

For: State and County Offices and LSA's

Marketing Assistance Loan and LDP Violation Policies

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

7 CFR Part 1421 was published on October 11, 2002. The intended effect of this rule is to implement the legislative requirements included in the Farm Security and Rural Investment Act of 2002 (the Act) and include programmatic policy changes to existing regulations. 7 CFR subpart 1421.109 amended the violation policies.

When a producer obtains a commodity loan or requests LDP, the producer agrees to the terms and conditions when signing the applicable forms and for loans upon receiving CCC-601. If CCC determines that a producer has violated any of the terms and conditions of the marketing assistance loan or LDP program, the producer:

- is responsible for monetary amounts as specified in the applicable regulations, terms, and conditions of each applicable form
- may be assessed liquidated damages and/or other administrative actions.

B Purpose

This notice:

- informs State and County Offices of the revised violation policies about the monetary amounts due when a producer violates the marketing assistance loan terms and conditions

Note: 8-LP will be revised to include policies provided in this notice.

- obsoletes Notice LP-1929.

<p>Disposal Date</p> <p>May 1, 2004</p>	<p>Distribution</p> <p>State Offices; State Offices relay to County Offices and LSA's</p>
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2 Loan and LDP Violation Policies

A General Information

When a producer obtains a commodity marketing assistance loan, the producer agrees, in writing, not to:

- provide incorrect certification of the applicable loan quantity (incorrect certification)
- remove or dispose of a commodity that is collateral for a CCC loan without prior written approval from CCC (unauthorized removal/unauthorized disposition)
- violate the terms and conditions of CCC-601.

When COC discovers a violation, COC shall determine whether the producer acted in “good faith” or not “good faith”, according to 8-LP, Part 6.

B “Good Faith” Determinations

A producer is considered to have acted in “good faith” if 1 of the following apply:

- there is evidence to support that the producer made every effort to comply with the terms and conditions of CCC-601 and CCC’s security interest was protected
- the violation was inadvertent, accidental, or unintentional
- the actions which resulted in a violation prevented the spoilage of the commodity or was necessary to protect CCC’s security interest in the commodity.

The “good faith” determination does **not** negate the producer’s responsibility for repayment of the marketing assistance loan and fulfilling the marketing assistance loan terms and conditions.

C Administrative Actions

Any producer determined to have violated the loan or LDP terms and conditions are subject to administrative actions provided in 8-LP, subparagraph 613 A. If COC determines the producer acted in good faith when the loan or LDP violation occurred and producer has had 2 or less loan or LDP violations in the previous 24 months, COC shall demand the applicable repayment of the loan quantity involved in the violation according to paragraph 3.

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2 Loan and LDP Violation Policies (Continued)

C Administrative Actions (Continued)

If COC cannot determine the producer acted in good faith when the violation occurred or if the producer has had more than 2 loan and/or LDP violations in the previous 24 months, COC shall:

- demand payment of liquidated damages
- for loans, call the applicable loan involved in the violation and require repayment of any market gain previously realized on the loan, plus interest
- for LDP's, demand repayment of entire LDP amount plus interest.

3 Repayment Rate Applicable to Loan Quantities Involved in Violations

A Applicable Repayment Rate for Unauthorized Removal or Disposition

Determine the repayment rate according to the following table for quantities involved in unauthorized:

- removal
- disposition

COC determines...		THEN the repayment rate is...
good faith	and the producer has 2 or less violations	the lesser of: <ul style="list-style-type: none">• principal and charges plus interest• the CCC-determined value on the date the violation occurred plus 15 percent of the loan rate.
good faith cannot be determined	or the producer has more than 2 violations	principal and charges plus interest.

For loan quantity involved in unauthorized disposition or removal, the CCC-determined value will be based on the rate in effect on the date the commodity:

- was sold, if acceptable production evidence is provided
- the date the violation is discovered for fed commodities and unauthorized removal.

Note: If acceptable production evidence is not provided for commodities sold, then producer's must repay the violated loan quantity at principal plus interest.

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3 Repayment Rate Applicable to Loan Quantities Involved in Violations (Continued)

B Applicable Repayment Rate for Incorrect Certifications and Fraudulent or Erroneous Representation

Producers are required to repay:

- loan quantities affected by an incorrect certification, fraudulent, or erroneous representation at principal plus interest
- LDP amount and charges plus interest applicable to LDP quantity affected by the violation.

Note: 7 CFR Part 1421.109(e) is being corrected to reflect CCC's intended policies about incorrect certifications. Incorrect certification of loan or LDP quantities indicates the quantity was never produced or harvested; therefore a CCC-determined value cannot be established for a nonexistent commodity.

4 Implementing Revised Policies

A Revised Policy Effective Date

The revised loan and LDP violation policies became effective October 11, 2002.

B Good Faith Determination Made Before Issuing This Notice

Good faith determinations made before the date of this notice:

- for unauthorized removal or disposition, shall follow policies and procedures according to this notice.
- for incorrect certifications, shall be made in accordance with policies and procedures provided in 8-LP.

C Authority to Waive Liquidated Damages

COC's may waive any or all of the liquidated damages assessed when COC determines all of the following apply:

- violation occurred inadvertently, accidentally, or unintentionally
- violation is the producer's first offense
- producer acted in good faith.

STC's may grant relief on a case-by-case by waiving any or all of the liquidated damages determined according to 8-LP, subparagraph 614 A for **any** offense.