

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation**

**7 CFR Parts 1400, 1421, 1427, 1430, 1434, 1435, and 1476**

**RIN 0560-AG34**

**Dairy and Cranberry Market Loss Assistance Programs, Honey Marketing Assistance Loan and LDP Program, Sugar Nonrecourse Loan Program, and Payment Limitations for Marketing Loan Gains and Loan Deficiency Payments**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 related to the Dairy and Cranberry Market Assistance Programs, the Honey Marketing Assistance Loan and LDP Program, the Sugar Program and payment limitations for marketing loan gains and loan deficiency payments. Other provisions of the Act will be implemented under separate rules.

**DATES:** Effective March 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Grady Bilberry, Director, Price Support Division, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, D.C. 20250-0540, Telephone: (202)720-7901; e-mail: grady\_bilberry@wdc.fsa.wdc.gov.

**SUPPLEMENTARY INFORMATION:**

**Notice and Comment**

Section 840 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387) requires that the regulations necessary to implement these provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

**Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866 and has been determined to be Economically Significant and has been reviewed by the Office of Management and Budget. A cost-benefit assessment

was completed and is summarized after the background section explaining the actions this rule will take.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**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 program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

**Unfunded Mandates**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on State, local or tribal governments, or the private sector.

**Small Business Regulatory Enforcement Fairness Act of 1996**

Section 840 of Public Law 106-387 requires that the regulations necessary to implement these provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the

provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of section 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This rule is considered a major rule for the purposes of SBREFA. However, the rule affects the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions. Accordingly, because it would be contrary to the public interest to delay those provisions of this rule, as expressed in Public Law 106-387, they are issued as final and are effective immediately.

**Paperwork Reduction Act**

Section 824 of Public Law 106-78 requires that the regulations implementing these provisions be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required after the rule is published, and Information Collection Packages and requests for approval will be submitted to OMB.

**Background**

This rule will implement requirements of Public Law 106-387 related to the Dairy, Honey and Cranberry Market Assistance Programs, the Sugar Program, and to payment limitations and eligibility for marketing loan gains and loan deficiency payments. Descriptions of this rule's provisions follow.

**1. 7 CFR Parts 1400, 1421, and 1427—Payment Limitation and Eligibility for 2000-Crop Marketing Loan Gains and Loan Deficiency Payments**

This rule implements section 837 of Public Law 106-387, which revised the payment limitation and eligibility requirements for Marketing Loan Gains (MLG's) and Loan Deficiency Payments (LDP's) for 2000-crop contract commodities and oilseeds. Section 837 increased to \$150,000 the maximum total amount of MLG's and LDP's provided under section 1001(3) of the

Food Security Act of 1985 (7 U.S.C. 1308(1)) that a person may receive under the Agricultural Marketing Transition Act (7 U.S.C. 7201 *et seq.*) for one or more contract commodities and oilseeds produced during the 2000 crop year. It also provides that a producer who marketed a quantity of an eligible 2000 crop for which an MLG or LDP was not received may receive such gain or payment as of the date the quantity was marketed or redeemed.

The payment limitation had also been increased from \$75,000 to \$150,000 for the 1999 crop year only, and it should be emphasized that this change of the limitation on MLG's and LDP's to \$150,000 is applicable only to the 2000 crop year. This rule amends the payment limitation provisions in 7 CFR Parts 1400, 1421, and 1427.

To implement the new eligibility requirements, this rule further amends the regulations at 7 CFR Part 1421, which govern MLG's and LDP's for wheat, feed grains, rice, oilseeds, and farm-stored peanuts, and at 7 CFR Part 1427, which govern MLG's and LDP's for cotton. Subject to certain conditions, the new rules will allow a producer who is otherwise eligible to receive a payment to receive an MLG or LDP even though the producer has already marketed the commodity. This will only apply for commodities marketed or redeemed with cash on or before April 12, 2001 and to otherwise eligible producers on commodities for which no MLG or LDP has been paid.

### *2. 7 CFR Part 1430-Dairy Market Loss Assistance Program (DMLAP III)*

This rule implements the requirements of section 805 of Public Law 106-387 related to the Dairy Market Loss Assistance Payment Program (DMLAP). Section 805 provided for the Commodity Credit Corporation to make supplemental payments to dairy producers who received payments under section 805 of Public Law 106-78 and to new dairy producers. The supplemental payments will be provided by extending the Dairy Market Loss Assistance Program, which was established by a final rule published in the **Federal Register** on May 10, 1999 at 64 FR 24933 and amended in a final rule published in the **Federal Register** on February 16, 2000 at 65 FR 7942.

The original DMLAP implemented section 1121 of Public Law 105-277, which directed the Secretary to provide \$200 million in assistance to dairy producers. Eligible dairy producers received payments for the first 26,000 hundredweight (cwt.) of milk marketings in either 1997 or 1998, but

not both. Eligible operations had to have been in existence during the fourth quarter of 1998. The \$200 million was divided among all the eligible dairy operations that applied during the initial application period that ended on May 21, 1999.

The second phase of DMLAP (DMLAP II) implemented sections 805 and 825 of Public Law 106-78, which provided \$325 million for assistance for livestock and dairy producers who suffered economic losses in 1999. Of that \$325 million, \$125 million was made available to dairy producers.

