

**BILLING CODE 3410-05-P**

**DEPARTMENT OF AGRICULTURE**

**Office of the Secretary**

**7 CFR Part 9**

**[Docket ID: FSA-2020-0006]**

**RIN 0503-AA65**

**Coronavirus Food Assistance Program; Additional Assistance**

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Coronavirus Food Assistance Program (CFAP) provides assistance to agricultural producers impacted by the effects of the COVID-19 outbreak. The Secretary of Agriculture implemented CFAP through two rounds of payments (CFAP 1 and CFAP 2). This rule amends the CFAP 1 provisions to provide additional assistance for swine and cattle producers who previously applied for assistance during the CFAP 1 application period. This rule also amends the CFAP 2 provisions to provide assistance for contract producers of chickens, eggs, turkeys, and swine; clarify eligible sales-based commodities; add additional commodities that are eligible for payment; change the payment calculation for sales-based commodities; and change the yield used to calculate payment for price-trigger crops for certain applicants. Some of the changes to CFAP are being made in response to the recently enacted , Consolidated Appropriations Act, 2021which provides additional funding and makes several changes to CFAP. Other changes to CFAP in this rule are discretionary changes being made in response to ongoing evaluation of CFAP and the ability to provide additional assistance, where needed.

**DATES:** Effective [Insert date of publication in the *FEDERAL REGISTER*].

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**SUPPLEMENTARY INFORMATION:**

**Background**

USDA established CFAP to assist producers of agricultural commodities marketed in 2020 who face continuing market disruptions, reduced farm-level prices, and increased production and marketing costs due to COVID-19 under authority provided by the Coronavirus Aid, and (e) of the sections 5(b), (d), and (CARES Act; Pub. L. 116–136) Relief, and Economic Security Act Commodity Credit Corporation Charter Act (15U.S.C. 714c(b), (d), and (e)). USDA implemented CFAP through two rounds of payments (CFAP 1 and CFAP 2). CFAP 1 was implemented through a final rule published in the *Federal Register* on May 21, 2020 (85 FR 30825–30835), with corrections published in the *Federal Register* on June 12, 2020 (85 FR 35799–35800), July 10, 2020 (85 FR 41328–41330), August 14, 2020 (85 FR 49593–49594), and September 21, 2020 (85 FR 59174–59175), and documents published in the *Federal Register* on May 22, 2020 (85 FR 31062–31065), June 12, 2020 (85 FR 35812), July 10, 2020 (85 FR 41321–41323), and August 14, 2020 (85 FR 49589–49593). USDA implemented CFAP 2 through a final rule published in the *Federal Register* on September 22, 2020 (85 FR 59380–59388).

The Consolidated Appropriations Act, 2021 (Pub. L. 116-), signed on December 27, 2020, provided additional funding and made several changes to CFAP. This rule implements the provisions of the Consolidated Appropriations Act, 2021, to provide assistance to contract poultry and livestock producers and to amend the payment calculation for sales commodities as described below.<sup>1</sup> Other changes to CFAP in this rule are discretionary changes being made in response to ongoing evaluation of CFAP and the ability to provide additional assistance, where needed.

CFAP is administered by USDA's Farm Service Agency (FSA). FSA accepted CFAP 1 applications from May 26, 2020, through September 11, 2020,<sup>2</sup> and CFAP 2 applications from September 21, 2020, through December 11, 2020. This rule amends the provisions for CFAP 1 and CFAP 2 as described below.

## **CFAP 1**

For eligible producers of cattle, hogs and pigs, CFAP 1 provided financial assistance in an amount equal to the sum of the following two calculations:

- Unpriced livestock sold between January 15, 2020, to April 15, 2020, multiplied by the applicable Coronavirus Aid, Relief, and Economic Stability Act (CARES Act) payment rate in 7 CFR 9.102; and
- Livestock inventory owned between April 16, 2020, to May 14, 2020, multiplied by the applicable Commodity Credit Corporation (CCC) payment rate in § 9.102.

