



Billing Code: 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA) for the Organic Certification Cost Share Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), is revising and clarifying its previous announcement of the availability of funding for fiscal years (FY) 2017 and 2018 under the Organic Certification Cost Share Program (OCCSP).

DATES: Producer and Handler Applications: The dates for FSA county offices to accept applications for OCCSP payments from producers and handlers for FY 2017 started on March 27, 2017, and ends on October 31, 2017, and for FY 2018, starts on October 1, 2017, and ends on October 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, (202) 720-7641.

SUPPLEMENTARY INFORMATION:

Revision and Clarification

On December 22, 2016, USDA published a NOFA for OCCSP (81 FR 93884-93887). That NOFA announced that the purpose of OCCSP is to provide cost share assistance to producers and handlers of agricultural products in obtaining certification under the National Organic Program (NOP) established under the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6524) and the regulations in 7 CFR part 205. FSA administers OCCSP.

In the December NOFA, USDA announced that beginning in FY 2017, transitional certification and State organic program fees would be eligible for cost share reimbursement, and that for OCCSP purposes, they would be considered two additional, separate scopes. As stated in the NOFA, transitional certification is an optional certification offered by some certifiers for producers and handlers who are in the process of transitioning land to organic production.

Upon review of OCCSP authority, FSA determined that it had erroneously announced the availability of cost-share for transitional certification, because no transitional certification programs are currently established under OFPA. Accordingly, this notice clarifies that cost-share assistance will not be available for transitional certification.

Consistent with this clarification, this NOFA provides revised information about eligible scopes for the OCCSP, allowable and unallowable costs, eligibility requirements for producers and handlers, documentation to be provided in a producer or handler's application package, provisions for grant agreements with State agencies, and the definition of "certified operation."

In addition, this NOFA provides the corrected date when the producer and applications were made available, which changed from the date announced in the December NOFA of March 20, 2017, to the actual start date of March 27, 2017, once the forms were approved for use.

Background

The purpose of OCCSP is to provide cost share assistance to producers and handlers of agricultural products in obtaining certification under NOP established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6524) and the regulations in 7 CFR part 205. The Agricultural Marketing Service (AMS) implemented OCCSP and has been running OCCSP through agreements with State agencies since FY 2008. USDA transferred authority to administer OCCSP from AMS to FSA beginning with FY 2017.

FSA accepted applications from States interested in overseeing reimbursements to their producers and handlers. In addition, all producers and handlers will have access to OCCSP through their local FSA offices. In States where State agencies provide cost share funds, producers and handlers can choose between the State agencies or the local FSA office. In addition to expanding to FSA local offices for FY 2017, OCCSP will now cover costs related to State organic program fees.

In order for a State agency to receive new fund allocations for FY 2017, it must establish a new agreement with FSA to administer OCCSP. FY 2017 agreements will include provisions allowing a State agency to request an extension of that new FY 2017 agreement to provide additional funds and allow the State agency to continue to administer OCCSP for FY 2018. FSA has not yet determined whether an additional application period will be announced for FY 2018 for State agencies that choose not to participate in FY 2017; State agencies that would like to administer OCCSP for FY 2018 are encouraged to establish an agreement for FY 2017 to ensure that they will be able to continue to participate. FSA does not anticipate substantive changes to the agreement

process with the participating States. Agreements will continue to allow subgrants to other entities.

Certified operations will be subject to the same eligibility criteria and calculation of cost share payments regardless of whether they apply for OCCSP through an FSA local office or a participating State agency. Certified operations may only receive OCCSP payment for the same scope for the same year from one source: either the State agency or FSA. FSA will coordinate with participating State agencies to ensure there are no duplicate payments. If a duplicate payment is inadvertently made, then FSA will inform the participant and require that funds be returned to CCC.

Availability of Funds

Funding for OCCSP is provided through two authorizations: National Organic Certification Cost Share Program (National OCCSP) funds and Agricultural Management Assistance (AMA) funds. Section 10004 of the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113-79) amended section 10606(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523(d)), authorizing \$11.5 million from CCC to be used for National OCCSP funds for each of FYs 2014 through 2018, to remain available until expended. National OCCSP funds will be used for cost share payments to certified operations in the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

The USDA organic regulations recognize four separate categories, or “scopes,” that must be individually inspected for organic certification: crops, livestock, wild crops,

and handling (that is, processing). A single operation may be certified under multiple scopes. For example, a certified organic vegetable farm that also has certified organic chickens and produces certified organic jams would be required to be certified for three scopes: crops, livestock, and handling. Beginning in FY 2017, State organic program fees will also be eligible for cost share reimbursement and for OCCSP purposes will be considered an additional separate scope. State organic program fees may be required by States that have established a State organic program according to 7 CFR 205.620-205.622, and are in addition to the costs of organic certification under the four scopes of USDA organic certification.

