RIN 0560-AF62

**Recourse Loan Regulations for Honey**

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule is issued pursuant to the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (the 1999 Act), which amended the Agricultural Market Transition Act, and provides for the availability of recourse loans to producers of 1998 crop honey. This rule sets forth the regulations for the administration of the honey recourse loan program.

**DATES:** Effective March 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Margaret Wright, Program Specialist, Farm Service Agency (FSA), USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250-0512; telephone: (202) 720-8481.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This rule is in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

**Federal Assistance Program**

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

**Executive Order 12372**

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

**Executive Order 12988**

This final rule has been reviewed in accordance with Executive Order 12988.

The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of the final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

**Unfunded Federal Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act and Notice and Comment**

Section 1133 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (the "1999 Act") provides that this rule-making shall be issued without regard to the public notice and comment provisions of 5 U.S.C. 553 or the Paperwork Reduction Act, and provides that the provisions of 5 U.S.C. 808 which allows exemption from layovers for Congressional review shall be applied. Accordingly, this rule and its information collection requirements are made effective immediately in accordance with these provisions. Because of the foregoing provisions and because this rule provides needed time-sensitive relief, delay in completing this rule would be contrary to the public interest.

**Background**

Section 1122 of the 1999 Act provides that in order to assist producers of honey to market their honey in an orderly manner during a period of disastrously low prices, the Secretary of Agriculture "[S]hall make available recourse loans to producers of the 1998 crop of honey on fair and reasonable terms and conditions, as determined by the Secretary". This final rule contains the terms and conditions that the Secretary has determined are necessary to implement Sec. 1122 of the 1999 Act. The terms and conditions focus on two

critical issues: (1) eligibility and (2) program administration.

**Eligibility**

The regulation at 7 CFR § 1434.4 lists the eligibility requirements for both the persons applying for a recourse loan (loan) and for the honey being tendered as loan collateral. The essence of the eligibility requirements is that loan applicants must be "producers" of honey and not speculators who have purchased the honey. In general, a loan applicant must have a separate and identifiable interest in both the bees and the honey. This means, in part, that the loan applicant must have been responsible for the financial risk of keeping the bees and for producing and extracting the honey.

The loan applicant must also hold a beneficial interest in the honey collateral until the loan is repaid. Under the regulation, such an interest will require that the producer maintains title and control over the disposition of the honey, as well as the risk of loss of the honey.

Persons handling the marketing of the honey through a CCC-approved cooperative marketing association (CMA) are also eligible to participate in the loan program, provided the beneficial interest in the honey remains with the CMA member/loan applicant who shares in the marketing proceeds realized by the CMA. Two or more applicants may be eligible for a joint loan if, as individuals, they would fulfill the eligibility requirements and the commingled honey is not already under CCC loan.

**Program Administration**

The program will be administered through the Department's Farm Service Agency (FSA). Section 1122 of the 1999 Act provides that recourse loans will be made to producers of 1998 crop honey and will operate on a no-net-cost basis. To operate the program on a no-net-cost basis, a service fee will be assessed at time of loan making to cover administrative costs associated with the honey recourse loan program. These administrative costs include costs associated with the county office loan workload, for publishing and distributing program information and procedures, and salary expenses. The honey recourse loan program will operate similarly to the way the honey program was operated in the 1994 and 1995 crop years. CCC has determined that the final date to request a loan will be 60 calendar days after publication of the regulation in the **Federal Register**. The loans will mature 9 months after loan disbursement. Anyone interested

in applying for a loan or who has questions concerning eligibility or any other matter covered under this regulation will be able to obtain assistance from the local FSA county office.

Any producer seeking to sell the honey pledged as collateral to repay the loan will be required to obtain written authorization from the county office before moving the honey for sale. If the producer fails to obtain such authorization, provides incorrect certifications, or makes fraudulent representations, the producer will be in violation of the terms and conditions of the loan note and security agreement and will be subject to liquidated damages and other actions as provided in § 1434.13 of the regulations. If the loan is not repaid in full by the loan maturity date, CCC may foreclose on the pledged honey and sell the honey. CCC's security interest in the honey loan collateral is first and superior to all other security interests. Also, the Government may pursue other options open to it including remedies against persons handling honey in disregard of the security interest.

