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DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0007]

Notice of Funding Availability (NOFA) for the Rice Production Program

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Notification of funding availability.

SUMMARY: The Farm Service Agency (FSA) is announcing the availability of funding for the Rice Production Program (RPP) to provide financial assistance to rice producers affected by higher production costs during the 2022 crop year. RPP will provide a one-time payment to assist rice producers with additional expenses associated with the 2022 crop year costs for rice. In this document, FSA is providing the eligibility requirements, application process, and payment calculation for RPP.

DATES:

Funding availability: Implementation will begin May 10, 2023.

Applications due date: We will accept applications for assistance through July 10, 2023.

FOR FURTHER INFORMATION CONTACT:

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alison.groenwoldt@usda.gov.

Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) (the CAA, 2023), appropriated \$250 million of rescinded

unobligated balances from the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), to the Secretary to provide financial assistance to rice producers through RPP. In accordance with section 602 of the CAA, 2023, RPP will provide a one-time payment to assist eligible rice producers with additional expenses associated with 2022 crop production costs for rice. The payment will be issued in two parts that will constitute the 1-time payment authorized in the CAA, 2023, in order to implement the requirement that the funding be fully expended without exceeding available funding.

The \$250 million funding for RPP assistance will remain available until expended and RPP payments will be subject to the availability of funding.

Under the authority for RPP, the payment rate per pound is as determined by the Secretary and shall be not less than 2 cents per pound unless there is a need to adjust the payment rate such that the amount of funding made available for RPP is fully expended. A payment rate at or above 2 cents per pound is expected to exceed the available funding. To ensure total payments do not exceed available funding, FSA will make an initial payment to eligible applicants at a payment rate of 1 cent per pound. Any remaining funding available at the conclusion of the application period, will be issued in a second payment to eligible applicants at a payment rate determined by the Secretary such that the funding available for RPP is fully expended, taking into account necessary reserves. Payments will be calculated based on information certified on the FSA–174.

Administration

RPP will be administered under the general supervision of the FSA Deputy Administrator for Farms Programs (Deputy Administrator). RPP will be carried out by FSA State and county committees with instructions issued by the Deputy Administrator.

FSA State committees, FSA county committees, representatives, and their employees do not have authority to modify or waive any of the provisions of RPP, except as discussed below.

The FSA State committee will take any required action not taken by the FSA county committee. The FSA State committee will also:

- Correct or require correction of an action taken by an FSA county committee that is not in compliance with this document; or
- Require an FSA county committee to not take an action or implement a decision that is not in compliance with this document.

The Deputy Administrator or a designee may determine any question arising under RPP or reverse or modify a determination made by an FSA State committee or FSA county committee.

The Deputy Administrator may authorize FSA State committees and FSA county committees to waive or modify non-statutory deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of RPP.

A representative of FSA may execute applications and related documents only under the terms and conditions determined and announced by FSA. Any document not executed under such terms and conditions, including any purported execution before the date authorized by FSA, will be null and void.

Definitions

The following definitions apply to RPP.

Application period means the period starting on May 10, 2023 and ending on July 10, 2023 during which time applicants may apply for RPP payments.

Actual Production History (APH) means the average actual production history for the primary policyholder as calculated by the Risk Management Agency (RMA). For RPP purposes, Substantial Beneficial Interest holders will be assigned an average APH using the primary policy holders APH and the APH from their individual policies, if applicable.

Average Adjusted Gross Farm Income means the average of the portion of the person or legal entity's adjusted gross income derived from farming, ranching, or forestry operations for the 3 taxable years preceding the most immediately preceding complete taxable year. The relevant tax years are 2018, 2019, and 2020.

If the resulting average adjusted gross farm income derived from items 1 through 12 of the definition of income derived from farming, ranching and forestry operations is at least 66.66 percent of the average adjusted gross

income of the person or legal entity, then the average adjusted gross farm income may also take into consideration income or benefits derived from the following:

- (1) The sale of equipment to conduct farm, ranch, or forestry operations; and
- (2) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

Crop year means the 12-month period following a crop's normal harvest period.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture, or their designee.