Under the new provisions of this rule, supplemental payments will be made to dairy operations that received payments under previous DMLAP on up to 39,000 cwt. of eligible production, an increase from 26,000 cwt under the previous DMLAP. For dairy operations that were new in 1999 or 2000 or that had less than 12 months eligible production, signup has been extended through February 28, 2001. Dairy operations may apply in person at FSA county offices during regular business hours and at that time complete the application form. Dairy operations that applied for and received payments under the February 2000 DMLAP do not need to reapply. The 2001 Act requires that payments be at a rate equal to 35 percent of the reduction in market value per unit of milk production in 2000. That rate will be \$.6468 per cwt., which was based upon USDA data on average returns and market prices.

### *3. 7 CFR Part 1434—Honey Marketing Assistance Loans*

Section 812 of Public Law 106-387 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 shall make available nonrecourse marketing assistance loans or loan deficiency payments to producers of the 2000 crop of honey on fair and reasonable terms and conditions, as determined by the Secretary. The loan rate for a marketing assistance loan available to producers of 2000 crop honey shall be 65 cents per pound. Producers shall repay a marketing assistance nonrecourse loan at principal plus interest or the prevailing domestic market price for honey. The marketing loan repayment rate will be announced monthly, as determined by the Secretary. The monthly loan repayment rate will be available at FSA county offices. Section 812(c) of Public Law 106-387 provides that, for an orderly transition, all outstanding 2000 crop honey recourse loans shall be converted to nonrecourse

loans. To effectuate the conversion, producers will be required to sign a new Farm Storage Note and Security Agreement (CCC-677). The loan maturity date will remain the same as for the recourse loans, and the loan rate will be increased and additional disbursements will be paid to the producers. The provisions of Public Law 106-387 related to the increase in payment limitation for marketing loan gains and loan deficiency payments and to eligibility of producers for marketing loan gains and LDP's for such commodities even though the producer has already marketed the commodity, which this rule implements, as described earlier in this summary, shall also apply to the Honey Program.

The terms and conditions of the Honey Program that this rule implements focus on eligibility and program administration.

#### *Eligibility*

The regulations at 7 CFR 1434.4 list the eligibility requirements for persons applying for a nonrecourse marketing assistance loan or loan deficiency payments for 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 maintain title and control over the disposition of the honey, as well as the risk of loss of the honey thru loan maturity or the date of repayment.

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*

Section 812 of Public Law 106-387 provides that nonrecourse marketing

assistance loans or loan deficiency payments will be made to producers of 2000-crop honey. The honey nonrecourse marketing assistance loan and loan deficiency payment 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 or LDP is March 31, 2001. The loans will mature 9 months after loan disbursement. Anyone interested in applying for a loan or LDP, 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 FSA county office before moving the honey for sale. If the producer fails to obtain such authorization, provides incorrect certification, or makes fraudulent representation, 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 7 CFR 1434.13. If the loan is not repaid in full by the loan maturity date, CCC may foreclose on the pledged honey and sell it. 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.

#### 4. 7 CFR Part 1435—Sugar Nonrecourse Loans

Section 836 of Public Law 106–387 provides that only nonrecourse loans be made available to processors of domestic sugar beets and sugarcane. Accordingly, this rule amends the regulations governing the Sugar Price Support Program, which is conducted by the Commodity Credit Corporation (CCC) under section 156 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The 2001 Act eliminates the requirement for recourse loans when the sugar tariff is established at 1.5 million tons or less. Recourse loans have never been made available during the time the 1996 Act has been in effect. Recourse loans have not been available because USDA has established a tariff-rate quota (TRQ) greater than 1.5 million tons each year since the enactment of the FAIR Act. USDA established the FY 2001 TRQ above 1.5 million tons in September 2000.

There is no significant economic impact expected from this action. USDA's baseline projects that under U.S. trade agreements U.S. imports will exceed 1.5 million tons during the remaining years of the FAIR Act. As a result, nonrecourse loans would have been in effect without this change.

#### 5. 7 CFR Part 1476—Cranberry Market Loss Assistance Payment Program

Section 816 of Public Law 106–387 directs the Secretary of Agriculture to use \$20 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers of the 1999 crop of cranberries. Public Law 106–554 mandated a Government-wide rescission of 0.22 percent of appropriated funds, reducing the funding for the Cranberry Market Loss Assistance Payment Program to \$19.956 million. This will be the first time since 1959 that the government has provided financial assistance directly to cranberry growers.

Recent increases in acreage and yields, while demand has remained fairly constant, have resulted in a large cranberry surplus. During the 1999 crop year, U.S. cranberry production reached a record high of 6.4 million barrels, which caused the price of cranberries to plummet to an average price of \$17 per barrel, a historical low. The result has been a tremendous increase in inventory and reduced grower returns. These extreme market conditions have caused many cranberry growers difficulty. Steps taken thus far by USDA towards stabilizing prices, including the purchase of agricultural products containing cranberry ingredients, have only marginally reduced existing surpluses. A cranberry marketing order was approved by the Secretary to help reduce the surplus, but the short-term impact on growers will be negative unless and until prices for cranberries are restored. There are an estimated 1,300 cranberry growers in the U.S. representing approximately 11 states nationwide, producing over 90 percent of cranberry production in the processed market, with the remainder sold to the fresh fruit market. Without a significant improvement in the market price on sales of cranberries, many cranberry producers will not be able to remain in business.

