USDA United States Department of Agriculture

Fact Sheet **October 2006**

Beneficial Interest Requirements for Marketing Assistance Loans and Loan Deficiency Payments (Excluding Sugar)

Overview

USDA Farm Service Agency (FSA) marketing assistance loans provide producers interim financing to store, rather than sell, their commodities when market prices are typically at harvest-time lows. Storing production facilitates more orderly commodity marketing throughout the year. More information on marketing assistance loans is available in the FSA fact sheet, *Nonrecourse Marketing Assistance Loan and Loan Deficiency Payment Program (June 2003).*

Beneficial Interest Requirements

To be eligible for a marketing assistance loan or a loan deficiency payment (LDP), producers must have beneficial interest in the commodity, in addition to other requirements. A producer retains beneficial interest when he/she maintains control of and title to the commodity.

For a marketing assistance loan, the producer must retain beneficial interest in the commodity from the time of planting through either the date the loan is redeemed or the date USDA's Commodity Credit Corporation (CCC) takes title to the commodity.

For an LDP, the producer must retain beneficial interest in the commodity from the time of planting through the date the producer files Form CCC-633EZ (page 1) in the FSA county office.

When a producer loses beneficial interest in the commodity, the commodity becomes ineligible for a loan or LDP even if the producer later regains beneficial interest. However, if the buyer rejects the commodity and returns it to the producer, the producer will regain beneficial interest and the commodity will once again become eligible for a loan or LDP.

Control of Commodity

A producer controls the commodity when he/she retains the ability to make all decisions affecting the commodity, including movement, sale and the request for and repayment of a loan or LDP.

Events Causing Loss of Beneficial Interest

Producers lose beneficial interest in a commodity when the earliest of one of the following events occurs:

- The producer obtains a payment for the commodity (without option to purchase);
- The date of the commodity invoice from the buyer;
- The commodity is loaded from farm storage bins or other bins for shipment to the buyer regardless of who pays for the delivery;
- The commodity is loaded for shipment from the warehouse to the buyer regardless of who pays for the delivery; or
- The buyer or agent receives delivery of warehouse receipts.

Commodity Title

A producer has title to the commodity if he/she has not sold or delivered the commodity, including delivering warehouse receipts.

Deceased Producers

Upon a producer's death, beneficial interest in the commodity passes to:

- The producer's estate;
- The producer's heirs; or
- A person to whom title has passed by state law.

The same terms and conditions that applied to the deceased producer apply to the new producer.

Selling Equity

If a producer receives any payment that gives the buyer a share of the commodity's equity, the commodity immediately becomes ineligible for a loan or LDP. If a producer sells any equity in the commodity after pledging it as loan collateral, CCC requires the producer to repay all principal, fees and interest.

continues ▶

Purchased Commodities

A producer who purchases or otherwise acquires a commodity from another producer does _not_ hold beneficial interest in that commodity, whether the purchase or acquisition is made before or after harvest. CCC will make an exception if, before harvest, a producer obtains title to the growing commodity and the risk of producing the commodity at the same time he/she obtains title to the land where the commodity is growing.

Option-to-purchase Contracts

An option-to-purchase is an agreement between the producer and buyer, allowing the buyer, at the buyer's option, to enter into a contract to buy the commodity at a later date. The option does not give the buyer any interest in the commodity and expires at a specified time.

If a producer enters into an option-to-purchase contract, the producer retains beneficial interest and can receive a loan or LDP payment if the following provision is written into the contract:

> Notwithstanding any other provision of this option to purchase, title and control of the commodity and beneficial interest in the commodity, as specified in [7CFR1421, -1427 or -1434, see below as applicable], shall remain with the producer until the buyer exercises this option to purchase the commodity. 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 Commodity Credit Corporation loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option.

The applicable Code of Federal Regulations references are:

- 7CFR1421 (wheat, feed grains, oilseeds, rice and farm-stored peanuts);
- 7CFR1427 (cotton); or
- 7CFR1434 (honey).

Sales Contracts and Loss of Beneficial Interest

Sales contracts (including advance sales contracts, contracts to sell, price-later contracts and contracts for future delivery) give the buyer an interest in the commodity at a time set forth in the contract or implied by law.

In many cases, deferred price, 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 later dates.

Producers under these contracts 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 until the earlier of the date payment is received or the commodity is applied in fulfillment of the contract; or
- 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.

A producer loses beneficial interest when he/she receives a payment in return for a sales contract. In addition, a producer loses beneficial interest upon signing any contract containing clauses that restrict the producer's decision to obtain a loan or LDP. Such clauses include

- The buyer requires the producer to obtain a loan or LDP; or
- The producer may obtain a loan or LDP only with the buyer's prior approval.

The producer must have sole discretion to make marketing decisions.

continues ▶

Seed Contract Producers

Seed can be pledged as loan or LDP collateral if it was produced under a contract where the buyer retains title to the seed and provides the seed to the producer. This includes contracts for hybrid and other specialty seeds. Beneficial interest is lost the earlier of the date:

- The producer receives payment for the commodity; or
- The commodity is delivered to the seed contract company.

MAL and LDP Open Storage Policy

Producers who deliver commodities to a CCC-approved federal- or state-licensed warehouse where the commodity is placed in open storage must solicit a negotiable warehouse receipt or other form of acceptable production evidence.

Unapproved Facilities

A producer loses beneficial interest and becomes ineligible for a loan or LDP on the date his/her commodity is delivered a facility that is not CCC approved, federally- or state-licensed. In addition, a producer loses beneficial interest if his/her commodity is commingled at a facility (other than an approved farm storage structure) with other producers' commodities, unless state or federal law authorizes commingling.

Producers who deliver eligible loan commodities to a CCC approved, federally- or state-licensed storage facility, such as a feedlot, feedyard, dairy, pit, poultry facility, ethanol plant or wool pool retains beneficial interest in the delivered commodity, if the storage facility is licensed to store the eligible loan commodities on behalf of the producer and can issue a warehouse receipt for the commodity delivered for storage.

Loans and LDPs Subject to CCC Determination

CCC has the right to determine producers' eligibility for a loan or LDP, based on a review of an option to purchase or sales contract involving the commodity.

For More Information

For more information about FSA and FSA programs, visit your local USDA Service Center or online at http://www.fsa.usda.gov.