

**For:** State and County Offices and LSA's

**Cotton Beneficial Interest (BI) Determinations**

**Approved by:** Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

Producers must maintain uninterrupted title and control, or BI in their cotton for the cotton to be eligible at the time a marketing assistance loan (MAL) or LDP is requested. For cotton, BI determinations may be difficult because the title instrument for each bale is an electronic warehouse receipt (EWR), which is commonly held by any number of entities other than the producer. Most cotton producers are unable to directly hold or transfer their cotton EWR's because that function is reserved for participants in the EWR provider systems.

County Offices usually have no direct knowledge as to whether an entity such as a broker has bought the cotton (and BI is lost) or not (and BI is maintained), unless the producer submits a contract between the producer and broker. CCC does not consider producers to have lost BI if loan servicing agents (LSA's), cotton clerks, gins and brokers hold EWR's.

**B Purpose**

This notice advises County Offices that:

- cotton clerks, LSA's, gins or brokers may hold EWR's on behalf of producers without producers losing BI in the cotton
- producers have most likely lost BI in cotton EWR's currently or previously held by exporters or domestic users.

<b>Disposal Date</b>	<b>Distribution</b>
August 1, 2009	State Offices; State Offices relay to County Offices and LSA's

## Notice CN-1037

### 1 Overview (Continued)

#### C Contact

For questions or information about this notice, State Offices shall contact Gene Rosera, PSD, by either of the following:

- e-mail at [gene.rosera@wdc.usda.gov](mailto:gene.rosera@wdc.usda.gov)
- telephone at 202-720-8481.

### 2 Beneficial Interest Requirements

#### A Regulations

Regulations at 7 CFR 1427(e) provide that a person **must** have BI in the cotton when the cotton is tendered to CCC as collateral for MAL's or at the time of an LDP request. Because an EWR is the title document for cotton, its holdership may be used to determine whether BI has been continually maintained by the producer up to the time of loan or LDP request.

#### B Electronic Warehouse Receipt

Warehouses initially issue EWR's and the initial "current holder" on behalf of a producer is either a gin, cotton clerk, or broker. This occurs because most cotton producers are not users of EWR provider systems and do not usually sell their cotton without the marketing services of a gin or other marketing entity. For this reason, producers sign agreements with LSA's, cotton clerks, gins or brokers to sell their cotton, and arrange with the issuing warehouse to make these entities holders of the cotton EWR's. CCC does not consider the producer to have lost BI in EWR's held by the entities if the entities have not purchased the cotton.

Sometimes, the entity that initially held the EWR's on behalf of the producer may ultimately be the buyer. When the cotton is purchased by this entity, the producer loses BI. Generally, if EWR's are held by an end user of the cotton, such as a domestic mill or an exporter, the cotton is assumed by CCC to have been sold and BI to have been lost. If cotton EWR's held by an end user are submitted for loan or LDP, the County Office shall obtain the agreement/contract between the producer and end user for a BI determination.

#### C Bale Eligibility Policy

Cotton is ineligible for loan or LDP if the EWR's have been purchased under the terms of a contract **before**:

- being submitted to CCC as collateral for a MAL
- the producer applies for LDP by submitting CCC-633EZ, page 1.

**Note:** CCC does not allow a producer to regain BI **after** the cotton has been sold.

**3 State and County Office Action**

**A State Office Action**

State Offices:

- shall distribute this notice to all County Offices
- may send marketing agreements/contracts to PSD for assistance in making BI determinations.

**B County Office Action**

County Offices shall use their best judgment in making BI determinations. If a County Office is uncertain, or has reason to question whether the producer has BI in cotton for which a loan or LDP is requested, the County Office:

- shall request and review a copy of the marketing agreement/contract between the producer and marketing entity/buyer and:
  - make a BI determination based on the terms
  - if unable to make a determination, send the agreement/contract to the State Office for assistance
- may request that the producer provide certification according to 8-LP, subparagraph 131 B.

**Note:** The document currently used for certification, “Option to Purchase and Sales Certification”, is being added as a form in an upcoming 7-CN revision.

If a County Office knows that EWR’s were previously held by an exporter or domestic user (such as a textile mill or yarn manufacturer), the County Office shall consider the cotton ineligible for loan or LDP unless the terms of the marketing contract indicate otherwise.