#### List of Subjects in 7 CFR Part 1434

Honey, Loan programs/agriculture, Reporting and record keeping requirements.

Accordingly, 7 CFR part 1434 is added to read as follows:

#### PART 1434—RECOURSE LOAN REGULATIONS FOR HONEY

- Sec.
- 1434.1 Applicability.
  - 1434.2 Administration.
  - 1434.3 Definitions.
  - 1434.4 Eligibility.
  - 1434.5 Containers and drums.
  - 1434.6 Application, availability, disbursement, and maturity.
  - 1434.7 Eligible storage.
  - 1434.8 Liens.
  - 1434.9 Fees and interest.
  - 1434.10 Determination of quantity.
  - 1434.11 Transfer of producer's interest prohibited.
  - 1434.12 Loss or damage.
  - 1434.13 Personal liability of the producer.
  - 1434.14 Release of the honey pledged as collateral for a loan.
  - 1434.15 Liquidation of loans.
  - 1434.16 Foreclosure.
  - 1434.17 Handling payments and collections not exceeding \$9.99.
  - 1434.18 Death, incompetency, or disappearance; appeals; other loan provisions.

**Authority:** Section 1122, Pub. L. 105-277, 112 Stat. 2681.

##### § 1434.1 Applicability.

The regulations of this part provide the terms and conditions under which

the Commodity Credit Corporation (CCC) may issue recourse loans for the 1998 crop of honey that has remained continuously within the beneficial interest of the producer. Additional terms and conditions that must be followed to obtain a loan will be set forth in these regulations and the applicable note and security agreements. Forms needed to obtain a loan will be available in State and county Farm Service Agency (State and county) offices.

##### § 1434.2 Administration.

(a) The regulations of this part shall be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county committees.

(b) State and county committees, representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) An approving official of CCC may execute loans and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void unless affirmed by the Executive Vice President, CCC.

##### § 1434.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title shall also be applicable except where those definitions conflict with the definitions set forth in this section or in program instruments created under this part.

*Administrator* is the FSA Administrator.

*Adulterated honey*, is for the purpose of this part only, honey where any foreign substance including water has been substituted in whole or in part for honey whether or not such substance is poisonous or deleterious to render honey injurious to health or otherwise makes the honey unsound, unhealthy, unwholesome, or otherwise unfit for human or animal consumption.

*Approving official* is a representative of CCC who is authorized by the Executive Vice President, CCC, to approve loan documents prepared under this part.

*Charge* is a fee, cost, and expense (including foreclosure costs) incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the honey.

*CMA* is a cooperative marketing association engaged in marketing honey.

*County office* is the local FSA office.

*Crop year* is the calendar year in which honey is extracted.

*Executive Vice President, CCC*, is the Administrator, FSA.

*FSA* is the Farm Service Agency, United States Department of Agriculture.

*Ineligible honey* is honey not eligible for a loan under this part for which ineligibility shall include, but is not limited to, honey from the following floral sources regardless of whether the honey meets other eligibility requirements: Andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mesquite, onion, prickly pear, prune, queen's delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Price Support Division, FSA. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligible for loan.

*Loan is a recourse loan on honey.*

*Loan quantity* is the quantity on which the loan was disbursed shown on the note and security agreement.

*Nontable honey* is honey having a predominant flavor of limited acceptability for table use even though

such honey may be considered suitable for table use in areas in which it is produced and includes honey with a predominant flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Christmas berry, cranberry, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, loosestrife, macadamia, mangrove, manzanita, mint, partridge pea, rattan vine, safflower, salt cedar (*Tamarix Gallica*) spanish needle, spikeweed, titi, toyon, tulip popular, wild cherry, yaupon, and similarly-flavored honey or blends of such honeys as determined by the Director, Price Support Division, Farm Service Agency.

*Ownership* is with respect to honey tendered for a loan, control, title, risk of loss, and the right to make all decisions regarding the tender of honey to CCC for a loan or for marketing.

*Person* is an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, political subdivision of a State, or any agency thereof.

*Program* is the administration and issuance of a loan in accordance with the terms and conditions of this part and of any note and security agreement which must be executed by a loan recipient under this part.