National OCCSP funds can be used to provide cost share for all four scopes of USDA organic certification (that is, crops, wild crops, livestock, and handling) and the additional scope of State organic program fees.

In addition to the National OCCSP funds, Section 1609 of the 2014 Farm Bill made a minor technical correction to the AMA authorizing language codified at 7 U.S.C. 1524, but did not change the amount authorized, which is \$1 million. The availability of the AMA funds for OCCSP is contingent upon appropriations; the AMA funds are available for FY 2017. AMA funds may be used only for cost share payments for organic certification for the three scopes of crops, wild crops, and livestock, and are specifically targeted to the following 16 States:

- Connecticut,
- Delaware,
- Hawaii,

- Maryland,
- Massachusetts,
- Maine,
- Nevada,
- New Hampshire,
- New Jersey,
- New York,
- Pennsylvania,
- Rhode Island,
- Utah,
- Vermont,
- West Virginia, and
- Wyoming.

Sequestration will apply to the total amount of funding available for OCCSP for FYs 2017 and 2018, if required by law.

Cost Share Payments

As required by law (7 U.S.C. 6523(b)), the cost share payments cannot exceed 75 percent of eligible costs incurred, up to a maximum of \$750 for each producer or handler. FSA will calculate 75 percent of the allowable costs incurred by an eligible operation, not to exceed a maximum of \$750 per certification scope. Cost share assistance will be provided for allowable costs paid by the eligible operation during the same FY for which the OCCSP payment is being requested. Cost share assistance will be provided on a first come, first served basis, until all available funds are obligated for each FY. Applications received after all funds are obligated will not be paid. Allowable costs include:

- Application fees;
- Inspection fees, including travel costs and per diem for organic inspectors;
- USDA organic certification costs, including fees necessary to access international markets with which AMS has equivalency agreements or arrangements;
- State organic program fees;
- User fees or sale assessments; and
- Postage.

Unallowable costs include:

- Inspections due to violations of USDA organic regulations or violations of State organic program requirements;
- Costs related to non-USDA organic certifications;

- Costs associated with or incidental to transitional certification;
- Costs related to any other labeling program;
- Materials, supplies, and equipment;
- Late fees;
- Membership fees; and
- Consultant fees.

Eligible Producers and Handlers

To be eligible for OCCSP payments, a producer or handler must both:

- Possess USDA organic certification at the time of application; and
- Have paid fees or expenses related to its initial certification or renewal of its certification from a certifying agent.

Operations with suspended, revoked, or withdrawn certifications at the time of application are ineligible for cost share reimbursement. OCCSP is open to producers and handlers in the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

How to Submit the Application

State Agencies

State agencies must have an agreement in place to participate in OCCSP. State agencies with funds remaining from an agreement from a previous FY may continue to administer OCCSP with those funds under the terms of their existing agreement. In the previous NOFA, State agencies were notified that they must complete an Application for Federal Assistance (Standard Form 424), and enter into a grant agreement with FSA to receive new fund allocations to provide cost share assistance for FY 2017. FSA accepted applications from State agencies between January 3, 2017, and February 17, 2017. Pending fund availability, applications received after February 17, 2017, may be considered.

State agencies that have submitted applications for FY 2017 do not need to resubmit their applications. All grant agreements between FSA and State agencies for FY 2017 will include revised terms and conditions consistent with the clarification in this NOFA that cost-share assistance will not be made available for transitional certification.

Agreements for FY 2017 will include provisions to allow modification of the agreement to also cover a period of performance for FY 2018. At this time, FSA has not determined whether an additional application period will be announced for FY 2018 for State agencies that do not establish an agreement to administer OCCSP for FY 2017.

Producers and Handlers

Certified operations may apply for OCCSP payments through FSA local offices or through a State agency (or authorized subgrantee) if their State has established an agreement to administer OCCSP. For a producer or handler to apply for OCCSP through FSA, each applicant must submit a complete application, either in person or by mail, to

any FSA county office. Additional options for producers or handlers to submit their application may be available at <https://www.fsa.usda.gov/programs-and-services/occsp>.

A complete application includes the following documentation:

- Form CCC-884 – Organic Certification Cost Share Program, available online at <https://www.fsa.usda.gov/programs-and-services/occsp> or at any FSA county office;
- Proof of USDA organic certification;
- Itemized invoice showing expenses paid to a third-party certifying agency for certification services during the FY in which the application is submitted; and
- An AD-2047, if not previously provided.