Producers of cranberries can receive a cash payment per pound for a qualifying farm unit's 1999 production of cranberries. Producers will only be paid on a maximum quantity of 1,600,000 pounds per separate farm unit, as reported to the Cranberry Marketing Committee, or other source approved by CCC. Payments will not be subject to

administrative offset, as provided by section 842 of Public Law 106–387.

To receive cash payments, eligible cranberry producers must (1) have produced cranberries during the 1999 crop year, (2) not have received a payment from any other Federal program, other than crop insurance, for the same loss, (3) be engaged in the business of producing and marketing agricultural products at the time of application for cash payment, and (4) apply for cash payments during the application period for each farm unit.

Program applications will be mailed to all cranberry growers in the United States by the Farm Service Agency's (FSA), Price Support Division (PSD). The names, addresses, and production of cranberry growers in the United States have been obtained from the Cranberry Marketing Committee list of producers who marketed cranberries under the Agricultural Marketing Service's Cranberry Marketing Order for 1999. There are approximately 30 producers in the State of Maine who do not market under the marketing order who will be identified by CCC and contacted to make application. In addition, program applications may be obtained by mail, telephone, or facsimile from the Price Support Division or obtained via the Internet. The Internet website is located at [www.fsa.usda.gov/dafp/psd/](http://www.fsa.usda.gov/dafp/psd/).

To participate in the program, cranberry producers must complete the application form and return it by mail to the PSD within the announced application period. At the close of the application period, a national per pound payment rate will be determined based on the factoring of the available funds of \$19.956 million divided by the total pounds of eligible 1999 cranberry production from each applying farm unit, with no farm exceeding 1,600,000 pounds of cranberry production. Because outlays for this program are a fixed amount, the national average payment rate and individual payments can only be calculated after the total eligible quantity of 1999 cranberry production has been determined from approved applications.

#### Cost-Benefit Assessment Summary

##### Outlays

##### SUMMARY OF OUTLAYS

Program	Outlays \$ millions
Payment Limitations and Eligibility .....	5
Dairy Market Loss Assistance ..	667
Honey .....	26
Cranberry .....	120

## SUMMARY OF OUTLAYS—Continued

Program	Outlays \$ millions
Sugar .....	0
Total .....	718

<sup>1</sup> \$19.956 million after 0.22% rescission required by Public Law 106-554.

*Payment Limitations and Eligibility for MLG's and LDP's*

An increase in the 2000-crop payment limit is expected to have a relatively minor effect on loan and LDP program outlays. Relatively few producers are expected to receive additional benefits because of the increase in the payment limit to \$150,000 per person. Outlays will be affected most notably for those producers who both reached the pre-2001-Act payment limit of \$75,000 and who lost beneficial interest upon delivery almost immediately after harvest. Loss of beneficial interest shortly after harvest made such producers ineligible for loans and therefore for either the certificate exchange process or the forfeiture process. As such, these producers were denied access to direct and indirect program benefits beyond the \$75,000 level prior to implementation of the statutorily-mandated, payment-limit increase. The number of producers meeting both conditions (reach \$75,000 in benefits and near-immediate loss of beneficial interest after harvest) is expected to be relatively small.

Producers who did not lose beneficial interest after harvest, but who reached the pre-2001-Act payment limit of \$75,000, had the opportunity (which many, if not all, used) to secure a CCC loan, using the certificate exchange process to realize an indirect certificate gain. With an increase in the limit to \$150,000, producers who subsequently reach \$75,000 in applicable benefits for the 2000 crop will not need to rely on the certificate exchange or forfeiture processes to realize additional program benefits unless and until their payment-limit-applicable benefits reach \$150,000.

*Dairy Market Loss Assistance Program*

The DMLAP III is not expected to have significant impacts on prices, production, or the consumption of dairy products. The \$667 million 2001 DMLAP assistance will offset a portion of the decline in dairy producer incomes in calendar year (CY) 2000 as prices declined. Value of all milk produced in CY 1999 was reported as \$23,402,392,000 and estimated CY 2000 value is \$20,881,600,000. The DMLAP

III payments will add about 3 percent to CY 2000 cash receipts of dairy producers. Payments will cut the decline in receipts from CY 1999 to CY 2000 from 11 percent to an 8 percent decline. While these payments will cushion the effect of declining revenue it is not expected to affect investment decisions that are based on market return prospects. While these payments could help some producers stay in operation longer or provide seed capital for expansion they could also provide an opportunity to get out of dairying with lower transition costs.

The number of commercial dairy operations declined about 5 percent from 1998 to 1999. Since we estimate that 2 percent of the farms are new entrants in the dairy business, about 7 percent of dairy farms left the business between 1998 and 1999. The enrollment criteria for the 1999 DMLAP required that the dairy operation be in business in the 4th quarter of 1998. Thus one could expect that about 1.5 percent of the recipients of the 1999 DMLAP payments would not have been in operation in 1999. If an additional 7 percent left production between 1999 and 2000 then about 8.5 percent of DMLAP III recipients were not in operation in CY 2000. The chance of including operations in the program that did not farm in 2000 was not considered great enough to justify requiring the 78,560 operations to re-enroll at the FSA county offices and delay the payments by several months. However, sign-up was extended to permit the estimated 1,600 commercial operations that did not enroll in the DMLAP II an opportunity to enroll in DMLAP III.