<sup>1</sup>Other changes to CFAP included in the Consolidated Appropriations Act, 2021, will be addressed in a subsequent rulemaking.

<sup>2</sup>Certain producers in Louisiana, Oregon, and Texas had through October 9 to apply due to natural disasters.

This rule provides additional CFAP 1 payments for livestock inventory owned between April 16, 2020, and May 14, 2020, based on a rate of \$33 per head for all categories of cattle (which results in a total CFAP 1 payment rate of \$66 per head for that inventory, including the prior \$33 per head payment for CFAP 1), and for hogs and pigs based on a rate of \$17 per head (which results in a total CFAP 1 payment rate of \$34 per head for that inventory including the prior \$17 per head payment for CFAP 1). The additional payments will be made subject to the availability of funds and will be factored, if needed. For the cattle and swine (hog and pig) sectors, there was a large difference in CFAP 1 rates between the first quarter sales loss rates (CARES Act funded) and the inventory payment rates (that were set based on expected second and third quarter sales) funded from CCC. The livestock inventory payment rates were determined to be insufficient to alleviate ongoing market price losses in the sector.

This additional assistance is also intended to help cattle and swine producers who face continuing market disruptions from changes in U.S. meat consumption due to the pandemic. These disruptions are reflected in futures prices. Generic live cattle futures prices at the end of November 2020 were 11.5 percent lower than on January 2, 2020, and generic lean hog futures prices were 5.4 percent lower. In contrast, futures prices for commodities such as soybeans and corn have been increasing in the second half of 2020 to levels above those in early January.

FSA is not reopening the CFAP 1 application period. Only producers who previously applied for CFAP 1 are eligible to receive this additional assistance. Eligible producers do not need to submit a new CFAP 1 application form or take any action to receive the additional payment. Producers are subject to a payment limitation of

\$250,000 for all CFAP 1 payments,<sup>3</sup> including this additional assistance, as provided in § 9.7(e).

## **CFAP 2**

In this final rule, USDA is also including certain producers that raise swine and poultry (including broilers, pullets, layers, chicken eggs, and turkeys) under a production contract that sustained increased costs or losses, including revenue losses, due to market disruptions and reduced harvesting facility output resulting from the COVID-19 outbreak. A swine or poultry contract producer is one who produces swine or poultry owned by someone else under a production contract. Not all production contracts operate the same way, so not all contract producers will be eligible. Only those producers who grow or produce an eligible commodity under contract for or on behalf of another person or entity and are not entitled to a share from sales proceeds of the commodity are eligible. For example, a farmer who raises chickens pursuant to a production contract where such chickens are owned by a company that produces chicken products could be an eligible contract grower if such farmer does not receive payment for chickens that die before reaching maturity or when young animals are not supplied to the farmer by the company, or whose income is reduced when fewer young animals than normal are provided by the company. The authorizes the Secretary to use up to \$1 Consolidated Appropriations Act, 2021 billion to provide assistance to ending on December 27, 2020, and 80 percent of revenue losses for the period beginning on January up to contract producers to cover livestock and poultry .

<sup>3</sup>Corporations, limited liability companies, limited partnerships, trusts, and estates may qualify for an increased CFAP 1 payment limitation. See 7 CFR 9.7(e).

The COVID-19 global pandemic not only disrupted protein markets as consumer consumption abruptly shifted from food service to home preparation, but also reduced harvesting facility output because of COVID-19 outbreaks among the workforce and when facilities reduced processing capacity to ensure worker health. Swine and poultry contract producers provided data and other information to USDA to illustrate the impact of these coronavirus disruptions on their operations. The impacts of slowdowns and shutdowns at processing facilities in late spring and early summer are still being felt in the poultry and swine industry. In some instances, companies managed and continue to manage the lack of harvest capacity by reducing or eliminating new production, which means that contract producers had fewer animals to produce under contract per cycle or did not have young animals delivered by the company for some periods. In other situations, companies required some contract producers to keep animals longer than they typically keep them before shipping them to the harvesting facility, which actions increased costs such as producer labor, and for additional wear and tear and water use associated with larger animals. In addition, swine and poultry contract producers cannot use their specialized growing facilities for other purposes to generate revenue as the sector works through the supply chain bottlenecks.