Deputy Administrator Established Yield means a national average yield, as determined by the Deputy Administrator to be used when APH data is not available. The national average yield is a weighted average yield using FSA eligible rice acres and state average APH data. The Deputy Administrator established yield is 7,694 pounds.

Eligible rice means short, medium, and long grain rice, including temperate japonica and sweet rice. Industrial rice and wild rice are not eligible to receive a RPP payment.

Eligible rice acres means eligible rice reported by the acreage reporting deadline as being planted or prevented from being planted for the 2022 crop year.

Income derived from farming, ranching, and forestry operations means income of an individual or entity derived from:

- (1) Production of crops, specialty crops, and unfinished raw forestry products;
- (2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;
- (3) Production of farm-based renewable energy;
- (4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;
- (5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;
- (6) Processing, packing, storing, and transportation of farm, ranch, forestry commodities including renewable energy;
- (7) Feeding, rearing, or finishing of livestock;
- (8) Payments of benefits, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(9) Sale of land that has been used for agricultural purposes;

(10) Payments and benefits authorized under any program made available and applicable to payment eligibility and payment limitation rules;

(11) Income reported on Internal Revenue Service (IRS) Schedule F or other schedule used by the person or legal entity to report income from such operations to the IRS;

(12) Wages or dividends received from a closely held corporation, and Interest Charge Domestic International Sales Corporation (IC-DISC) or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, or forestry activities as defined in this document; and

(13) Any other activity related to farming, ranching, and forestry, as determined by the Deputy Administrator.

Producer means a person, partnership, association, corporation, estate, trust, or other legal entity that produces rice as a landowner, landlord, tenant, or sharecropper.

United States means all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Eligible Applicants

To be eligible for RPP, a producer must have reported to FSA a share interest in eligible rice by the acreage reporting deadline. Late-filed or modified rice acreage reports will not be eligible for RPP. In addition, the applicant must meet one of the following:

- Be a citizen of the United States;
- Be a resident alien, which for purposes of this subpart means "lawful alien" as defined in 7 CFR part 1400;
- Be a partnership organized under State law;
- Be a corporation, limited liability company, or other organizational structure organized under State law; or
- Be an Indian Tribe or Tribal organization, as defined in Section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Application Process

FSA will accept applications during the application period. FSA will pre-populate the Rice Production Program (RPP) Application (form FSA-174) using acreage data and ownership shares reported to the FSA and APH data on file with RMA or, if APH data is not available, the Deputy

Administrator established yield. The pre-populated form will be mailed to producers at the start of the application period.

To apply for RPP, applicants must return a completed FSA-174 to their recording FSA county office by the close of the application period. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA.

Producers who reported eligible rice to FSA by the acreage reporting deadline according to 7 CFR 718.102, Acreage Reports, but do not receive a pre-populated form may still apply for RPP by visiting their recording FSA county office by close of the application period and completing an FSA-174.

Each applicant must submit the following forms in person or by mail, email, or facsimile, or other methods announced by FSA, if not already on file with FSA, within 60 days of the application deadline:

- Form AD-2047, Customer Data Worksheet, for existing customers who need to update their customer profile;
- Form CCC-901, Member Information for Legal Entities, if applicable;
- Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- Form FSA-510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to the person or legal entity's certification, for a legal entity and all members of that entity, for the 2022 program year, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400, if applicable; and
- Form AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, for the RPP applicant and applicable affiliates as provided in 7 CFR part 12.

Applicants may be required to provide additional documentation to FSA if requested, to verify the accuracy of information provided on the application. Additional documentation must be submitted within 30 calendar days from the requested date or the application will not be processed. Additional information may include, but is not limited to:

- The producer's APH; and
- Evidence, such as seed receipts, custom harvesting receipts, or sales receipts to substantiate the reported share interest in the eligible rice.