*Honey Marketing Assistance Loans*

The 2001 Honey Program loan rate, 65 cents per pound, is expected to significantly exceed market prices, and CCC will receive loan repayments at the alternative repayment rate (CCC's estimated of the prevailing honey price) rather than principal plus interest. The 2001 honey crop price is forecast to average 51 cents per pound. There is no expected impact on 2000-crop honey supply because the program was not created until the honey production season was essentially finished.

There are no significant expected effects on market prices or demand because the major benefit to producers is expected to be the LDP's or marketing loan gains, not market price improvement through honey removals from forfeitures. CCC has limited ability to affect market prices. Domestic honey prices are closely related to prices of imports because of sizeable quantities imported. For the 1996-1999 period,

honey imports represented about 45 percent of total domestic honey consumption. Sizable CCC honey removals in the 1980s resulted in increased imports instead of increased domestic market prices. Since foreign honey prices are unaffected by the 2001 Honey Program, it would seem unlikely that domestic honey prices will be affected by the program, and domestic consumers will not be impacted.

CCC's estimated loan loss is about 14 cents per pound. Conversely, the producers' increase in income from marketing loan gains, LDP's, and gains from forfeitures is also 14 cents per pound. The CCC's loan losses and producers' gains from loans are estimated at \$9.8 million. CCC's cost and producers' gains from LDP's are estimated at \$16.3 million. The total program cost and increase in producers' income is estimated at \$26.1 million.

Producers who use the 2001-crop loan program will also benefit from the reduced borrowing costs compared with commercial loans if market prices stay below 65 cents per pound. Interest savings are estimated at \$5.3 million. It is expected that 2.9 million pounds of honey, or 1.5 percent of production, will be forfeited to CCC.

*Sugar Nonrecourse Loans*

The elimination of the recourse loan option by the 2001 Act is not expected to have any impact on Federal expenditures or farm incomes because the recourse loan option was not expected to be exercised in FY 2001 or FY 2001. The February 2000 baseline, like all previous baselines, assumed that the sugar TRQ would exceed 1.5 million tons in FY 2001 and FY 2002 because of international access commitments under the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). Consequently, nonrecourse loans have always been expected to be offered by CCC in FY 2001 and FY 2002.

*Cranberry Market Loss Assistance Program*

The principal benefit from the market loss assistance program will be the approximately \$20 million in financial assistance that cranberry growers receive, which could determine if some of them remain in business. Individual payments will be based on each grower's production, with an upper cap of 1.6 million pounds. The per-pound payment hinges on the total eligible production reported by applicants, so FSA will be unable to calculate the final rate until about February 2001. Participation will likely be almost universal among eligible cranberry

growers as the only requirement is to have produced a 1999 cranberry crop. Given expected heavy participation and information on how production is divided among growers provided by USDA's Agricultural Marketing Service (AMS), FSA's preliminary projection is for a payment rate on the order of \$5 to \$7 per barrel. Given that rate, half of the cranberry growers will receive payments under \$10,000 and about 12 percent of the growers will receive the highest payments of around \$90,000.

The cranberry market loss assistance program could aid some producers on the brink of insolvency to remain in business but the effect of this program on the long-run viability of the industry will be minimal. In fact, if the program encourages overproduction it will slow structural changes needed to enhance industry viability. Conversely, program benefits could prove to be synergistic with the two concurrent programs designed to address oversupply: the imposition of the cranberry marketing order in 2000 and government purchases of excess cranberry products.

For further information, the following individuals may be contacted regarding the different parts of the Cost/Benefit Assessment:

Cranberry—John Jenkins, 202-720-2100  
Honey, Dairy, Pasture Recovery, and Sugar—Dan Colacicco, 202-720-6733  
Payment Limitations—Terry Hickenbotham, 202-690-0733

## List of Subjects

### Part 1400

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

### Part 1421

Feed grains, Loan programs—agriculture, Peanuts, Oilseeds, Price support programs, Reporting and recordkeeping requirements, Soybeans.

### Part 1427

Cotton, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

### Part 1430

Dairy products, Milk, Price support programs, Reporting and recordkeeping requirements.

### Part 1434

Honey, Loan programs—agriculture, Reporting and recordkeeping requirements.

### Part 1435

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Sugar.

### Part 1476

Cranberries, Loan programs—Price support programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Chapter XIV is amended as set forth below.

## PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation is revised to read as follows:

**Authority:** 7 U.S.C. 1308, 1308-1, and 1308-2; 16 U.S.C. 3834; Pub. L. 106-78 113 Stat. 1135; and Pub. L. 106-387 (114 Stat. 1549).

2. Amend § 1400.1 by revising Footnote 3 in the table in paragraph (g) to read as follows:

### § 1400.1 Applicability.

\* \* \* \* \*

<sup>3</sup> The total of marketing loan gains and loan deficiency payments cannot exceed \$75,000 per crop year, except for the 1999 and 2000 crop years in which the limit shall be \$150,000.

## PART 1421-GRAINS AND SIMILARLY HANDLED COMMODITIES

3-4. The authority citation is revised to read as follows:

**Authority:** 7 U.S.C. 7213-7235, 7237; 15 U.S.C. 714b, 714c; Sec. 813, Pub. L. 106-78, 113 Stat. 1182; Sec. 206, Pub. L. 106-224, Sec. 205, Pub. L. 106-224, Sec. 837, Pub. L. 106-387, 114 Stat. 1549.

