

§ 1421.6

peas and lentils; and the U.S. Standards for Beans for chickpeas, whether or not such determinations are made on the basis of an official inspection.

(5) With regard to hull-less barley, hull-less oats, rapeseed, safflower seed, flaxseed, and sunflower seed used for a purpose other than to extract oil, the determination of eligibility will be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination may be paid by CCC. The quality requirements that are used in administering marketing assistance loans and loan deficiency payments for the oilseeds in this paragraph are available in USDA State and county FSA service centers.

(6) With regard to farm-stored peanuts, the determination of eligibility will be determined at the time of delivery to CCC by a Federal or State Inspector authorized or licensed by the Secretary.

(d) Eligible wool and mohair must:

(1) Have been produced and sheared from live sheep and goats, of domestic origin and located in the U.S. for a period of not less than 30 calendar days prior to shearing.

(2) Be of merchantable quality deemed by CCC to be suitable for loan and must have been shorn in the United States.

(e) When certifying acreage on farms in which an interest is held, the producer must provide acceptable evidence of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable for the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county FSA service center at the producer's expense, before commingling.

(f) A commodity that is purchased, substituted, or acquired by sale, gift or, exchange of an existing harvested, sheared, or slaughtered commodity, or through any other transaction is ineligible to be pledged as collateral for a marketing assistance loan; in addition a loan deficiency payment shall not be

7 CFR Ch. XIV (1-1-10 Edition)

made with respect to such commodities.

[67 FR 63511, Oct. 11, 2002, as amended at 71 FR 32422, June 6, 2006; 74 FR 15651, Apr. 7, 2009]

§ 1421.6 Beneficial interest.

(a) To be eligible to receive marketing assistance loans and loan deficiency payments, a producer must have beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or is requested for a loan deficiency payment. For the purposes of this part, the term "beneficial interest" refers to a determination by CCC that a person has title to and control of the commodity that is tendered to CCC as collateral for a marketing assistance loan or of the commodity that will be used to determine a loan deficiency payment. A determination of whether a person has beneficial interest in a commodity is made by CCC in accordance with this part and is not based upon a determination under any State law or any other regulation of a Federal agency.

(b) Except as provided in paragraph (e) of this section, when requesting a marketing assistance loan for a loan commodity, in order to have beneficial interest in the commodity tendered as collateral for the loan, a person must:

(1) Be the producer of the commodity as determined in accordance with § 1421.4;

(2) Have had ownership of the commodity from the time it was planted (with respect to wool and mohair from time of shearing) through the earlier the date the loan was repaid or the maturity date of the loan;

(3) Have control of the commodity from the time of planting (for wool and mohair from the time of shearing) through the maturity date of the loan. To have control of the commodity, such person must have complete decision-making authority regarding whether the commodity will be tendered as collateral for a loan, when the loan will be repaid, or if the collateral will be forfeited to CCC in satisfaction of the loan obligations of such person, and where the commodity will be maintained during the term of the loan;

Commodity Credit Corporation, USDA

§ 1421.6

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse authorized in accordance with §1421.103(c). Delivery of the commodity to a location other than to such an authorized warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, feed or grain bank, or other facilities as determined by CCC will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been authorized by CCC under §1421.103(c).

(c) Except as provided in paragraph (e) of this section, when requesting a loan deficiency payment for a loan commodity, in order to have beneficial interest in the commodity a person must:

(1) Be the producer of the commodity as determined in accordance with §1421.4;

(2) Have had ownership of the commodity from the time it was planted, with respect to wool and mohair from the time of shearing, or from the time of slaughter for unshorn pelts, through the date the producer has elected to determine the loan deficiency payment rate;

(3) Have control of the commodity. For control such person must have complete decisionmaking authority regarding whether a loan deficiency payment will be requested with respect to the commodity; when the loan deficiency rate will be selected; and where the commodity will be maintained prior to the date on which the loan deficiency payment rate will be determined;

(4) Not have received any payment from any party with respect to the commodity; and

(5) If the commodity has been physically delivered to a location other than a location owned or under the total control of the producer, have delivered the commodity to a warehouse authorized in accordance with §1421.103(c). Delivery of the commodity to a location other than to an authorized warehouse will result in the loss of beneficial interest in the commodity on the date of physical delivery and the producer will be considered to have lost beneficial interest as of 11:59 p.m. of such day. Accordingly, delivery of a commodity to entities such as a dairy, feedlot, ethanol plant, wool pool, feed mill, feed or grain bank, or unauthorized storage facility, will result in the loss of beneficial interest as of the date of delivery, regardless of any other action or agreement between such an entity and the producer unless such an entity has been authorized by CCC under §1421.103(c).

