UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice LP-2035

For: State and County Offices, CMA's, and LSA's

Beneficial Interest Policy Clarification for Marketing Assistance Loans (MAL's) and LDP's

Approved by: Deputy Administrator, Farm Programs

1 Beneficial Interest Policy Clarification

A Background

PSD has received several questions and concerns about policy established in Notice LP-2030. Specifically, open storage, deferred price, and price later contract policy issued in amended 7 CFR Part 1421.

7 CFR Part 1421 regulation will be amended for clarification and for the changes reflected in this notice. However, this policy shall be implemented based on the date of issuance of this notice.

Notice LP-2030, subparagraph 2 A about the automatic loss of beneficial interest on the 16th calendar day of physical delivery to open storage provision is **rescinded**.

Note: A determination of whether a person has beneficial interest in a commodity is made solely by CCC in accordance with 7 CFR Part 1421.

B Purpose

This notice provides clarification about the policy established in Notice LP-2030 for open storage, deferred price, and price later contract policy. Questions and answers are provided for additional clarification in Exhibit 1.

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Disposal Date	Distribution
March 1, 2007	State Offices; State Offices relay to County Offices, CMA's, and LSA's

1 Beneficial Interest Policy Clarification (Continued)

D Contract Policy Clarification

In many cases, deferred price, forward, or price later contracts allow producers to select the sales price of the commodity at the time the contract is entered into or at a later date.

Producers under a deferred price, forward, or price later contract will be considered to have:

- beneficial interest in the commodity, if there are **no** restrictive or contradictory clauses within the contract that may cause the producer to lose beneficial interest in the commodity
- lost beneficial interest at a specific time, if the contract states that ownership or title in the commodity transfers at the time the commodity is priced, date of signing the contract, or the date the commodity is delivered.

Refer to 8-LP, paragraphs 129 through 131 for other events and clauses, but procedure is not limited to these events or clauses that may cause producers to lose beneficial interest in the commodity.

2 Beneficial Interest and Open Storage

A Definitions

<u>Approved farm storage</u> means a storage structure that is located on or off the farm, excluding public warehouses as defined in 8-LP, Exhibit 2 that provides safe storage for the commodity through the maturity date for the loan. Refer to 8-LP, subparagraph 424 A for approved farm storage policy. Storage of wool and mohair with a warehouse commissioned agent is considered approved farm storage.

<u>CCC-approved warehouse</u> means warehouses that are CCC-approved to store and handle commodities owned by CCC or commodities pledged as collateral for marketing assistance loans and can issue negotiable warehouse receipts for commodities physically delivered to the warehouse. The warehouse must be approved by KCCO and a UGRSA agreement must be in effect between CCC and the warehouseman. Refer to **http://www.fsa.usda.gov/daco/default.htm** for CCC-approved warehouses.

<u>Federally-licensed warehouse</u> means warehouses that are licensed under the United States Warehouse Act to store and issue negotiable warehouse receipts for commodities physically delivered to the warehouse on behalf of producers.

<u>Negotiable warehouse receipt</u> means a receipt which it is stated that the grain referred to thereon will be delivered to the bearer or to the order of any person named in such receipt.

<u>State-licensed warehouse</u> means warehouses licensed by State law to store and issue negotiable warehouse receipts for commodities physically delivered to the warehouse on behalf of producers.

2 Beneficial Interest and Open Storage (Continued)

A Definitions (Continued)

Unapproved/unlicensed warehouses means warehouses that are not CCC-approved; Federally; or State licensed to store and issue negotiable warehouse receipts for commodities physically delivered or stored in the warehouses; such as, but not limited to, dairy, feedlot, pit, ethanol plant, feed mill, or wool pool.

B LDP Storage Waiver

Approved storage requirements are waived for LDP's; however, all other MAL eligibility requirements **must** be met, including beneficial interest, to receive the LDP instead of MAL.

3 Open Storage Policy Clarification

A MAL and LDP Open Storage Policy

Producers who deliver commodities to a CCC-approved, Federally- or State-licensed warehouse and the commodity is placed in open storage **must** be able to receive from the warehouse a negotiable warehouse receipt or other form of acceptable production evidence, if requested. Refer to 8-LP, subparagraphs 535 C and D for acceptable types and requirements for production evidence.

For State-licensed facilities, each State FSA Office shall contact their State Department of Agriculture to obtain a copy of the State warehousing license to determine the existing State law as it relates to producers delivering commodities to open storage. The specific State law, if applicable, may dictate the time-frame of when title and ownership transfers or when a warehouse receipt can be written for commodities delivered and placed in open storage. For State FSA Offices that do **not** have a specific State law governing open storage, refer to 8-LP, paragraphs 129 through 131 for events that will cause producers to lose beneficial interest in the commodity.

Example: A producer delivers a commodity to a CCC-approved, Federally- or State-licensed warehouse. The State law specifies that after 30 calendar days of open storage the producer must decide to either:

- apply the commodity to a contract
- place the commodity into warehouse inventory that would enable the producer to obtain a warehouse receipt indicating title and control remains with the producer.

Therefore, on or after the 31^{st} calendar day, if the producer elects to store the commodity at the warehouse, the warehouse **must** be able to issue a negotiable warehouse receipt.

3 Open Storage Policy Clarification (Continued)

B Production Evidence Requirements for Open Storage

It is **not** mandatory at the time of LDP request that the producer deliver a negotiable warehouse receipt or acceptable production evidence to the FSA County Office for the commodities placed in open storage.