5. Amend § 1421.1 by revising paragraphs (e) introductory text, (e)(1), (e)(2) introductory text, and (e)(2)(v) to read as follows:

### § 1421.1 Applicability.

\* \* \* \* \*

(e) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during either the 1999 or 2000 crop year, the \$75,000 per person total limitation on all commodities together on the sum of loan deficiency payments and marketing loan gains realized under this part shall not apply, but, rather, such limit shall be \$150,000 per person.

(2) For eligible crops produced in either the 1999 or 2000 crop year, a producer may receive with respect to a commodity, a marketing loan gain in connection with loans made under this part or loan deficiency payments made under this part even though the crop has already been marketed, so long as:

- (i) \* \* \*
- (ii) \* \* \*
- (iii) \* \* \*
- (iv) \* \* \*

(v) The producer marketed the 1999 crop year commodity prior to February 16, 2000 and marketed the 2000 crop year commodity on or before April 12, 2001.

\* \* \* \* \*

## PART 1427—COTTON

6. The authority citation is revised to read as follows:

**Authority:** 7 U.S.C. 7213-7235, 7237; 15 U.S.C. 714b, 714c; Sec. 813, Pub. L. 106-78, 113 Stat. 1182; Sec. 837, Pub. L. 106-387, 114 Stat. 1549.

7. Amend § 1427.1 by revising paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, and (d)(2)(v) to read as follows:

### § 1427.1 Applicability.

\* \* \* \* \*

(d) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during either the 1999 or 2000 crop year, the \$75,000 per person total limitation on all commodities together on the sum of loan deficiency payments and marketing loan gains realized under this part shall not apply, but, rather, such limit shall be \$150,000 per person.

(2) For eligible cotton produced in either the 1999 or 2000 crop year, a producer may receive, with respect to cotton, a marketing loan gain in connection with loans made under this part or loan deficiency payments made under this part even though the cotton has already been marketed, so long as:

- (i) \* \* \*
- (ii) \* \* \*
- (iii) \* \* \*
- (iv) \* \* \*

(v) The producer marketed 1999 crop year cotton prior to February 16, 2000 and marketed 2000 crop year cotton on or before April 12, 2001.

\* \* \* \* \*

## PART 1430—DAIRY PRODUCTS

8. The authority citation for part 1430 subpart D is revised to read as follows:

**Authority:** Pub. L. 105-277, 112 Stat. 2681; Pub. L. 106-78, 113 Stat. 1135; Pub. L. 106-387, 114 Stat. 1549.

9. In § 1430.500 revise the phrase "under Public Law 105-277, 112 Stat. 2681 and sections 805 and 825 of Public Law 106-78 only" to read "under Public Law 105-277, 112 Stat. 2681; sections 805 and 825 of Public Law 106-78; and section 805 of Public Law 106-387 only".

10. Amend § 1430.502 and § 1430.503 by revising the phrase "February 28, 2000" wherever it appears to read "February 28, 2001".

11. Revise § 1430.510 to read as follows:

**§ 1430.510 New producers.**

Notwithstanding other provisions of this subpart, producers who were new producers in 1999 or 2000 and not affiliated with other eligible producers may receive payments from sums made available after October 27, 2000 based on their 1999 production levels or for 2000, on their production levels from October 1, 1999 through September 30, 2000.

12. Add § 1430.511 to read as follows:

**§ 1430.511 Supplemental payments.**

(a) Supplemental payments under Public Law 106–387 will be made available to dairy operations in connection with normal milk production that is sold on the commercial market.

(b) For supplemental payments made under this section, the payment rate shall be \$0.6468 per cwt.

(c) For dairy operations that received a payment under sections 805 and 825 of Public Law 106–78 on less than 12 months production, an annual production level will be calculated by subtracting from the dairy operation's production level for the period of October 1, 1999 through September 30, 2000 the production level on which previous payments were received.

13. Revise part 1434 to read as follows:

**PART 1434—NONRECOURSE MARKETING ASSISTANCE LOAN AND LDP REGULATIONS FOR HONEY**

Sec.

- 1434.1 Applicability.
- 1434.2 Administration.
- 1434.3 Definitions.
- 1434.4 Eligible producer.
- 1434.5 Eligible honey.
- 1434.6 Beneficial interest.
- 1434.7 Approved storage.
- 1434.8 Containers and drums.
- 1434.9 Determination of quantity.
- 1434.10 Application, availability, disbursement, and maturity.
- 1434.11 Fees and interest.
- 1434.12 Liens.
- 1434.13 Transfer of producer's interest prohibited.
- 1434.14 Loss or damage.
- 1434.15 Personal liability of the producer.
- 1434.16 Release of the honey pledged as collateral for a loan.
- 1434.17 Liquidation of loans.
- 1434.18 Loan repayments.
- 1434.19 Settlement.
- 1434.20 Foreclosure.