Initial RPP payment will be issued after an application is reviewed and eligibility requirements are met. At the

conclusion of the application period, a second payment will be issued to eligible applicants using a payment rate determined by the Secretary such that the funding available for RPP is fully expended, taking into account necessary reserves.

Payment Rates and Calculations

Consistent with section 602(b) of CAA, 2023, the RPP payment will be calculated as described in this section.

Producers will certify on the FSA-174 the producer's share of eligible rice acres and APH, or if APH data is not available, the use of the Deputy Administrator established yield.

FSA will determine an eligible producer's RPP payment by adding the calculated payment for planted acres and the calculated payment for prevented planted acres, which are each calculated as follows:

- For planted acres, the producer's share of planted eligible rice acres multiplied by APH or, if APH data is not available, the Deputy Administrator established yield, multiplied by the payment rate; and
- For prevented planted acres, the producer's share of prevented planted eligible rice acres multiplied by APH or, if APH data is not available, the Deputy Administrator established yield, multiplied by the payment rate, which is then multiplied by a prevented planting factor of 60 percent.

For example, a producer reported 200 acres of planted rice and 100 acres of prevented planted rice for the 2022 crop year, and the producer has an APH of 7,500 pounds per acre. For the initial payment, FSA multiplies $\$0.01 \times 7,500 \times$ the sum of adding 200 planted acres plus 60 percent $\times$ 100 prevented planted acres, resulting in the total initial payment of \$19,500.

RPP payments are subject to availability of funds. To ensure total payments do not exceed available funding, FSA will make an initial payment to eligible applicants at a payment rate of 1 cent per pound. Any remaining funding available at the conclusion of the application period, will be issued in a second payment to eligible applicants at a payment rate determined by the Secretary such that the funding available for RPP is fully expended, taking into account necessary reserves.

Sharing Payments Between Multiple Producers

Each producer reporting a share interest of eligible rice to the FSA on a Report of Acreage (FSA-578) will be given the opportunity to apply for RPP and the RPP payment will be calculated

based on the producer's reported ownership share. If a farm's acres of rice are leased on a share basis, neither the landlord nor the tenant can receive 100 percent of RPP payment for the producers with an ownership share on the farm, as the RPP payment is to be distributed proportionately to the producers according to the landlord's and tenant's share of the eligible rice as reported to FSA on the FSA-578.

FSA will approve an application for shared RPP payments to applicants when all the following, as applicable, have been determined to have occurred:

- (1) Landlords, tenants, and sharecroppers each sign their own RPP application and agree to the eligible rice acres recorded on the application, which when added together cannot exceed 100 percent of the eligible rice acres recorded on the FSA-578 for the 2022 crop year;

- (2) Upon request from the FSA county committee, if necessary, provide a copy of the lease agreement; and

- (3) FSA determines that the payment shares do not circumvent either the provisions of this document or the provisions of 7 CFR part 1400.

Payment Limitation and Attribution

As required by the CAA, 2023, and consistent with 7 CFR 760.1507(b), the payment limitation for RPP is determined by the producer's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, if the producer's average adjusted gross farm income is less than 75 percent of the producer's average adjusted gross income (AGI) for the 3 taxable years preceding the most immediately preceding complete tax year, a producer, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in payments for RPP.

If at least 75 percent of the producer's average AGI is derived from farming, ranching, or forestry related activities and the producer provides the required certification and documentation, as discussed below, the producer, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to \$250,000 in payments for RPP.

The relevant tax years for establishing a producer's average AGI and percentage derived from farming, ranching, or forestry related activities are 2018, 2019, and 2020 for program year 2022.