The producer must have the capability to obtain a negotiable warehouse receipt or provide another form of acceptable production evidence, if requested. Any other form of acceptable production evidence that is submitted **must** be certified by the warehouse that ownership or title of the delivered commodity remains with the producer.

If load summary sheets or delivery records are provided instead of negotiable warehouse receipts, the production evidence must include a certification statement from the warehouse indicating the following:

"Title and control remains with the producer and a negotiable warehouse receipt can be issued to the producer for the quantity physically delivered to the warehouse."

8-LP will be revised to include this statement as a requirement on the production evidence submitted.

4 State and County Office Action

A State Office Action

State Offices shall:

- contact the State Department of Agriculture to learn the specified time-frame for open storage
- use the specific State law, if applicable, about open storage when determining if the producer maintains beneficial interest when the commodity is delivered to open storage
- establish guidelines for when forms of acceptable production evidence is required
- ensure County Offices are consistent when requesting forms of acceptable production evidence for determining beneficial interest
- obtain a copy of your CCC-approved, State-licensed warehouses and make the lists available to the County Offices

  Note: A copy of Federally-licensed warehouses for each State can be obtained online at **http://www.fsa.usda.gov/approved_whses/uswa/approved_whses_uswa.asp**.

4 State and County Office Action (Continued)

A State Office Action (Continued)

- publicize the contents of this notice immediately to the maximum extent possible

- instruct County Offices to notify all producers of the contents of this notice using all available resources.

B County Office Action

County Offices shall:

- notify producers of the contents of this notice

- continue to follow 8-LP and this notice for assistance in determining when beneficial interest is lost

- use every available resource to inform producers and farm organizations of the beneficial interest provisions and policies for the 2006 and subsequent crop years.

If there are reasons to believe the commodity is ineligible or the facility and/or storage capacity is in question, County Offices may contact the facility operator to verify existence and delivery of the commodity and that beneficial interest remains with the producer.

Questions and Answers

Question #1: If the commodity is delivered to a Federally- or State-licensed warehouse to store grain, but the Federally- or State-licensed warehouse does not have a UGRSA, would beneficial interest be considered lost on the date of delivery?

Answer #1: No. However, the Federally- or State-licensed warehouse must be able to issue a negotiable warehouse receipt or other form of acceptable production evidence, if requested.

Question #2: Some warehouses are able to write negotiable and non-negotiable warehouse receipts. Which is required for a MAL or LDP?

Answer #2: A negotiable warehouse receipt is required for a warehouse stored MAL. For LDP's, a negotiable or non-negotiable warehouse receipt, or other form of acceptable production evidence is acceptable. Refer to 8-LP, subparagraphs 535 C and D for acceptable types of and requirements for production evidence**.**

Question #3: Are producers who deliver commodities to a warehouse where the commodity is commingled with commodities from other producers **ineligible** for LDP, if the facility is not a CCC-approved, Federally- or State-licensed warehouse?

Answer #3: No. Producers who deliver to an unapproved/unlicensed warehouse are eligible to receive an LDP based on the date of delivery. The LDP rate will based on the date of physical delivery since beneficial interest will be considered lost on that date.

A CCC-633 EZ, Page 1 must be on file in the County Office before delivery of the commodity to the unapproved/unlicensed facility. This would also apply to producers delivering to a dairy, feedlot, pit, ethanol plant, feed mill, or wool pool.

Question #4: Can a producer receive a MAL and immediately redeem with commodity certificates if the grain is delivered in an unapproved/unlicensed warehouse?

Answer #4: Yes. The producer can receive a MAL on grain delivered to an unapproved/unlicensed warehouse and immediately exchange with a commodity certificate for the outstanding loan quantity. Beneficial interest will be considered lost on the date of delivery of the commodity to the unapproved/unlicensed warehouse

Question #5: Is wool and mohair delivered to a warehouse commissioned agent eligible for MAL or LDP?

Answer #5: Yes. Wool and mohair beneficial interest policy has **not** changed. Wool and mohair that is delivered to a warehouse commissioned agent is considered approved farm storage and is eligible for MAL and LDP as provided at 8-LP, Part 15.

Questions and Answers (Continued)

Question #6: If a contract specifies that beneficial interest is lost in the commodity on the date of delivery or on a specified date, does the producer have until the date of delivery or the specified date that beneficial interest is lost to request an LDP?

Answer #6: Yes. If the contract specifies that the producer will lose beneficial interest in the commodity based on the date of delivery or a specified date, the producer **must** have a CCC-633 EZ, Page 1 on file in the County Office before the date beneficial interest is considered lost. CCC-633 EZ, Page 2, 3, or 4, as applicable, can be submitted to the FSA County Office when the LDP is requested.

Question #7: If a producer buys a field of standing corn from another producer, is the buyer of the standing corn eligible for an LDP?

Answer #7: No, if the producer only acquires the standing corn. If the producer purchases the property and title of the land transfers to the producer, the producer is eligible for an LDP. All other eligibility requirements must be met.

Question #8: Is a producer ineligible for an LDP if beneficial interest is lost before a CCC-633 EZ, Page 1 is filed?

Answer #8: Yes. The producer must file a CCC-633 EZ, Page 1 in the FSA County Office, before the loss of beneficial interest in the commodity.