(d) Notwithstanding any provision of paragraphs (b) and (c) of this section and §1421.5(f), in order to facilitate handling situations involving the death of a producer, CCC will consider an estate, heirs of the deceased producer, and a person to whom title to a commodity has passed by virtue of State law upon the death of the producer to have beneficial interest in a commodity produced by the producer under the same terms and conditions that would otherwise be applicable to such producer;

(e) Notwithstanding any provision of paragraphs (b) and (c) of this section and §1421.5(f), a person who purchases or otherwise acquires a commodity from a producer under any circumstances does not obtain beneficial interest in the commodity whether such purchase or acquisition is made prior to the harvest of the crop or after harvest; however, CCC will consider a person to have beneficial interest in a commodity if, prior to harvest, such person has obtained title to the growing commodity at the same time that such person obtained full title to the land on which such crop was growing;

(f) If marketing assistance loans and loan deficiency payments are made available to producers through an approved cooperative marketing association in accordance with part 1425 of

§ 1421.6

7 CFR Ch. XIV (1–1–10 Edition)

this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved cooperative marketing association or its member approved cooperative marketing association, except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved cooperative marketing association shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

(g) A producer will lose beneficial interest in a commodity if the producer receives any payment from any person under any contractual arrangement with respect to a commodity if the person who is making the payment, or any person otherwise associated with the person making the payment, will at any time have title to the commodity or control of the commodity prior to or after harvest, shearing, or slaughter unless:

(1) Such payment is authorized in accordance with part 1425 of this chapter; or

(2) The payment is made as consideration for an option to purchase the commodity and such option contains the following language:

Notwithstanding any other provision of this option to purchase or any other contract, title and control of the commodity and beneficial interest in the commodity as specified in 7 CFR 1421.6 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 (CCC) loan that is secured by such commodity;

(2) The date CCC claims title to such commodity; or

(3) Such other date as provided in this option.

(h) Inclusion in a contract of one or more of the following types of provi-

sions will not result in the loss of beneficial interest in a commodity:

(1) A provision that allows the producer to select the sales price of the commodity at a time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred-price, forward or price later contract. The following conditions apply:

(i) Producers under a deferred-price, forward, or price later contract will lose beneficial interest in the commodity the earlier of receipt of any payment or once the commodity is applied in fulfillment of the delivery requirements of such a contract.

(ii) Beneficial interest in the commodity is retained by the producer if the contract has no restrictive or contradictory clauses within the contract that may cause the producer to lose beneficial interest in the commodity.

(2) A provision between the producer and a warehouse authorized in accordance with §1421.103(c) for the storage of CCC loan collateral that provides the producer a period of time following the date of physical delivery of the commodity to elect whether the commodity is to be stored and receipted on behalf of the producer or is to be considered transferred to the warehouse if CCC determines such a provision is required.

(i) Commodities produced under a contract in which the title to the seed remains with the entity providing the seed to the producer, including contracts for the production of hybrid seed, genetically modified commodities, and other specialty seeds as approved in writing by CCC, are eligible to be pledged as collateral for a marketing assistance loan or a loan deficiency payment may be made with respect to such production if, at the time of the request for such a loan or LDP, the producer has not:

(1) Received a payment under the contract; or

(2) Delivered the commodity to another person.

[71 FR 32422, June 2, 2006, as amended at 71 FR 51426, Aug. 30, 2006; 71 FR 60413, Oct. 13, 2006; 74 FR 15651, Apr. 7, 2009]