*Table honey* is any honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country including honey having the following sources: alfalfa, apple, basswood, bird's-foot trefoil, blackberry, blueberry, brazil brush, catsclaw, Chinese tallow, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, snowberry, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch, western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Price Support Division, FSA.

*Representative* is a receiver, executor, administrator, guardian, or trustee representing the interests of a person or an estate.

*State committee* is the FSA committee so designated for the applicable State.

#### § 1434.4 Eligibility.

(a) To be eligible to receive an individual or joint loan under this part, a person must:

(1) Own, other than through a security interest, mortgage, or lien, honey that:

(i) Is produced in the United States during the calendar year for which a

loan is requested and extracted on or before December 31 of such calendar year;

(ii) Does not contain any ineligible honey floral sources;

(iii) Is not adulterated;

(iv) Has not been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or caramelization;

(v) Does not contain excessive bees or bee parts, paint chips, wood chips, or other foreign matter; and

(vi) Is not fermenting.

(2) Share in the risk of producing honey;

(3) Comply with paragraph (h) of this section;

(4) Store the honey pledged as loan collateral in eligible storage and in eligible metal containers that meet the requirements of §§ 1434.7 and 1434.5, respectively;

(5) Adequately protect the interests of CCC by providing security for a loan in accordance with the requirements in § 1434.8 and by maintaining in good condition the honey pledged as security for a loan;

(6) Be accurate and truthful and not make any misrepresentations with respect to any information provided to CCC concerning any activity covered by this part; and

(7) Not have been convicted of a crime as would render the person not eligible for the loan because of the provisions of part 718 of this title.

(b) A person who complies with paragraph (a) of this section, who enters into a contract to sell the honey used as collateral for a loan but retains, at a minimum, a beneficial interest in the honey and who does not receive an advance payment from the purchaser to enter into the contract unless the purchaser is a cooperative marketing association (CMA) that is eligible under paragraph (g) of this section, remains eligible for a loan.

(c) Two or more applicants may be eligible for a joint loan if:

(1) The conditions in paragraphs (a) and (b) of this section are met with respect to the commingled honey collateral stored in the same eligible containers they are tendering for a loan; and

(2) The commingled honey is not used as collateral for an individual loan that has not been repaid.

(d) Heirs who succeed to a beneficial interest in the honey are eligible for a loan if they:

(1) Assume the decedent's obligation under a loan if such loan has already been obtained; and

(2) Assure continued safe storage of the honey if such honey has been pledged as collateral for a loan.

(e) A representative may be eligible to receive a loan on behalf of a person or estate who or which meets the requirements in paragraphs (a), (b), (c), and (d) of this section and that the honey tendered as collateral by the representative, in his capacity as a representative, shall be considered as tendered by the person or estate being represented.

(f) A minor who otherwise meets the requirements of this part for a loan shall be eligible to receive a loan only if the minor meets one of the following requirements:

(1) A court or statute has conferred the right of majority on the minor;

(2) A guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A surety, by furnishing a bond, guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(g) A CMA which the Executive Vice President, CCC, determines meets the requirements for CMA's in part 1425 of this title may be eligible to obtain a loan on behalf of those members who themselves are eligible to obtain a loan provided that:

(1) The beneficial interest in the honey must always, until loan repayment or forfeiture, remain in the member who delivered the honey to the eligible CMA or its member CMA's, except as otherwise provided in this part; and

(2) The honey delivered to an eligible CMA shall not be eligible for a loan if the member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this title.

(h)(1) To be eligible to receive loans under this part a producer must have the beneficial interest in the honey that is tendered to CCC for a loan. The producer must always have had the beneficial interest in the honey unless, before the honey was extracted, the producer and a former producer whom the producer tendering the honey to CCC has succeeded had such an interest in the honey. Honey obtained by gift or purchase shall not be eligible to be tendered to CCC for loans. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible to receive loans whether succession to the honey occurs before or after extraction so long as the

heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the honey if the producer retains control, title, and risk of loss in the honey including the right to make all decisions regarding the tender of such honey to CCC for a loan, and the producer takes one of the following actions:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such honey if all other eligibility requirements are met and the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title, risk of loss, and beneficial interest in the honey, as specified in 7 CFR part 1434, shall remain with the producer until the buyer exercises this option to purchase the honey. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) the maturity of any CCC loan which is secured by such honey; (2) the date the CCC claims title to such honey; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the honey if the producer retains title, risk of loss, and beneficial interest in the honey and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If loans are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the honey must always have been in the producer-member who delivered the honey to the CMA or its member CMA's, except as otherwise provided in this section. Honey delivered to such a CMA shall not be eligible for loans if the producer-member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this chapter.

