United States Department of Agriculture

Farm and Foreign Agricultural Services

Marketing and Regulatory Programs

Farm Service Agency

Agricultural Marketing Service

1400 Indep. Ave, SW
Washington, DC
20250-0522

INFORMATION MEMORANDUM FOR THE SECRETARY

TO:	Thomas J. Vilsack Secretary	
THROUGH:	Alexis Taylor Deputy Under Secretary FFAS	Ed Avalos Under Secretary MRP
FROM:	Val Dolcini Administrator	Elanor Starmer Administrator

SUBJECT: Organic Certification Cost Share Program

ISSUE

The Agricultural Marketing Service (AMS) and the Farm Service Agency (FSA) recommend the transfer of administration of the organic certification cost share programs from AMS to FSA, using a Secretarial delegation of authority. AMS and FSA agree that this transfer will improve direct outreach to customers and increase operational efficiencies, facilitating higher participation in the program. This memorandum outlines the legal, budgetary and stakeholder considerations related to such a transfer.

BACKGROUND

Current Status

AMS' Transportation and Marketing Program currently administers the Organic Certification Cost Share Program (OCCSP) and the Agricultural Management Assistance (AMA) Program, which reimburse organic producers and processors each year for up to 75% of organic certification fees, with a maximum reimbursement of $750. AMS administers the programs through State departments of agriculture – AMS requests annual applications from interested States, and organic producers and processors then apply to States for reimbursement. Currently, 49 States and a few territories participate in OCCSP; and 16 States, which are identified by Congress, participate in AMA.

Cost share reimbursement is distributed on a first-come, first-served basis. Available funds significantly exceed applications, and under current management, we expect that to continue through the Farm Bill expiration in 2018. Currently, $12.5 million is available annually from two funding streams: $11.5 million from the Farm Bill (Section 10004(c)), and $1 million from the Federal Crop Insurance Act (7 U.S.C. 1524). Farm Bill funds are no-year funds, so the unspent surplus accumulates through 2018. At the end of FY15, $4.6 million of the $11.5 million remained. Despite significant outreach, AMS and the States have not attracted enough demand from organic entities to expend the available funds. AMS estimates that fewer than half of organic operations in the U.S. currently participate in the program.

Proposal for FSA Administration

FSA proposes to administer the program through county offices, with state-level oversight. By administering the program directly, USDA could leverage FSA's field-based structure, streamline the process, and increase efficiencies. Currently, State-level implementation varies widely: Utah has never participated, whereas Maine reimburses about 95% of organic farms, ranches, and processors. Each State has a slightly different application process. FSA could offer the program nationwide for the first time, while also providing clear, consistent procedures to all organic producers and handlers. FSA is exploring the option of collaborating with State agencies as well.

Importantly, managing organic cost share would support FSA's ongoing efforts to develop a more diverse customer base and serve as a key resource for organic producers. OGC has confirmed that USDA has the legal authority to execute this change, and to utilize cost share funds to support effective administration and outreach. Both the Farm and Foreign Agricultural Services and Marketing and Regulatory Programs mission areas support this proposal.

Benefits of Proposed Change

FSA's State and county office structure will increase program oversight and outreach potential. By making applications available at field offices, USDA could reach more farmers locally, increase enrollment, and utilize more available funds. The organic cost-share reimbursement process is similar to existing FSA programs, and its eligibility requirements are actually simpler than many of FSA's established programs. FSA administration of organic cost share also fits well with the goals of Bridges to Opportunity and the Organic Working Group. It would bring more organic producers into FSA offices, where they could access other valuable resources. AMS would partner with FSA to support outreach, and initial implementation.

Status of Addressing Challenges Associated with the Proposed Change

AMS and FSA have discussed the administrative challenges involved in a potential transfer, and worked with the General Counsel and agency/departmental budget staff to resolve legal, budgetary, logistical, stakeholder and personnel issues. The attached appendix summarizes those challenges and status of addressing them.

RECOMMENDATION

AMS and FSA, having worked closely together to address internal and external challenges, have determined that the benefits of this transfer far outweigh the risks. We recommend transferring administration of the Organic Certification Cost Share Programs from AMS to FSA through a Secretarial Memorandum. If you concur with this recommendation, please sign the attached Secretarial Memorandum. If you have questions or concerns, we are available to discuss those further at your convenience.