1434.21 Loan deficiency payments.

1434.22 Handling payments and collections not exceeding \$9.99.

1434.23 Death, incompetency, or disappearance; appeals; other loan provisions.

**Authority:** Sec. 812, Public Law 106–387, 114 Stat. 1549.

**PART 1434—NONRECOURSE MARKETING ASSISTANCE LOAN AND LDP REGULATIONS FOR HONEY**

**§ 1434.1 Applicability.**

(a) The regulations of this part provide the terms and conditions under which the Commodity Credit Corporation (CCC) may issue nonrecourse marketing assistance loans or loan deficiency payments for the 2000 crop of honey, under Public Law 106–387.

(b) Notwithstanding provisions of this subpart and subchapter, for eligible honey produced during the 2000 crop year:

(1) The \$75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loans made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be \$150,000 per person.

(2) A producer may receive, with respect to honey, a marketing loan gain or loan deficiency payment in connection with loans made under this part even though the honey has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the commodity;

(ii) The person seeking the payment is the actual producer of the commodity and had beneficial interest in the commodity at the time of the operative marketing, for commodities to which paragraph (b)(2)(iii) of this section applies, or at the time at which the commodity was redeemed in the case of commodities to which paragraph (b)(2)(iv) of this section applies;

(iii) For those commodities that were previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of redemption;

(iv) For commodities not covered by paragraph (b)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the commodity;

(v) Unless otherwise allowed by the Deputy Administrator, the producer

marketed the commodity prior to April 12, 2001.

**§ 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 Farm Service Agency (FSA) 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 the regulations of this part 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 are inconsistent with the definitions set forth in this section or for purpose of program instruments created under this part.

*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.

*Ineligible honey* is honey not eligible for a loan under this part for which ineligibility shall include, but is not limited to, honey from applicable floral sources regardless of whether the honey meets other eligibility requirements.

*Intermediate Bulk Container (IBC)* is a bulk container with a polyethylene inner bottle with a galvanized steel protective cage with a 275 and 330 gallon capacity and is reusable.

*Loan* is a nonrecourse marketing assistance loan on honey.

*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.

*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.

*Table honey* is any honey having a good flavor of the predominant floral source which can be readily marketed for table use.

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

#### **§ 1434.4 Eligible producer.**

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

(1) Have produced honey 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;

(2) Be responsible for the risk of keeping the bees and producing honey;

(3) Have a continuous beneficial interest in the honey from the time the honey was extracted through date of repayment of the loan;

(4) Store the honey pledged as loan collateral in eligible storage and in eligible containers that meet the requirements of § 1434.7 and § 1434.8, respectively; and

(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.

(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 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 the capacity of 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 that 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.

#### **§ 1434.5 Eligible honey.**

To be eligible for a loan, the honey must:

(a) Have been produced by an eligible producer;

(b) Have been 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;

(c) Be of merchantable quality deemed by CCC to be suitable for loan; that is, the honey:

(1) Is not adulterated;

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

(3) Does not contain any ineligible honey floral sources; such as andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, 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;

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

(5) Is not fermenting; and

(d) Be stored in acceptable containers.

#### **§ 1434.6 Beneficial interest.**

(a) To be eligible to receive marketing assistance 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.

(b) 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:

(1) 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."

or:

(2) 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.

(c) 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.

(d) 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 if the loan was

repaid with principal plus interest, the loan on such re-offered honey shall have the same maturity date as the original loan.

#### **§ 1434.7 Approved storage.**

(a) Loans will be made only on honey in approved storage, which shall consist of a storage structure located on or off the farm that 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 that 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 that is to be pledged as collateral for a loan and that 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 Containers and drums.**

(a)(1) The honey must be packed in plastic Intermediate Bulk Container (IBC) or metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. The IBC container is a bulk container with a polyethylene inner bottle with a galvanized steel protective cage with a 275 and 330 gallon capacity and is reusable. 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 that 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 that have been reconditioned inside and outside. The steel drums

must be clean, treated inside and outside to prevent rusting, fitted with gaskets that 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 that are severely enough dented as to cause damage to their lining, improper seal, or stacking capabilities; and

(6) Rusted drums with corroded areas.

#### **§ 1434.9 Determination of quantity.**

The amount of a marketing assistance loan and loan deficiency payment shall be based on 100 percent of the net weight in pounds of such quantity certified by the producer and verified by the county office representative for honey on Form CCC-633 (Honey) that is eligible to be pledged as security for the loan or LDP Estimates of the quantity of honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

#### **§ 1434.10 Application, availability, disbursement, and maturity.**

(a) A producer must unless otherwise authorized by CCC, request loans and loan deficiency payments at the county office that, in accordance with part 718 of this title, is responsible for administering the program. To receive loans and loan deficiency payments for 2000 crop honey, a producer shall execute a note and security agreement or loan deficiency payment application on or before March 31 of the year following the year in which the honey was extracted.

(b) A producer must request a loan 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.

(c) 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.

(d) 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, for honey that:

- (1) Has been extracted;
- (2) Is in eligible storage; and
- (3) Has not been blended or mixed with ineligible honey.

(e) 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 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.

#### **§ 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 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.

(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.

#### **§ 1434.18 Loan repayments.**

(a) For 2000 crop honey, a producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(1) The principal, plus interest; or

(2) The alternative repayment rate for honey as determined by the Secretary.

(b) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the prevailing domestic market price for honey, on a monthly basis.