Contract producers are eligible for payments if they produced broilers, pullets, layers, chicken eggs, turkeys, or swine under a contract in both the 2019 and 2020 calendar years, received eligible revenue under such a contract during the 2020 calendar year, suffered at least a 5 percent loss in eligible revenue for the 2020 calendar year as compared to the 2019 calendar year, and meet all other requirements for CFAP

eligibility. Eligible revenue is the revenue received by a contract producer for contract production of the eligible commodity, as reported on Internal Revenue Service Form 1099. Payments to eligible contract producers will be calculated by subtracting the contract producer's 2020 eligible revenue from their 2019 eligible revenue, and multiplying the result by 80 percent. Contract producers must submit a complete CFAP 2 application between January 11, 2021, and February 12, 2021. Contract producers are subject to a payment limitation of \$250,000 for all CFAP 2 payments,<sup>4</sup> including any CFAP 2 payments received for other commodities not grown under a contract, as provided in § 9.7(e).

USDA has determined that producers of pullets, water buffalo, yak, and turfgrass sod face continuing market disruptions, low farm-level prices, and significant marketing costs associated with the COVID-19 outbreak, similar to producers of commodities that were previously determined to be eligible for CFAP 2 assistance. As a result, USDA is amending the definitions of “Other livestock” and “Sales-based commodities” in § 9.201 to include those commodities. USDA will reopen signup specifically for pullets, turfgrass sod, and contract growers on January 11, 2021, through February 12, 2021. The change to accept applications for water buffalo and yak was previously implemented by USDA; therefore, the deadline is not extended for those livestock types. USDA is also amending the definition of “Other livestock” to clarify that reptiles and bees are ineligible.

This rule also amends the definition of “Other livestock” in § 9.201 to clarify that by-products of live animals included as “Other livestock” are eligible for CFAP 2. As

<sup>4</sup>Corporations, limited liability companies, limited partnerships, trusts, and estates may qualify for an increased CFAP 2 payment limitation. See 7 CFR 9.7(e).

provided in § 9.203(i)(1), the payment calculation for sales-based commodities is based on sales of raw commodities; the portion of sales derived from adding value to the commodity, such as processing and packaging, is not included when calculating a payment. For example, sales of alpaca fleece would be included for payment calculation; however, if the alpaca fleece is further processed into alpaca yarn prior to sale, the portion of the sale price derived from that processing is not included. Eligible by-products of other livestock do not include eggs that are sold to be hatched for breeding stock. This change was previously implemented by USDA; therefore, the deadline is not extended for by-products of “Other livestock.”

USDA is amending the payment calculation for sales-based commodities to include the amount of crop insurance indemnities and Noninsured Crop Disaster Assistance Program (NAP) and Wildfires and Hurricanes Indemnity Program Plus (WHIP+) payments for sales commodities that were or would have been marketed in 2019 in addition to the amount of the producer’s 2019 sales, as required by the Consolidated Appropriations Act, 2021. CFAP 2 uses a producer’s 2019 sales as an approximation of the amount of what the producer would expect to market in 2020. USDA is including crop insurance indemnities and NAP and WHIP+ payments in the payment calculation for sales-based commodities in order to more accurately represent what a producer would expect to have marketed in 2020 by taking into account commodities that would have been marketed in 2019 if not for losses covered by crop insurance or NAP. For producers who began farming in 2020 and had no sales in 2019, CFAP 2 payments will continue to be based on the farmer’s actual 2020 sales, without inclusion of crop insurance indemnities or NAP or WHIP+ payments, since payments are

based on the actual crop that incurred marketing costs and was impacted by market disruptions and low farm-level prices. Producers of eligible sales-based commodities who applied for CFAP 2 before the December 11, 2020, application deadline and received crop insurance indemnities or NAP or WHIP+ payments for crops that were or would have been marketed in 2019 may amend their CFAP 2 applications from January 11, 2021, through February 12, 2021, to include those amounts. This rule is not extending the CFAP 2 deadline for producers of sales-based commodities who did not previously apply for CFAP 2, except for producers of pullets and turfgrass sod as described above.

