

**Billing Code 3410-05-P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**Notice of Funds Availability (NOFA); Cotton Ginning Cost-Share Program (CGCS)**

**Payments to Cotton Producers**

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

**ACTION:** Notice.

**SUMMARY:** This NOFA announces the availability of cost-share funds to certain cotton producers of the United States, specifically for the 2016 cotton crop. Eligible CGCS participants will receive a one-time payment, calculated based on a cost-share not to exceed 20 percent of calculated ginning costs by region, the number of cotton acres that were planted, including failed acreage, for the 2016 crop year, and the percentage of share the participant had in such cotton. Similar to other Commodity Credit Corporation (CCC) programs, certain eligibility requirements apply, such as a \$40,000 per individual or entity payment limit and a requirement that each participant's 3-year average adjusted gross income (AGI) be \$900,000 or less. CGCS payments will be made to help the domestic cotton industry find new and improved ways to market cotton.

**DATES:** Application period: March 12, 2018, through May 11, 2018.

**FOR FURTHER INFORMATION CONTACT:** Kelly Hereth, (202) 720-0448.

**SUPPLEMENTARY INFORMATION:**

**Background**

U.S. upland and extra-long staple (ELS) cotton producers are required to gin and bale cotton before either of the components of cotton (lint or seed) can be marketed, as

there is no commerce in un-ginned bales. Approximately 17 million bales of cotton in the United States were ginned for the 2016 cotton crop year. There exists, however, 2016 cotton production carryover (ginned cotton inventory that has not yet been sold) of 2.75 million bales at the end of the 2016 marketing year (July 31, 2017). Additionally, the 2017 cotton crop production is projected to exceed 21 million bales (a production increase of 23 percent over crop year 2016), the majority of which has not been marketed. While the payments under CGCS are based on ginning costs, the intended effect of CGCS is to aid the broader marketing chain associated with cotton. For example, there is a direct cost to cotton producers associated with ginning for improved bale packing and storage to meet the ever increasing quality demands of the fiber industry, and there is a large domestic market for the cotton seed extracted during the ginning process.

The state of the market has limited the ability of U.S. cotton producers to expand domestic markets, develop new and additional markets, maintain existing markets and marketing facilities, and increase the uses for cotton. The CCC Charter Act (15 U.S.C. 714c(e)) includes authority for CCC to use its general powers to increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

The ginning of cotton is necessary prior to marketing the lint for fiber or the seed for oil or feed; therefore CCC is using its general authority to aid in the expansion and maintenance of domestic markets for cotton. Increased domestic consumption and uses for cotton as a result of the CGCS payments to cotton producers, based on cotton ginning

costs, will aid more than just the farmers; as the cotton gins, cooperatives, marketers, cottonseed crushers, and other marketing facilities will indirectly benefit also.

CGCS is being done as a NOFA, as opposed to a regulation, because it is a one-time payment based on the 2016 cotton crop to aid expansion and creation of new markets for cotton. The Farm Service Agency (FSA) has designed CGCS to have a simplified, streamlined application process in order to provide assistance as quickly as possible to cotton producers by using 2016 cotton crop acres, which are already known to FSA through previously submitted acreage reports. CGCS does not affect the ability to submit, or allow a producer or owner to submit, additional or revised acreage reports for 2016. Accordingly, there is no benefit for public comment on CGCS.

FSA will administer CGCS on behalf of CCC, using CCC funds.

### **CGCS Description**

CGCS is a one-time payment to cotton producers based on the 2016 cotton crop already on file with the agency. CGCS will be available to producers of upland and ELS cotton. CGCS payments will be available to those cotton producers who had a share in the 2016 cotton acres that were planted, including failed cotton acreage, and reported to FSA. Landowners who had a share interest, share in the cotton crop, and incurred ginning costs for the 2016 cotton crop are considered eligible for the 2016 CGCS, provided all other eligibility requirements are met.

Based on 2016 acreage reports and the CGCS payment rates established by this NOFA, FSA will make approximately \$220 million in CGCS payments to eligible cotton producers. The maximum aggregate payment amount a person or legal entity is eligible

for under CGCS is \$40,000. The funds announced in this NOFA are not subject to sequestration.

All 2016 cotton crop producers have already submitted the required form FSA-578, "Report of Acreage," to FSA, as part of their participation in various FSA and CCC programs. The regulation in 7 CFR part 718 requires producers to report to FSA their acreage for various commodities, including the number of cotton acres that were planted, including failed acres, but not prevented planted acres, in the United States for their 2016 cotton crop and their percentage share of the reported 2016 cotton crop acreage.

Accordingly, FSA has already acquired this information relevant to the operation of CGCS as previously reported to FSA on a FSA-578 or a crop acreage report to their crop insurance agent (both reports are referred to in this NOFA as the acreage report). If there were any errors in the previously submitted acreage report, the producer may go through the established FSA process to correct the reported information. Any such requests for correction are subject to review and require approval by FSA through the established process before they are accepted. Because FSA already possesses 2016 cotton acreage report and producer share data, FSA knows who is potentially eligible to apply for CGCS, and FSA will mail pre-filled applications to such applicants. Applicants may also apply through a FSA county office.