(i) A producer may, before the final date for obtaining a loan for honey, re-offer as loan honey any honey that has been previously pledged as loan honey except that the loan on such re-offered honey shall have the same maturity date as the original loan.

#### § 1434.5 Containers and drums.

(a)(1) The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. The metal containers must meet the requirements of the Federal Food, Drug,

and Cosmetic Act, as amended, and regulations issued thereunder and must be generally fit for the purpose for which they are to be used;

(2) The 5-gallon containers must hold approximately 60 pounds of honey, and must be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable, and

(3) The steel drums must be an open-end type and filled no closer than 2 inches from the top of the drums. Such drums must be new or must be used drums which have been reconditioned inside and outside. The steel drums must be clean, treated inside and outside to prevent rusting, fitted with gaskets which provide a tight seal and have an inside coating suitable for honey storage.

(b) Honey shall not be eligible to be pledged as collateral for loans if such honey is stored in:

(1) 55-gallon steel drums having a tare weight less than 38 pounds, 30-gallon steel drums having a tare weight less than 26 pounds, or drums having removable liners of polyethylene or other materials;

(2) Bung-type drums;

(3) Bulk tanks;

(4) Plastic buckets and containers;

(5) Steel drums which are severely enough dented as to cause damage to their lining, improper seal, or stacking capabilities; and

(6) Rusted drums with corroded areas.

#### § 1434.6 Application, availability, disbursement, and maturity.

(a) The deadline for requesting a loan offered under this part is May 7, 1999.

(b) Loans mature on demand but not later than the last day of the ninth calendar month following the month in which the note and security agreement was approved. When the final maturity date falls on a non-workday for county offices, CCC shall extend the final date to the next workday. Before the date 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.

(c) A producer must request loans at the county office of the county where the honey is stored if the honey is stored at the producer's farm. A producer who requests a loan on honey stored in eligible storage other than the producer's farm, may request loans at

either the county office of the county where the storage facility is located or at the county office of the county where the producer's main place of business is located. A CMA must request loans at the county office for the county in which the principal office of the CMA is located unless the State committee designates another county office. If the CMA has operations in two or more States, the CMA must file its loan applications at the county office for the county in which its principal office for each State is located.

(d) Subject to paragraph (a) of this section, loans for the 1998 crop of honey are available to producers as soon as announced by CCC.

(e) Loans will be made on the honey as declared and certified by the producer on Form CCC-633 (Honey), (Honey Loan Certification and Worksheet) at the time the honey is pledged as collateral for a loan. The producer is also required to declare and certify on Form CCC-633 (Honey) the class (table or nontable) and floral source of the honey at the time the honey is pledged as collateral for a loan.

(f) The request for a loan shall not be approved until all producers having an interest in the honey sign the note and security agreement and CCC approves such note and security agreement. The disbursement of loans will be made by county offices on behalf of CCC.

(g) The loan documents shall not be presented for disbursement unless the honey subject to the note and security agreement:

(1) Is eligible to be pledged as collateral for a loan;

(2) Is in existence;

(3) Has been extracted;

(4) Is in eligible storage; and

(5) Has not been blended or mixed with ineligible honey.

(h) 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.

#### § 1434.7 Eligible storage.

(a) Loans will be made only on honey in eligible storage which shall consist of a storage structure located on or off the farm which is determined by CCC to be under the control of the producer and affords safe storage for honey pledged as collateral for a loan. If the honey located in a farm storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey

securing such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a loan which is stored in the same structure.

(b) Producers may also obtain loans on honey packed in eligible containers and stored in facilities owned by third parties in which the honey of more than one person is stored if the honey which is to be pledged as collateral for a loan and which is stored identity preserved or is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name, loan number, and lot number so as to identify the honey from other honey stored in the structure.

#### § 1434.8 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.

#### § 1434.9 Fees and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC to operate the program on a no-net-cost basis as determined by the Executive Vice President, CCC. The amount of such fees will be available in State and county offices and will be shown on the note and security agreement.