USDA is also amending the calculation for price-trigger commodities. As published on September 22, 2020, payments are calculated using the 2019 Agriculture Risk Coverage-County Option (ARC-CO) benchmark yield multiplied by 85 percent when FSA is unable to obtain a 2020 actual production history (APH) approved yield. This rule amends the calculation to use 100 percent of the ARC-CO benchmark yield when the applicant:

- Has coverage for the crop under an Area Risk Protection Insurance Plan, Margin Protection Plan, Stacked Income Protection Plan, Supplemental Coverage Option, or Whole-Farm Revenue Protection Plan under the Federal Crop Insurance Act (7 U.S.C. 1501-1524);
- Is a landlord of the applicable acreage and their share of the crop is insured by the tenant under a policy or plan of insurance under the Federal Crop Insurance Act;

- Is a tenant of the applicable acreage and their share of the crop is insured by the landlord under a policy or plan of insurance under the Federal Crop Insurance Act; or
- Is a joint venture and the crop is insured by one of the members under a policy or plan of insurance under the Federal Crop Insurance Act.

In these situations, FSA does not have 2020 APH approved yield for the CFAP 2 applicant because the insurance plan does not require calculation of an APH approved yield or because the record of the APH approved yield would not be associated with the CFAP 2 applicant. However, the crop was insured in these situations and using 100 percent of the ARC-CO benchmark yield is intended to treat producers with crop insurance coverage but without an available 2020 APH approved yield in a more favorable way to other producers who had crop insurance. All applicants affected by this change were previously eligible under the original rule; therefore, no action is required by those producers and no change to the application deadline is required. FSA will recalculate and issue payments based on the amended calculation.

This document also makes minor corrections to the definitions of “fruits” and “tree nuts” in § 9.201 and to the calculation in § 9.202(c). In § 9.1, it adds the applicable date that livestock must have been physically located in the United States for CFAP 2, which was inadvertently omitted from the previous final rule. These corrections do not affect administration of CFAP 2.

The changes in this document are consistent with our original intent in creating and administering CFAP 2 and are not expected to increase expected costs beyond the original approved amount.

## **Notice and Comment and Effective Date**

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs CFAP for payments to certain commodity producers and therefore falls within the benefits exemption.

The Office of Management and Budget (OMB) designated this rule as major under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been significantly impacted by the COVID-19 outbreak, which has resulted in significant declines in demand and market disruptions. USDA finds that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective upon publication in the *Federal Register*.

## **Executive Orders 12866, 13563, and 13777**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and therefore, OMB has reviewed this rule.

In general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Forces, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an on-going approach. USDA reviewed this regulation and made changes to provide better customer service. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

### **Cost Benefit Analysis Summary**

CFAP 1 and CFAP 2 assist producers of agricultural commodities marketed in 2020 who face continuing market disruptions, reduced farm-level prices, and increased production and marketing costs due to COVID-19. These additional costs are associated with declines in demand, surplus production, or disruptions to shipping patterns and marketing channels.

As mentioned above, in implementing the CFAP 1 and CFAP 2, FSA received feedback from local office staff and the agricultural industry. As a result, additional CFAP assistance and other changes are being made to provide assistance to additional

growers that suffered COVID-related revenue losses, to ensure that calculations most accurately reflect losses, and to clarify certain provisions appearing in CFAP 2.