**§ 1434.19 Settlement.**

The value of the settlement of loans shall be made by CCC on the following basis:

(a) With respect to nonrecourse loans, the schedule of premiums and discounts for the commodity:

(1) If the value of the collateral 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; or

(2) If the value of the collateral at settlement is greater than the amount due, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(b) With respect to honey that is delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

**§ 1434.20 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.

(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.

**§ 1434.21 Loan deficiency payments.**

(a) Loan deficiency payments shall be available with respect to 2000 crop of honey.

(b) In order to be eligible to receive loan deficiency payment for a crop of honey, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loan in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) File a Form CCC-666 LDP;

(4) Comply with §§ 1434.7 and 1434.8 or provide evidence of production as determined by CCC for such quantity; and

(5) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the marketing assistance loan rate exceeds the rate at which CCC has announced that producers may repay their marketing assistance loan in accordance with § 1434.18.

(d) The loan deficiency payment applicable to a crop of honey shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (e) of this section, by the quantity of honey the producer is eligible to pledge as collateral for a price support loan for which a loan deficiency payment is required.

(e) Notwithstanding any provisions in this section, loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for a loan deficiency payment if CCC determines that such quantity represented the quantity for the number of containers of honey initially certified for the loan deficiency payment when the payment was made.

(f) When applying for an individual loan deficiency payment, each producer agrees:

(1) When signing Form CCC-666 LDP, that the producer will provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest; and

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

(g) 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.

**§ 1434.22 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 that 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.

**§ 1434.23 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 that 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) In order to effectuate a conversion of 2000-crop recourse honey loans to nonrecourse loans, producers will be required to sign a new CCC-677 Note and Security Agreement. The loan maturity date will remain the same as the original recourse loan, the loan rate will be increased and additional disbursements will be paid to the producers.

**PART 1435—SUGAR PROGRAM**

15. The authority citation for part 1435 continues to read as follows:

**Authority:** 7 U.S.C. 7272; and 15 U.S.C. 714b and 714c.

**§ 1435.2 [Amended]**

16. Amend § 1435.2 by removing the definition for "Recourse loan."

17. Revise the second sentence in paragraph (a) of § 1435.100 to read as follows:

**§ 1435.100 Applicability.**

(a) \* \* \* The regulations of this subpart set forth the terms and conditions under which CCC will make nonrecourse loans available to eligible processors. \* \* \*

\* \* \* \* \*

18. Remove § 1435.102 and redesignate §§ 1435.103 through 1435.111 as §§ 1435.102 through 1435.110.

19. In newly designated § 1435.104, remove paragraph (g)(2) and redesignate paragraphs (g)(3) and (g)(4) as paragraphs (g)(2) and (g)(3).

20. In newly designated § 1435.105, revise paragraphs (c) and (d)(4) to read as follows:

**1435.105 Loan maintenance.**

\* \* \* \* \*

(c) Nonrecourse loan recipients shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processor for processing not less than the minimum payment levels CCC specifies for the applicable crop year when nonrecourse loans are in effect.

(d) \* \* \*

(4) If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a nonrecourse loan is less than the loan quantity, because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call the loan and other outstanding loans. Such determination shall result in the processor being ineligible for nonrecourse loans for the remainder of that crop year and through the next crop year.

21. In newly designated § 1435.106, remove paragraph (b), redesignate paragraphs (c) through (h) as paragraphs (b) through (g), and revise newly redesignated paragraph (g) introductory text to read as follows:

**§ 1435.106 Loan settlement and foreclosure.**

\* \* \* \* \*

(g) If a processor's nonrecourse loan indebtedness is not satisfied in accordance with the provisions of this section:

\* \* \* \* \*

**PART 1476—CRANBERRY MARKET ASSISTANCE PAYMENTS**

22. Add part 1476 to subchapter B of 7 CFR Chapter XIV to read as follows:

**PART 1476—CRANBERRY MARKET LOSS ASSISTANCE PAYMENT PROGRAM**

Sec.

- 1476.1 Applicability.
- 1476.2 Administration.
- 1476.3 Definitions.
- 1476.4 Eligibility.
- 1476.5 Payment application, time, and method.
- 1476.6 Applicant payment quantity.
- 1476.7 Payment rate and cranberry farm unit payment.
- 1476.8 Offsets.
- 1476.9 Appeals.
- 1476.10 Misrepresentation and scheme or device.
- 1476.11 Estates, trusts, and minors.
- 1476.12 Death, incompetency, or disappearance.
- 1476.13 Maintaining records.
- 1476.14 Refunds; joint and several liability.

**Authority:** Sec. 816, Pub. L. 106–387, 14 Stat. 1549; sec. 203(d)(1), Pub. L. 106–224, 7 U.S.C. 1421 note; 15 U.S.C. 714 et seq.

**§ 1476.1 Applicability.**

(a) The regulations in this part are applicable to the 1999 crop of

cranberries. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to cranberry growers who have applied to participate in the Cranberry Market Loss Assistance Payment Program in accordance with section 816 of Public Law 106–387. Additional terms and conditions are set forth in the payment application that must be executed by participants to receive a cranberry payment.

(b) Payments shall be available only for cranberries produced and harvested in the United States.

**§ 1476.2 Administration.**

(a) The Cranberry Market Loss Payment Program shall be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by FSA's Price Support Division (PSD) and Kansas City Management Office (KCMO).

(b) The PSD and KCMO and representative and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) No provision or delegation of this part to PSD or KCMO 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 PSD or KCMO.