### **Payment Limits, Eligible Persons, and Legal Entities**

CGCS payments are limited to \$40,000 per person or legal entity.

A person or legal entity is ineligible for payments if the person's or legal entity's AGI for the applicable compliance program year is more than \$900,000. If a person with

an indirect interest in a legal entity has AGI of more than \$900,000, the CGCS payments subject to AGI compliance provisions to the legal entity will be reduced as calculated based on the percent interest of the person in the legal entity receiving the payment. The relevant years used to calculate AGI for 2016 CGCS are the 2012, 2013, and 2014 tax years. As with other FSA and CCC programs, AGI will be calculated based on the average income for the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested.

In addition to having a share in cotton planted in 2016, to be eligible for a CGCS payment, each applicant is required to be a person or legal entity who was actively engaged in farming in 2016 and otherwise eligible for payment, as specified in 7 CFR part 1400, and who complies with requirements including, but not limited to, those pertaining to highly erodible land conservation and wetland conservation provisions (commonly referred to as the conservation compliance provisions) specified in 7 CFR part 12.

Foreign persons are not eligible for payments. Federal, State, and local governments are not eligible for CGCS payments.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. 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.

**Payment Calculation**

The CGCS payment will be calculated as follows:

$$\text{acres} \times \text{share} \times \text{CGCS payment rate}$$

Acres are the number of 2016 cotton crop acres (both upland and ELS) in which the applicant had an interest, as reported on their acreage report as planted (including failed acres, but not prevented planted acres).

Share is the producer’s or landowner’s share of such acres.

As shown in Table 1, the CGCS payment rate is 20 percent times the ginning cost. The ginning cost is the calculated average cost of ginning per acre in the production region. The applicable production region includes several States in which the 2016 cotton crop (upland and ELS cotton) was planted (not where the farm operation is located). There are four production regions, consistent with the U.S. cotton industry’s longstanding designation. The per-acre regional rates are defined in Table 1. Cotton acreage planted in 2016 in any state not listed in Table 1, will receive the regional rate based on where the 2016 cotton acres are located, as determined by the Deputy Administrator.

Table 1. Cotton Production Regions

Region	States	Costs of Ginning per Acre	CGCS Payment Rate <sup>1</sup>
Southeast.....	Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia.....	\$116.05	\$23.21
Mid-South.....	Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, Tennessee.....	\$151.97	\$30.39
Southwest.....	Kansas, Oklahoma, Texas.....	\$98.26	\$19.65
West.....	Arizona, California, New Mexico.....	\$240.11	\$48.02

<sup>1</sup>The CGCS payment rate is 20 percent times the regional rate.

To develop the costs in Table 1, FSA used the USDA Economic Research Service's calculation of cotton ginning costs, which is based on the Agricultural Resource Management Survey (ARMS). The data is based on a large survey of cotton producers in 2007 and 2015 and was updated through 2016 using several indices that reflect annual changes in ginning costs. The per planted acre ginning costs were converted to regional averages weighted by each State's share of regional plantings during the most recent 5 years (2012-2016). In the ARMS data, no distinction is made between ginning costs for upland and ELS cotton, therefore the same rate will be applied to both varieties of cotton.

For example, an applicant has 1,000 acres of upland cotton located in Texas and 1,000 acres of ELS cotton in New Mexico, and the applicant has 100 percent interest in all of the cotton reported for 2016 for the farm. Even though the farm operation is located in Texas, the applicable CGCS payment rate is based on where the cotton is planted. Therefore, for the acres located in Texas the CGCS payment rate is \$19.65, and for the cotton acreage located in New Mexico, the CGCS payment rate is \$48.02 (as shown in Table 1). Therefore, the result of the CGCS calculation would be \$67,670 ((1,000 cotton acres in Texas x \$19.65 per acre x 100 percent share) + (1,000 acres in New Mexico x \$48.02 x 100 percent share)), but the CGCS payment to this applicant would be reduced to \$40,000 because the CGCS payment limit is \$40,000 per person or legal entity.

### **Application and Eligible Applicants**

To apply for CGCS, each applicant must submit a complete valid CGCS application (CCC-882 form) to their recording FSA county office either in person, by

mail, or by electronic means, including email and facsimile. The application period is from March 12, 2018, through May 11, 2018. CGCS applications must be received by FSA by May 11, 2018, in order to be eligible for a CGCS payment. Applicants may revise their application and re-submit it to FSA during the application period; however, the revised CGCS application must be received by FSA by May 11, 2018. Any application received by FSA after May 11, 2018, will neither be processed nor considered and will be ineligible for any CGCS payment. FSA will pre-fill the application, which will include, but is not limited to, the number of 2016 planted acres, including failed acres, of cotton (upland and ELS cotton) on the farm as previously reported by the producer on form FSA-578, the farm serial number, and tract number of the farm where the cotton acreage was reported as of **[Insert date of publication in the FEDERAL REGISTER]**. The applicant will be required to sign and date the pre-filled form. If FSA decides it is necessary to confirm the applicant's share interest in the 2016 cotton crop, the applicant will be required to submit evidence upon request, such as seed receipts, custom harvesting receipts, or bale gin lists, to substantiate either the claimed share interest in the cotton or the number of cotton acres reported for the 2016 crop year.