These changes (referred to as “CFAP Additional Assistance”), along with the associated gross and net estimated outlays, are shown in Table 1 (at the end of this section). Payments for item 1 will draw on both CCC and CARES funding, as available. Payments for items 3, 4, and 5 (all payments referenced as CFAP 2 payments or modified CFAP 2 payments) draw on CCC funding that remains given CFAP 1 and CFAP 2 payments. These payments are authorized by the CCC Charter Act (section 5 (b), (d) and (e)). Item 2 (contract grower) payments use CARES Act funding that remains available from assistance provided under CFAP 1.

Estimated gross outlays for CFAP Additional Assistance are estimated at \$4.35 billion (see Table 1). After taking into account payment limitations, net outlays are estimated at \$3.14 billion. Top-up payments to beef cattle producers and swine producers account for the bulk of net outlays (79 percent of the total), followed by payments to contract swine, chicken, egg, and turkey producers (at 17 percent of the total).

FSA, which implemented CFAP 1 and 2, will start accepting CFAP Additional Assistance applications for contract producers and turfgrass sod and pullet producers on January 11, 2021. Producers who did not apply by the CFAP 1 deadline (September 11, 2020) are not eligible for the beef cattle and swine top-up payment. The other items shown in Table 1 do not require any additional application on the part of the producer.

Net payments represent benefits to producers, which is the government cost of the program. Outlays shown in Table 1 are estimated at expected maximum levels. Some

producers must take additional actions under this rule if they are interested in receiving benefits; these producers include livestock contract producers and turfgrass sod and pullet producers. These producers realize administrative costs associated with participation, which are estimated at \$3.9 million.

Table 1. Summary of CFAP Additional Assistance Regulatory Changes and Estimated Costs

Item	Gross Estimated Outlays (in billion \$)	Net Estimated Outlays (in billion \$)
Item 1—Provide a “top up” inventory payment to cattle and swine producers eligible for CFAP 1.....	\$3.43	\$2.37
Item 2—Assist contract producers of swine, chickens, eggs, and turkeys.....	\$0.62	\$0.62
Item 3—Include turfgrass sod, pullets, and by-products of live animals as “sales-based commodities” for CFAP 2 eligibility.....	\$0.21	\$0.10
Item 4—Include 2019 crop insurance indemnities and 2019 NAP payments received in 2019 to the producer’s 2019 sales to compute CFAP 2 payments.....	\$0.07	\$0.03
Item 5— Change the calculation for price-trigger commodities with respect to ARC-CO.....	\$0.02	\$0.02
Item 6— Clarify that reptiles and bees are ineligible for CFAP 2.....	No change in outlays	No change in outlays
Item 7—Make minor corrections to the definitions of “fruits” and “tree nuts” in §§ 9.201 and 9.202(c).....	No change in outlays	No change in outlays
<b>Total.....</b>	<b>\$4.35</b>	<b>\$3.14</b>

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

## **Environmental Review**

The environmental impacts of this final rule 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 because USDA will be making the payments to producers the USDA regulations for compliance with NEPA (7 CFR part 1b).

Although OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)). CFAP was designed to avoid skewing planting decisions. Producers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of what a new USDA program might look like. The discretionary aspects of CFAP (for example, determining AGI and payment limitations) were designed to be consistent with established USDA and the CCC programs and are not expected to have any impact on the human environment, as CFAP payments will only be made after the commodity has been produced. Accordingly, the following Categorical Exclusion in 7 CFR part 1b applies: 1b.3(a)(2), which applies to activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and the transfer or reprogramming of funds. As such, the implementation of and participation in CFAP do not constitute major Federal

actions that would significantly affect the quality of the human environment. Therefore, an environmental assessment or environmental impact statement for this regulatory action, will not be prepared; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the

relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about CFAP additional assistance and other issues.

### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local,

and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### **Federal Assistance Programs**

The titles and numbers of the Federal Domestic Assistance Programs found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.130—Coronavirus Food Assistance Program 1

10.132—Coronavirus Food Assistance Program 2

### **Paperwork Reduction Act**

FSA is requesting emergency approval on the additional information collection required for this rule for CFAP to provide assistance for contract producers of chickens, eggs, turkeys, and swine and to provide additional assistance for other commodities as clarified in this rule. The additional assistance for swine and cattle producers who previously applied for assistance under 0560-0297 does not require any new information collection. All of the information collection uses forms currently approved under 0560-0297.

## **E-Government Act Compliance**

USDA is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects in 7 CFR Part 9**

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

For the reasons discussed above, this final rule amends 7 CFR part 9 as follows:

## **PART 9 – CORONAVIRUS FOOD ASSISTANCE PROGRAM**

1. Revise the authority citation for part to read as follows<sup>9</sup>:

**Authority:** 15 U.S.C. 714b and 714c; Division B, Title I, Pub. L. 116-136, 134 Stat. 505; and Division N, Title VII, Pub. L. 116-###.

### **Subpart A—General Provisions**

2. In § 9.1, revise paragraphs (a)(1) and (a)(2) to read as follows:

#### **§ 9.1 Applicability and administration.**

(a) \* \* \*

- (1) For assistance under subpart B,
  - (i) On January 15, 2020, and remaining in the United States until sold, for livestock sold between January 15, 2020, and April 15, 2020; or
    - (ii) On the applicable date selected for livestock in inventory between April 16, 2020, and May 14, 2020; and
  - (2) For assistance under subpart C, on the applicable date selected for livestock in inventory between April 16, 2020, and August 31, 2020.

\* \* \* \*

3. Amend § 9.4 as follows:
  - a. In paragraph (a)(1), remove the word “and”;
  - b. Revise paragraph (a)(2);
  - c. Add paragraph (a)(3); and
  - d. In paragraph (d), remove the reference to “§ 9.202(a) or (b)” and add “§ 9.203(a) or (b)” in its place.

The revision and addition read as follows.

**§ 9.4 Time and method of application.**

(a) \* \* \*

- (2) December 11, 2020, for payments issued under § 9.203, except for applications for pullets, turfgrass sod, and contract producers; and
- (3) February 12, 2021, for payments issued under § 9.203 for applications for pullets, turfgrass sod, and contract producers.

\* \* \* \*

**Subpart C—CFAP 1**

4. Amend § 9.102 as follows:
  - a. In paragraph (c) introductory text, remove the word “two” and add the word “three” in its place;
  - b. In paragraph (c)(1), remove the word “and”;
  - c. In paragraph (c)(2), remove the period and add the word and punctuation “; and” in its place;
  - d. Add paragraph (c)(3);

- e. In paragraph (d) introductory text, remove the word “two” and add the word “three” in its place;
- f. In paragraph (d)(1), remove the word “and”;
- g. In paragraph (d)(2), remove the period and add the word and punctuation “; and” in its place;
- h. Add paragraph (d)(3).

The additions read as follows.

**§ 9.102 Calculation of payments.**

\* \* \* \*

(c) \* \* \*

(3) Cattle inventory owned between April 16, 2020, to May 14, 2020, multiplied by a payment rate of \$33 per head. This calculation is subject to the availability of funds and will be factored, if needed.

(d) \* \* \*

(3) Hog and pig inventory owned between April 16, 2020, to May 14, 2020, multiplied by a payment rate of \$17 per head. This calculation is subject to the availability of funds and will be factored, if needed.

\* \* \* \*

**Subpart C—CFAP 2**

- 5. Amend § 9.201 as follows:
  - a. Add the definitions of “Contract producer”, “Crop insurance”, and “Eligible revenue” in alphabetical order;
  - b. Revise the definition of “Fruits”;

- c. Add the definitions of “Layer” and “NAP” in alphabetical order;
- d. Revise the definition of “Other livestock”;
- e. In the definition of “Producer”, remove the second sentence;
- f. Add the definition of “Pullet” in alphabetical order;
- g. In the definition of “Sales-based commodities”, remove the words “and wool” and add the words “wool, and turfgrass sod” in their place;
- h. Revise the definition of “Tree nuts”; and
- i. Add the definition of “WHIP+” in alphabetical order.