Delegation authority

The Office of the General Counsel has stated that the Secretary has the legal authority to delegate authority to FSA to implement the cost share programs. The OCCSP was first established in the 2002 Farm Bill, which stated,

> "The Secretary of Agriculture (acting through the Agricultural Marketing Service) shall establish a national organic certification cost-share program to assist producers . . . ." Pub. L. 107-171, sec. 10606, codified at 7 USC 6523(a).

The AMS Administrator has been delegated authority to run the program at 7 CFR 2.79(a)(8)(lxiv). OGC does not view the "acting through" language as an impediment to FSA taking on responsibility for the program's implementation. Giving the phrase, "shall establish" its plain meaning, the Secretary has carried out the statute's requirement that the program be established through AMS and the program may now be administered through an agency other than AMS, through a Secretary's Memorandum that transfers the program from AMS to FSA. The Secretary's Memorandum would be followed by a published delegation of authority to FSA.

Budget

FSA has been instructed in the past to avoid using CCC funds for salaries and expenses due to a limitation on expenditures under section 11 of the CCC Charter Act. But in this case, whether it is AMS or FSA running the cost-share program, General Provision (GP) 711 of the 2016 Appropriations Act expressly permits CCC funds to be used for S&E "without regard to" the section 11 cap. Under GP 711, the organic cost-share program falls outside of the cap because it was amended by the 2014 Farm Bill (see P.L. 113-79, section 10004) and because the program is appropriated a definite amount each year ($11.5 million) through 2018. The relevant language is as follows:

> "Sec. 711. In the case of each program established or amended by the Agricultural Act of 2014 (Public Law 113-79), other than by title I or subtitle A of title III of such Act, or programs for which indefinite amounts were provided in that Act, that is authorized or required to be carried out using funds of the Commodity Credit Corporation--
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> (1) such funds shall be available for salaries and related administrative expenses, including technical assistance, associated with the implementation of the program, without regard to the limitation on the total amount of allotments and fund transfers contained in section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i); and
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> (2) the use of such funds for such purpose shall not be considered to be a fund transfer or allotment for purposes of applying the limitation on the total amount of allotments and fund transfers contained in such section."

The cost share statutes are silent on the amount of program funds that are allowed for administrative costs. AMS currently takes 4% of program funds for USDA administration and State agriculture departments receive 10% of funds for program administration. FSA will conduct an internal analysis of the cost of administering both the OCCSP and the AMA, and its impact on workload in the field, using the 4 – 10% range as a guideline, to ensure sufficient availability of resources and good stewardship of taxpayer dollars.

Transfer of Personnel and Cooperative Agreements

One employee currently oversees the organic certification cost share programs. AMS and FSA plan to move the position to FSA's Farm Programs, where the programs will be housed. This will likely be accomplished first through a temporary detail, followed by a structural reorganization package (1010) to effectuate the transfer of this position.

AMS and FSA have also explored the impact of the transfer on the existing grant agreements between AMS and state departments of agriculture. FSA will likely offer cooperative agreements to state departments of agriculture interested in continuing to assist in implementing the OCCSP and AMA. OGC opined that the transfer of the program to FSA will not have any automatic impact on the existing agreements, nor must AMS cancel the agreements. The authority to award these agreements resides in the statute that establishes the program (given its express purpose of assistance to producers and handlers and its requirement that the Secretary pay a Federal share of certification costs). When the program is transferred to FSA via Secretary's Memorandum, the authority to administer existing agreements, and award new ones, will also transfer to FSA. OGC recommends executing bilateral modifications for each grant agreement in which all of the necessary edits are made to the grant and FSA and the states serve as signatories.

Stakeholder Interests

Some organic stakeholders are unfamiliar with FSA. AMS and FSA are working closely with stakeholder groups to build trust, and feedback is increasingly positive. Both agencies have met with NASDA and organic certifiers, and an informational session was held with the National Sustainable Agriculture Coalition and the Organic Trade Association (OTA) at USDA on April 28, 2016. The stakeholder session was positive and provided constructive feedback for FSA engagement with the organic sector.

Some groups are concerned that the change will be perceived negatively by some in Congress. However, USDA notified authorizers and appropriations of the possibility of this transfer and has not received negative feedback. In fact, OTA worked with select Congressional offices to instruct USDA to expand the program to cover transitional certification and California State Organic Program fees. Interested stakeholders include: State departments of agriculture, organic certifiers, the National Sustainable Agriculture Coalition, the National Organic Coalition, the Organic Farming Research Foundation, and the Organic Trade Association.