(d) The Executive Vice President, CCC or a designee, may waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the Cranberry Market Loss Assistance Payment Program.

(e) A representative of CCC may execute the Cranberry Market Loss Assistance Payment Program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

**§ 1476.3 Definitions.**

The definitions set forth in this section shall be applicable for purposes of administering the Cranberry Market Loss Assistance Payment Program.

*Agricultural Marketing Service or AMS* means the Agricultural Marketing Service of the Department.

*Application* means the Cranberry Market Loss Assistance Program payment application, CCC.

*Application period* means a period, to be announced by CCC, during which applications for payments under the Cranberry Market Loss Assistance Payment Program must be received to be considered for payment.

*Barrel* means 100 pounds of stored cranberries.

*Cranberry Marketing Committee* means the eight member panel that administers the Cranberry Marketing Order authorizing volume control through producer allotments.

*Cranberry Marketing Order* means the order regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is effective under the Agricultural Marketing Agreement Act of 1937.

*Department or USDA* means the United States Department of Agriculture.

*Farm Unit* means a separate and distinct farming operation that reports independent production information to the Cranberry Marketing Committee.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

*United States* means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

**§ 1476.4 Eligibility.**

(a) To be eligible to receive cash payments under this part, a cranberry farm unit must:

(1) Have produced cranberries in the United States anytime during the 1999 crop year;

(2) Not have been compensated for the same loss by any other Federal programs, except an indemnity provided under a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501).

(3) Be engaged in the business of producing and marketing agricultural products at the time of application for payment.

(4) Apply for payments during the application period.

products at the time of application for payment.

(4) Apply for payments during the application period.

(b) A cranberry farm unit must submit a timely application and comply with all other terms and conditions of this part and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this part.

#### **§ 1476.5 Payment application, time, and method.**

(a) Payments in accordance with this part shall be made available to eligible cranberry producers based on information provided on a Cranberry Market Loss Assistance Payment Program Application, CCC-890.

(b) Payment applications must be received within the program application period announced by CCC.

(c) Cranberry Market Loss Assistance Payment Program applications may be obtained from the CCC and PSD, in person, by mail, by telephone, or by facsimile. In addition, applicants may download a copy of the Form CCC-890 at <http://www.usda.gov/dafp/psd>. In order to participate in the program authorized by this part, cranberry producers must execute the Cranberry Market Loss Assistance Payment Program Application and forward the completed original to PSD as directed on the application.

#### **§ 1476.6 Applicant payment quantity.**

(a) The applicant's payment quantity of cranberries will be determined by the CCC, based on the 1999 crop of cranberries that was produced on each farm unit, as provided by the Cranberry Marketing Committee or obtained by CCC, with the agreement of the applicant.

(b) The maximum quantity of the 1999 crop of cranberries for which producers are eligible for a payment for a farm unit under this part shall be 1,600,000 pounds.

#### **§ 1476.7 Payment rate and cranberry farm unit payment.**

(a) Payments under this part may be made to a cranberry farm unit only up to 1,600,000 pounds of 1999 cranberries produced in the United States. A payment rate will be determined after the conclusion of the application period, and shall be calculated by dividing the total available program funds for the Cranberry Market Loss Assistance Payment Program by the total 1999 eligible cranberry production submitted and approved for payment.

(b) Each cranberry farm unit payment will be calculated by multiplying the

payment rate determined in paragraph (a) of this section by the farm unit's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) After receipt of the application for payment, together with required supporting documents and the determination of the payment rate, CCC will issue payments to the applicant by electronic deposit to the applicants's account. Applicants may request that payment be made by mailed check. If a payment is not made within 30 days of the close of the announced application period, CCC will pay interest at the prompt payment interest rate.

#### **§ 1476.8 Offsets.**

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against a farm unit, a farm unit's cranberry production, or proceeds thereof, in favor of the producer or any other creditors, including agencies of the U.S. Government.

(b) Any payments received by a cranberry farm unit are not subject to administrative offsets or withholdings, including administrative offset under chapter 37 of title 31, United States Code, as provided by Public Law 106-387.

(c) The regulations governing offsets and withholdings found at 7 CFR part 1403 shall not be applicable to this part.

#### **§ 1476.9 Appeals.**

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

#### **§ 1476.10 Misrepresentation and scheme or device.**

(a) A cranberry farm unit shall be ineligible to receive assistance under this part if it is determined by the CCC to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or farm unit engaged in a misrepresentation, scheme, or device, shall be refunded to CCC, with interest together with such other sums as may become due. Any cranberry farm unit or person engaged in acts prohibited by this section and any cranberry farm unit or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

#### **§ 1476.11 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1476.12 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

#### **§ 1476.13 Maintaining records.**

Cranberry farm units making application for benefits under this part must maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this part, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the cranberry farm unit under this program. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments

received plus interest thereon, as determined by CCC.

**§ 1476.14 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this part, all payments made under this part to any cranberry farm unit shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing a cranberry farm unit's application for payment as

having an interest in the farm unit shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be applicable to refunds required of any person under this part if CCC determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the CCC for funds, from the date CCC made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(e) Any excess payments made by CCC with respect to any application under this part must be refunded.

(f) In the event that a benefit under this part was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Dated: March 9, 2001.

**James R. Little,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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