The additions and revisions read as follows.

#### **§ 9.201 Definitions.**

\* \* \* \*

*Crop insurance* means an insurance policy reinsured by Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

*Contract producer* means a producer who grows or produces an eligible commodity under contract for or on behalf of another person or entity. The contract producer does not have ownership in the commodity and is not entitled to a share from sales proceeds of the commodity.

\* \* \* \*

*Eligible revenue* means the revenue received by a contract producer for contract production of broilers, pullets, layers, chicken eggs, turkeys, hogs, or pigs, as reported on Internal Revenue Service Form 1099.

\* \* \* \*

*Fruits* means any of the following fruits: Abiu, acerola (Barbados cherry), achachairu, antidesma, apples, apricots, aronia (chokeberry), atemoya (custard apple), avocados, bananas, blueberries, breadfruit, cacao, caimito, calabaza melon, canary melon, canary seed, caneberries, canistel, cantaloupes, carambola (star fruit), casaba melon, cherimoya (sugar apple), cherries, Chinese bitter melon, citron, citron melon, coconuts, cranberries, crenshaw melon, dates, donaqua (winter melon), durian, elderberries, figs, genip, gooseberries, grapefruit, grapes, ground cherry, guamabana (soursop), guava, guavaberry, honeyberries, honeydew, huckleberries, Israel melons, jack fruit, jujube, juneberries, kiwiberry, kiwifruit, Korean golden melon, kumquats, langsat, lemons, limequats, limes, longan, loquats, lychee, mangos, mangosteen, mayhaw berries, mesple, mulberries, nectarines, noni, olives, oranges, papaya, passion fruits, pawpaw, peaches, pears, persimmons, pineapple, pitaya (dragon fruit), plantain, plumcots, plums, pomegranates, prunes, pummelo, quinces, raisins, rambutan, sapodilla, sapote, schizandra berries, sprite melon, star gooseberry, strawberries, tangelos, tangerines, tangors, wampee, watermelon, wax jamboo fruit, and wolfberry (goji).

\* \* \* \*

*Layer* means a chicken producing table or commercial type shell eggs.

*NAP* means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and part 1437 of this title.

\* \* \* \*

*Other livestock* means any of the following livestock: Animals commercially raised for food, fur, fiber, or feathers, including alpacas, bison, buffalo, beefalo, deer,

ducks, elk, emus, geese, goats, guinea pigs, llamas, mink, ostrich, pheasants, pullets, quail, rabbits, reindeer, turkey, water buffalo, and yak. It includes by-products of those live animals (such as fleece). It excludes all equine, reptiles, bees, breeding stock (including eggs to be hatched for breeding stock), companion or comfort animals, pets, and animals raised for hunting or game purposes.

\* \* \* \*

*Pullet* means a young female chicken that has not laid an egg.

\* \* \* \*

*Tree nuts* means any of the following tree nuts: Almonds, carob, cashew, chestnuts, coffee, hazel nuts, jojoba, macadamia nuts, pecans, pine nuts, pistachios, and walnuts.

\* \* \* \*

means the *WHIP+Wildfires and Hurricanes Indemnity Program Plus (WHIP+)* under part 760, subpart O, of this title.

6. Redesignate § 9.202 as § 9.203.

7. Add new § 9.202.

The addition reads as follows.

### **§ 9.202 Eligibility.**

- (a) Producers, excluding contract producers, are eligible for payment under §9.203(a) through (i) if they meet all other requirements for eligibility under this part.
- (b) Contract producers are not eligible for payment under § 9.203(a) through (i).