In order to be eligible for CGCS, applicants are required to have reported their 2016 crop year planted cotton, including failed acreage, to FSA using the FSA-578 acreage report. Only the number of cotton acres reported on the FSA-578 acreage report and the producer's share in the planted, including failed, cotton acreage for the 2016 crop year will be eligible for consideration for a CGCS payment. In the event that there are determined acres of planted, including failed, cotton (upland and ELS cotton) crop acreage for 2016, as verified by FSA in carrying out acreage reporting compliance



activities, then determined acres will be used in place of the reported acres from the acreage report. (Standard FSA acreage report compliance activities include verifying the number of reported acres; the results are referred to as “determined acres.”)

The applicant’s share interest in cotton acres on a CGCS application cannot be greater than the share interest in cotton acres as reported on the acreage report. FSA will verify and confirm the applicant’s share interest in cotton acres reported on the CGCS application by comparing it to the applicant’s share interest in the cotton as reported on that farm’s acreage report for the 2016 crop year. For example, if a farm has 50 acres of cotton and the acreage was reported with two producers each having an equal 50 percent share interest in those reported acres of cotton, each producer can file a CGCS application for 50 acres of cotton with a 50 percent share.

As noted above, if there are any corrections required for acreage reports, they may be made, however corrections related to upland or ELS cotton acres or shares must be received by FSA by May 11, 2018, the CGCS application deadline, in order for any corrected acreage to be used to calculate the CGCS payment. Any correction to 2016 cotton crop acres made to the acreage report after May 11, 2018, is not eligible to be considered for CGCS.

### **Process for Evaluation of CGCS Applications and Approval of Payments**

FSA will review each CCC-882 application to determine eligibility by verifying that the application is complete and the number of cotton acres the applicant certified on the application for the 2016 crop year is the same as reported on the FSA-578 acreage report.

When there are multiple eligible applicants for a farm, FSA will approve each application that is filed for the CGCS when all the following, as applicable, occur or have been determined to have occurred:

- 1) The landlord, tenant, and sharecropper have signed and submitted their own CGCS application not to exceed their reported share interest in cotton acres on the farm;
- 2) CCC confirms the shares are consistent with the acreage report to protect the interests of tenants and sharecroppers and at no time will payments be issued for total shares exceeding 100 percent of the total cotton acres reported on the farm, and where lease agreements exist under which terms are determined to be a share lease, according to 7 CFR part 1412, for cotton, neither the landlord, tenant, nor sharecropper will receive 100 percent of CGCS payment for the farm;
- 3) If determined necessary and requested by the FSA county office committee, the applicant provided a copy of the lease agreement; and
- 4) CCC determines that the payment shares do not circumvent either the provisions of this NOFA or the provisions of 7 CFR part 1400.

The result of an approved application will be a CGCS payment, consistent with the terms specified in this NOFA and the payment application. All applications are subject to the approval by FSA on behalf of CCC, and FSA will not approve ineligible applications.

### **Provisions Requiring Refund to FSA**

In the event that any application for a CGCS payment resulted from erroneous information or a miscalculation, the payment will be recalculated and 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 either the acreage or share of cotton acreage or both, or if the CGCS payment would exceed the participant's payment based upon correct acreage and share, the application will be disapproved and the full CGCS payment for that crop and participant will be required to be refunded to FSA with interest from the date of disbursement. If any corrections to the 2016 cotton crop acres or shares are made to the acreage report and would have resulted in a lower CGCS payment, the applicant will be required to refund the difference with interest from date of disbursement.

The liability of anyone for any penalty or sanction resulting from a CGCS application, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. §§286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. §714; and 31 U.S.C. § 3729.

### **Paperwork Reduction Act Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), OMB approved an emergency information collection request on CGCS for 6 months under OMB control number of 0560-0287 so FSA can begin the application period upon publication of this NOFA.

## **Environmental Review**

Because this is a one-time payment for commodities that is not connected to the management of existing operations (consistent with 7 CFR 799.31(b)(6)(iii)), there are no measurable individual or cumulative impacts to the human environment, as defined by the National Environmental Policy Act and, as such, no Environmental Assessment or Environmental Impact Statement will be prepared. Consistent with the nature and anticipated impacts of this action, this NOFA 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 Catalog of Federal Domestic Assistance, to which this NOFA applies is:

10.118 Cotton Ginning Cost Share Program.

Steven J. Peterson,  
Acting Administrator,  
Farm Service Agency, and  
Executive Vice President,  
Commodity Credit Corporation.