To receive more than \$125,000 in RPP payments, producers must submit form FSA-510, accompanied by a certification from a certified public

accountant or attorney as to the percentage of that person or legal entity's certified average AGI that was derived from farming, ranching, or forestry operations. If a producer requesting the increased payment limitation is a legal entity, all members of that entity must also complete form FSA-510 and provide the required certification according to the direct attribution provisions in 7 CFR 1400.105, Attribution of Payments. If a legal entity would be eligible for the increased payment limitation based on the legal entity's average AGI derived from farming, ranching, or forestry related activities but a member of that legal entity either does not complete a form FSA-510 and provide the required certification or is not eligible for the increased payment limitation, the payment to the legal entity will be reduced by the payment limitation applicable to the share of the RPP payment attributed to that member.

If a producer files form FSA-510 and the accompanying certification after their RPP payment is issued but before the application period, FSA will process the form FSA-510 and issue an additional payment if the producer's initial payment amount was limited by the \$125,000 payment limitation.

A payment made to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility. Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as described in § 760.1906.

Like other programs administered by FSA, payments made to an Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), will not be subject to payment limitation.

Provisions Requiring Refund to FSA

In the event any application for an RPP payment resulted from erroneous information or miscalculation, the participant must refund any excess payment to FSA with interest to be calculated from the date of the disbursement to the participant. If, for whatever reason, FSA determines that the applicant misrepresented the information provided, the application will be disapproved and the full RPP payment will be required to be refunded to FSA with interest from the date of disbursement.

Miscellaneous Provisions

General requirements that apply to other FSA-administered commodity programs also apply to RPP, including compliance with the provisions of 7 CFR part 12, “Highly Erodible Land and Wetland Conservation,” and the provisions of 7 CFR 718.6, which address ineligibility for benefits for offenses involving controlled substances. Appeal regulations in 7 CFR parts 11 and 780 and equitable relief and finality provisions in 7 CFR part 718, subpart D, apply to determinations under RPP.

Participants are required to retain documentation in support of their application for 3 years after the date of approval. Participants receiving an RPP payment must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the participant’s business and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

Applicants have a right to a decision in response to their application. If an applicant files a late RPP application, the application will be considered a request to waive the deadline.

The Deputy Administrator has the authority to waive or modify application deadlines and other requirements or program provisions not specified in law in cases where the Deputy Administrator determines it is (1) equitable to do so and (2) where the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of RPP.

Applicants who request to waive or modify RPP provisions do not have a right to a decision on the requests, and the Deputy Administrator’s refusal to exercise discretion on requests to waive or modify RPP provisions will not be considered an adverse decision and is, by itself, not appealable.

The regulations governing offsets in 7 CFR part 3 apply to RPP payments.

In either applying for or participating in RPP, or both, the applicant is subject to laws against perjury (including but not limited to 18 U.S.C. 1621). If the applicant willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the applicant knows or believes not to be true, during either applying for or participating in RPP, or both, then the applicant may be found to be guilty of perjury. Except as otherwise provided by law, if guilty of

perjury the applicant may be fined, imprisoned for not more than 5 years, or both, regardless of whether the applicant makes such verbal or written declaration, certification, statement, or verification within or outside the United States.

Paperwork Reduction Act Requirements

In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under the control number of 0503–0028. FSA will collect the information from the rice producers to qualify for the payment to cover the higher production costs. RPP is a one-time funding as described in this NOFA.

Environmental Review

The environmental impacts 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).

The purpose of RPP is to provide a one-time payment to assist rice producers with the increased production costs for rice from the 2022 crop year. The limited discretionary aspects of RPP do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the Categorical Exclusions in 7 CFR 799.31(b)(6)(iii) that applies to price support programs.

No Extraordinary Circumstances (7 CFR 799.33) exist. FSA has determined that this action does not constitute major Federal actions 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 and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing,¹ to which this document applies is 10.976, Rice Production Program (RPP).

¹ See <https://sam.gov/content/assistance-listings>.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: OAC@usda.gov.

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Zach Ducheneaux,

Administrator, Farm Service Agency.

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