Contract producers are eligible for payment under §9.203(l) if they:

(1) Produced broilers, pullets, layers, chicken eggs, turkeys, hogs, or pigs under a contract in both the 2019 and 2020 calendar years and received revenue under such a contract during the 2020 calendar year;

(2) Had at least a 5 percent loss in eligible revenue for the 2020 calendar year, as compared to the 2019 calendar year; and

(3) Meet all other requirements for eligibility under this part.

(c) Contract producers must provide a copy of their contract pursuant to which they raised an eligible commodity as specified in paragraph (b)(1) of this section and provide documentation to support the information provided on their application if requested by FSA.

8. Amend redesignated § 9.203 as follows:

a. Revise paragraph (a)(3);

b. Add paragraph (a)(4);

c. In paragraph (c), remove the words “producer multiplied” and add the words “producer, multiplied” in their place;

d. Revise paragraph (i)(1);

e. In paragraph (i)(2), remove the words “sales as” and add the words “sales, without crop insurance indemnities and NAP and WHIP+ payments, as” in their place;

f. In the heading of the first column of Table 2 to paragraph (j), add the words including parentheses “(including crop insurance indemnities and NAP and WHIP+ payments)” immediately after “2019 Sales range”; and

g. Add paragraph (l).

The additions and revision read as follows:

**§ 9.203 Calculation of payments.**

(a) \* \* \*

(3) Under paragraph (a) of this section, eligible acres include the producer's share of the determined acres, or reported acres if determined acres are not present, of the crop planted for the 2020 crop year, excluding prevented planted and experimental acres. For producers who insured acres of the crop under a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524), the yield will be the average of the producer's 2020 actual production history (APH) approved yield from all of the producer's insured acres nationwide. For producers for whom FSA is unable to obtain a 2020 APH approved yield, the yield will be:

(i) The 2019 Agriculture Risk Coverage-County Option (ARC-CO) benchmark yield if the applicant:

(A) Has coverage for the crop under an Area Risk Protection Insurance Plan, Margin Protection Plan, Stacked Income Protection Plan, Supplemental Coverage Option, or Whole-Farm Revenue Protection Plan under the Federal Crop Insurance Act;

(B) Is a landlord of the applicable acreage and their share is insured by the tenant under a policy or plan of insurance under the Federal Crop Insurance Act;

(C) Is a tenant of the applicable acreage and their share is insured by the landlord under a policy or plan of insurance under the Federal Crop Insurance Act; or

(D) Is a joint venture and the crop is insured by one of the members under a policy or plan of insurance under the Federal Crop Insurance Act; or

(ii) The 2019 Agriculture Risk Coverage-County Option (ARC-CO) benchmark yield multiplied by 85 percent for all other applicants.

(4) ARC-CO yields in paragraph (a)(3) of this section for producers growing a crop in multiple counties will be weighted based on the producer's crop acreage physically located in each county.

\* \* \* \*

(the specified range , multiplied by the payment rate for that range in Table 2 of paragraph (j) of this section. Eligible sales only includes sales of raw commodities grown by the producer; the portion of sales derived from adding value to the commodity, such as processing and packaging, and from sales of products purchased for resale is not included in the payment calculation unless determined eligible by the Secretary. within or would have been marketed in calendar year 2019 were for the sales commodities in calendar year 2019 and the producer's crop insurance indemnities and NAP and WHIP+ payments for sales commodities that sum of the amount of the producer's eligible sales the )(1)

Payments for sales commodities will be equal to the sum of the results for the following calculation for each 2019 sales range in Table 2 of paragraph (j) of this section: i

\* \* \* \*

(l) For eligible contract producers of broilers, pullets, layers, chicken eggs, turkeys, hogs, or pigs, if 2020 eligible revenue decreased by 5 percent or more compared to 2019 eligible revenue then payments will be equal to:

(1) Eligible revenue received in calendar year 2019 minus eligible revenue received in calendar year 2020, multiplied by

(2) 80 percent.

\* \* \* \*

William Northe, Under Secretary, U.S. Department of Agriculture.