


For: Cotton State and County Offices and LSA's

Cotton Policy About Beneficial Interest and Holdership of Cotton EWR's

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

It has come to PSD's attention that some State and County Offices requested domestic cotton buyers to return EWR's of purchased cotton to CCC for processing MAL gains or LDP's. These requests are:

- a violation of CCC's beneficial interest policy and regulations for cotton to be eligible for program benefits
- unauthorized interference with a commercial transaction to which CCC is not a party
- not authorized **regardless of the circumstances.**

Domestic cotton buyers (textile mills, exporters, etc) become holders of cotton EWR's by purchasing the cotton and obtaining title and control (beneficial interest) of such cotton from the producer. The holder of EWR's maintains legal title to the cotton bales. The transfer of holdership of EWR's from warehouses, through gins and other producers' agents, reflects a commercial transaction to which CCC is not a party. If the cotton is sold, the producer is not allowed to re-acquire the EWR's to obtain MAL or LDP benefits because that producer has already lost the required beneficial interest.

B Purpose

This notice instructs State and County Offices to:

- not request or permit any cotton industry entity such as a merchant, broker, or gin to transfer the holdership of cotton EWR's to CCC after beneficial interest has been lost by the producer

Note: If a State or County Office is or becomes aware of this request, the requestor shall be informed that doing so is a violation of regulations and policy.

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1 Overview (Continued)

B Purpose

- determine and collect from any cotton producer the value of any benefits received by the producer for cotton that was sold and the EWR's subsequently returned to CCC for processing of an LDP or MAL.

C Contact

State Offices shall direct questions about policy issues to Gene Rosera by either of the following:

- e-mail at gene.rosera@wdc.usda.gov
- telephone at 202-720-8481.

2 Beneficial Interest Requirements

A Regulations and Policy

Regulations at 7 CFR §1427.5(b) provide that for cotton to be eligible for MAL, the cotton must not have been sold or have been previously sold and repurchased. Beneficial interest regulations are located at 7 CFR §1427.5 (j) and 7-CN, subparagraph 100 B.

Cotton producers requesting an MAL or LDP from CCC are responsible, at the time of application, to:

- have had and continually maintained beneficial interest in the cotton at the time the MAL or LDP is requested
- make CCC the holder of cotton EWR's for all MAL's, including MAL's for which the collateral will be exchanged for a commodity certificate.

Specifically, FSA employees **shall not** act as the agent of producers by instructing any entities other than the producer about EWR holdership.

B FSA Responsibilities for Providing MAL Benefits

In providing requested MAL benefits to producers, FSA staff shall inform producers that CCC must be made the holder of EWR's for all bales for which MAL's are requested. However, it is the responsibility of the producer or the producer's agent, and not of FSA staff, to assure that holdership of EWR's by CCC occurs.

EWR holdership is governed by commercial marketing or sales agreements to which FSA staff is not a party. FSA employees must not act as an agent for the producer under these agreements. Thus, FSA employees are **prohibited** from requesting gins, brokers, or merchants to change EWR holdership for any bales. This prohibition applies even if producer/agent miscommunications result in loss or reduction of MAL benefits.

FSA State and County Offices shall **not** take actions to reverse or correct actions taken by producers or their marketing agents with respect to MAL's or LDP's.

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2 Beneficial Interest Requirements (Continued)

B FSA Responsibilities for Providing MAL/LDP Benefits (Continued)

FSA shall avoid miscommunications about beneficial interest by:

- informing the producer of program requirements such as EWR holdership
- **not** requesting an entity other than the producer to change the holdership of an EWR on behalf of the producer
- **not** compensating for actions of the producer/producer's agent that result in a loss or reduction of MAL/LDP benefits or loss of beneficial interest.

Note: Specifically, if MAL or LDP benefits are lost or potentially lost because a producer or producer's agent failed to timely make CCC the holder of cotton EWR's, then FSA staff shall not take any action to reverse or correct actions taken by the producer or producer's agent.

C Routine Actions

State and County Offices shall:

- inform producers, gins, and warehouses about CCC's requirements for bale information or holdership of EWR's as appropriate to process MAL or LDP requests.
- answer producers' inquiries about their payment limitation balances.

State and County Offices **shall not**:

- request entities other than the producer to make CCC the holder of cotton EWR's
- correct or reverse actions taken by producers or producers' agents that result in loss of beneficial interest or take any actions to restore lost beneficial interest so that MAL or LDP benefits can be provided
- act on behalf of producers or CCC to direct or request entities to change the holdership of cotton EWR's
- complete or maintain CCC-605 for producers.

Note: CCC-605 is a power of attorney to which CCC is not a party. Although CCC recognizes and acts upon these agent designations made by the producer, CCC does not retain or amend these forms except when they are presented by the agent of the producer in support of a loan redemption.

2 Beneficial Interest Requirements (Continued)

D Remedial Actions

State Offices shall:

- poll all cotton offices to determine:
 - whether any FSA office staff requested a buyer to return sold cotton to CCC
 - the value of cotton loan gains, gains from certificate exchanges, or LDP benefits that were provided to sold 2007 or 2008 crop year cotton for any instance wherein a cotton buyer returned sold cotton to CCC at the request of any FSA State or County Office staff member
- for any such occurrences that are known or determined to have occurred, direct the appropriate County Office to:
 - inform the producer according to 7-CN, subparagraph 302 A of the value of benefits that were improperly provided based on violation of beneficial interest regulations
 - request that the producer repay any improper loan gain, LDP, or gain from the commodity certificate exchange plus interest
 - follow procedures provided in 7-CN, paragraph 302 B if the requested payment is not received.