Producers or handlers may be required to provide additional documentation to FSA if necessary to verify eligibility or issue payment.

FSA's application period began on March 27, 2017, for FY 2017 and will begin on October 1, 2017, for FY 2018. Both application periods end on October 31 of their respective years, or when there is no more available funding, whichever comes first.

Participating State agencies will establish their own application process and deadlines for producers and handlers, as specified in their grant agreements, and eligible operations must submit an application package according to the instructions provided by the State agency. A list of participating States will be available at <https://www.fsa.usda.gov/programs-and-services/occsp> after their agreements with FSA to administer OCCSP are finalized.

Definitions

For this NOFA, new or revised definitions include the following:

“State agency” means the agency, commission, or department of a State government, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, or the Commonwealth of the Northern Marian Islands, authorized by the State to administer OCCSP.

“USDA organic certification” means a determination made by a certifying agent that a production or handling operation is in compliance with Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) and the regulations in 7 CFR part 205, which is documented by a certificate of organic operation.

The following definitions from the regulations of 7 CFR 205.2 also apply to this NOFA: “certified operation,” “certifying agent,” “crop,” “handler,” “inspection,” “inspector,” “labeling,” “livestock,” “organic,” “organic production,” “processing,” “producer,” “State certifying agent,” “State organic program,” and “wild crop.”

Participating State Agency Reporting Requirements

Twice a year, each participating State agency must provide FSA with a Federal Financial Report (form SF-425) along with a spreadsheet of Operations Reimbursed, listing the producers and handlers receiving cost share payments within the reporting period. The semi-annual reports are due to FSA on May 30 and November 30 of each year. Once a year, each participating State agency will need to provide FSA with a

narrative report to describe program activities and any sub-recipients. The annual reports are due to FSA on November 30 of each year.

Other Provisions

Persons and legal entities who file an application with FSA have the right to an administrative review of any FSA adverse decision with respect to the application under the appeals procedures at 7 CFR parts 780 and 11. FSA program requirements and determinations that are not in response to, or result from, an individual disputable set of facts in an individual participant's application for assistance are not matters that can be appealed.

A producer or handler may file an application with an FSA county office after the OCCSP application deadline, and in such case the application will be considered a request to waive the deadline. The Deputy Administrator has the discretion and authority to consider the case and waive or modify application deadlines and other requirements or program provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of OCCSP. Although applicants have a right to a decision on whether they filed applications by the deadline or not, applicants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion to consider the request will not be considered an adverse decision and is, by itself, not appealable.

Any person or legal entity who applies to a State agency is subject to review rights afforded by the State agency.

Participating State agencies that are dissatisfied with any FSA decision relative to a State agency agreement may seek review for programs governed by Federal contracting laws and regulations.

The regulations governing offsets and withholdings in 7 CFR part 1403 apply to OCCSP payments. Any participant entitled to an OCCSP payment may assign such payment(s) in accordance with the regulations in 7 CFR part 1404.

Awards to State agencies will be subject to 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Paperwork Reduction Act Requirements

The information collection request for OCCSP have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for the approval is 0560-0289. There were no public comments submitted for the information collection request.

Catalog of Federal Domestic Assistance

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.171, Organic Certification Cost share Program (OCCSP).

Environmental Review

The environmental impacts of this NOFA have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). As previously stated, since FY 2008 USDA implemented OCCSP through AMS via agreements with State agencies. To make OCCSP more accessible by using FSA county offices as a sign-up option for applicants, USDA shifted jurisdiction of OCCSP from AMS to FSA. FSA is now administering and coordinating OCCSP through agreements with interested States, and also now provides cost share payments directly to eligible producers and handlers for eligible expenses. The general scope of OCCSP, as implemented previously by AMS, is unchanged.

The purpose of OCCSP is to provide cost share assistance to producers and handlers of agricultural products in obtaining USDA organic certification. FSA's jurisdiction over OCCSP and the minor, discretionary changes to OCCSP (that is, two options for payment receipt: from a State, or from FSA) are administrative in nature. The discretionary aspects of OCCSP (for example, program eligibility, calculation of cost share payments, etc.) were effectively designed by AMS and are not proposed to be substantively changed. As such, the Categorical Exclusions in 7 CFR part 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii) (that is, financial assistance to supplement income). No Extraordinary Circumstances (7 CFR 799.33) exist. As such, FSA has determined that this NOFA does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will

not prepare an environmental assessment or environmental impact statement for this regulatory action.

Chris P. Beyerhelm,
Acting Administrator,
Farm Service Agency, and
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 2017-10521 Filed: 5/22/2017 8:45 am; Publication Date: 5/23/2017]