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

#### § 1434.10 Determination of quantity.

The amount of a loan shall be based on 100 per cent of the net weight in pounds of such quantity certified by the producer for honey on Form CCC-633 (Honey) which is pledged as security for the loan and covered by the note and security agreement. Estimates of the quantity of honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

#### § 1434.11 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 § 1434.14, 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.

#### § 1434.12 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.

#### § 1434.13 Personal liability of the producer.

(a) When applying for an individual or joint loan, 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 which 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 which 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 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 § 1434.14.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct which 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 formula set out below. 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.

(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 or a designee, within 60 calendar days from the date the determination is received, such determination may be considered to have been approved unless the Administrator issues procedures that allow for more time or decides in an individual case that more time is needed.

(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 which caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraph (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 which 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 § 1434.14, the value of

the settlement for such collateral removed by CCC shall be determined by CCC according to § 1434.16.

(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 which 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 here are in addition to remedies the CCC will have through its security interest on honey which 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.

#### **§ 1434.14 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 which 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.

#### **§ 1434.15 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.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 calendar days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount, plus charges, plus interest shall be established. CCC shall inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title.

#### **§ 1434.16 Foreclosure.**

(a) Upon maturity and nonpayment of the loan, title to the unredeemed honey securing the loan shall vest in CCC.

(b) If the total amount due on a loan or the unpaid amount of the note and charges, plus interest is not satisfied upon maturity, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may also be effected without removing the honey from storage. The honey may be processed before sale and CCC may

become the purchaser of the whole or any part of the honey at either a public or private sale.

(c) If the honey is removed from storage by CCC and is sold, the value of the settlement shall be the proceeds from the sale of the honey minus costs associated with the disposition of the honey and shall be applied to the amount owed CCC by the producer; and

(1) If the value of the collateral computed at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency and CCC may take any action against the producer to recover the deficiency; or

(2) If the proceeds received from the sale of the honey so computed are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the honey, such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

**§ 1434.17 Handling payments and collections not exceeding \$9.99.**

In order to avoid administrative costs of making small payments and handling small accounts, amounts of \$9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of \$9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

**§ 1434.18 Death, incompetency, or disappearance; appeals; other loan provisions.**

(a) In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the county office which made the loan, be made to the persons who would be entitled to such producer's share under the regulations contained in part 707 of this title. Applications for loans may be made upon application of a representative of the producer as allowed under standard practice for farm programs.

(b) Appeals of adverse decisions made under this part shall be subject to the provisions of 7 CFR parts 11 and 780.

(c) The Executive Vice President, CCC, may impose such additional loan conditions as are determined to be necessary or appropriate to insure that the purposes and goals of the program provided for in this part are met.

Signed at Washington, D.C., on March 2, 1999.

**Keith Kelly,**

*Executive Vice President, Commodity Credit Corporation.*

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**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1469**

**RIN 0560-AF63**

**Recourse Loan Regulations for Mohair**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, this final rule sets forth the regulations for a recourse loan program for mohair. The program will be conducted during the 1999 fiscal year and applies to mohair produced during and before the 1999 fiscal year.

**DATES:** Effective March 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Margaret Wright, Program Specialist, Farm Service Agency (FSA), USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250-0512; telephone: (202) 720-8481.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule is in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

**Federal Assistance Program**

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

**Executive Order 12372**

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental

consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

**Executive Order 12988**

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of the final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

**Unfunded Federal Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act and Notice and Comment**

Section 1133 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (1999 Act) provides that this rule-making shall be issued without regard to the public notice and comment provisions of section 5 U.S.C. 553 or the Paperwork Reduction Act, and provides that the provisions of 5 U.S.C. 808 which allows exemption from layovers for Congressional review shall be applied. Accordingly this rule and its information collection requirements are made effective immediately in accordance with these provisions. Because of the foregoing provisions and because this rule provides needed time-sensitive relief, delay in completing this rule would be contrary to the public interest.

**Background**

Section 1126 of the 1999 Act provides that the Secretary of Agriculture (Secretary) shall make available recourse loans, as determined by the Secretary, to producers of mohair produced during or before that fiscal