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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA-2020-0004]

RIN 0503-AA65

Coronavirus Food Assistance Program

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of Agriculture is issuing this rule to implement the Coronavirus Food Assistance Program (CFAP). CFAP provides assistance to agricultural producers impacted by the effects of the COVID-19 outbreak. This rule establishes provisions for direct payments to producers of eligible commodities. This rule specifies the eligibility requirements, payment calculations, and application procedures for CFAP.

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

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SUPPLEMENTARY INFORMATION:

Background

In response to the COVID-19 outbreak, the Coronavirus Aid, Relief, and Economic Stability Act (CARES Act; Pub. L. 116-136) was enacted. Title 1 of Division B, of that Act provides:

> For an additional amount for the "Office of the Secretary", $9,500,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus by providing support for agricultural producers impacted by coronavirus, including producers of specialty crops, producers that supply local food systems, including farmers markets, restaurants, and schools, and livestock producers, including dairy producers: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

This rule implements the $9.5 billion provided under the CARES Act to support agricultural producers to prevent, prepare for, and respond to coronavirus. In addition, in accordance with 15 U.S.C. 714b, the Secretary is using funds of the Commodity Credit Corporation (CCC) to assist producers with the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities and to remove surplus commodities from normal marketing channels. At this time, the amount of CCC funds available for these purposes is limited to $6.5 billion. While section 11002 of the CARES Act provides for a $14 billion replenishment of CCC's borrowing authority, these funds will not be available to CCC until after June 2020:

> $14,000,000,000, may be used, prior to the completion of the report described in 15 U.S.C. 713a–11, to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, as reflected in the June 2020 report of its financial condition.

Taking into account these two funding sources, the Secretary has established CFAP to provide producers with financial assistance that helps offset sales losses and increased marketing costs associated with the COVID-19 pandemic. Income losses will be partially compensated under the CARES Act. CCC authorities will be used to partially compensate producers for the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities and the disposal of surplus commodities from normal marketing channels that may be currently unavailable. In order to reduce the exposure of producers to COVID-19 and to reduce the workload of USDA employees during this pandemic, one payment application and one payment will be issued by USDA to eligible producers by combining CARES Act and CCC funds.

Two principal USDA agencies will be used by the Secretary to implement CFAP, the Farm Service Agency (FSA) and the Agricultural Marketing Service (AMS). FSA will be the principal agency charged with implementing CFAP and AMS will assist FSA with respect to matters dealing with producers of specialty crops.

Generally, in order to be eligible for a payment, a producer must have suffered a 5-percent-or-greater price loss over a specified time resulting from the COVID-19 outbreak or face additional significant marketing costs for inventories. COVID-19 price losses are due to significant declines in certain types of demand. Additional marketing costs from COVID-19 are due to surplus production or to disruptions to shipping patterns and the orderly marketing of commodities. In addition, due to the COVID-19 outbreak, many farmers markets, restaurants, and schools have temporarily or permanently closed, thus causing significantly decreased demand for commodities grown by producers that are ordinarily supplied to these places. Non-specialty crops eligible for CFAP payments are malting barley, canola, corn, upland cotton, millet, oats, sorghum, soybeans, sunflowers, durum wheat, and hard red spring wheat. Payments also will be available for specialty crops (including, but not limited to almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes), dairy, cattle, lambs and yearlings, wool, and hogs and pigs. Additional eligible commodities, such as aquaculture and nursery crops (including cut flowers) will be announced in a subsequently announced Notice of Funding Availability (NOFA) issued by FSA on behalf of the Secretary; any additional commodities would also need to meet the eligibility requirements in this rule. Throughout this rule, "producer" refers to a person or legal entity who shares in the risk of producing a crop or livestock and who is entitled to a share in the crop or livestock available for marketing.

CFAP will provide eligible producers with financial assistance that helps them offset sales losses and increased marketing costs resulting from the COVID-19 pandemic. With respect to commodity and livestock losses due to price declines that occurred between mid-January 2020 and mid-April 2020 and, in the case of specialty crops, for products that were shipped but spoiled and no payment was received, CARES Act funds will be used in accordance with authority under the CARES Act. Funds available to CCC will be used as authorized by sections 5(b), (d), and (e) of the CCC Charter Act (15 U.S.C. 714c(b), (d), and (e)). These authorities will be used to partially compensate producers for on-going market disruptions and assist with the transition to a more orderly marketing system as the pandemic wanes by:

- Assisting with the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities;
- Aiding in the removal or disposition of surplus agricultural commodities; and
- Aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

USDA will track funds from the CARES Act and the CCC Charter Act separately, to ensure that the payments are consistent with each respective authority. Payment for income loss is consistent with the authority provided in the CARES Act. Payment to aid in the removal or disposition of surplus agricultural commodities and for additional marketing and production costs is consistent with the authority provided in the CCC Charter Act. All payments will be tracked by the type of funding. If a single payment includes a portion from each type of funding, USDA will track the funds separately.

Payments

Payments will be calculated using payment rates as specified in Tables 1 & 2 in the CFAP regulation in 7 CFR 9.5. USDA will make an initial payment of 80 percent of an eligible 2020 CFAP participant's calculated 2020 CFAP payment. By issuing initial payments, FSA can quickly provide assistance to those eligible participants that immediately apply for assistance while trying to ensure that 2020 CFAP payments do not exceed the $16 billion funding limit to ensure those funds are distributed equitably among all eligible producers. If funds remain available after the initial payment to eligible applicants, USDA will disburse the remainder of available funding not to exceed the $16 billion funding limit and funds may prorated if necessary. The payment rates will be applied as discussed below.

For producers of non-specialty crops, an average payment rate per unit (bushel, pound, or hundredweight) will be determined for each eligible commodity based on the decline in the weekly average of the futures prices (or weekly average of the cash prices, if futures prices are unavailable)[1] between the average for the week of January 13-17, 2020, and the average for the week of April 6-9, 2020.[2] Only the comparison between those two-week periods is used. If the decline in futures prices is 5 percent or greater between those time periods, a payment for that commodity is triggered and eligible producers are paid based on inventory held on January 15, 2020. Eligible inventory for the purpose of non-specialty crops is the lower of self-certified unpriced inventory that an eligible producer has vested ownership in as of January 15, 2020, or 50 percent of the eligible producer's 2019 production of that commodity. CARES Act funds will be used to make a payment for a producer by multiplying 50 percent of the producer's eligible inventory on January 15, 2020, by a pre-specified payment rate calculated as 50 percent of the calculated futures (or cash, if futures are unavailable) price decline. CCC funds will be used to make a payment to the producer by multiplying 50 percent of the eligible

[1]Futures market (May contracts quoted on the Chicago Board of Trade for all crops other than wheat and cotton. Wheat uses the May contract quoted on the Minneapolis Grain Exchange and upland cotton uses the May contract quoted on the Intercontinental Exchange. Canola uses the May contract on the Intercontinental Exchange in Canadian dollars, which are exchanged into U.S. dollars). The price for sorghum is calculated as 95 percent of the corn futures price, which is consistent with the multiplicative factor used by the Risk Management Agency (RMA) under the Commodity Exchange Price Provisions (CEPP). The price of durum wheat is calculated as 103.4 percent of the Hard Red Spring Wheat futures price, which is the multiplicative factor used under CEPP for Montana, North Dakota, and South Dakota. The price of sunflowers is the soybean oil price divided by two plus one cent, which is consistent with the CEPP for oil-type sunflowers. AMS data is used for other crops where futures contracts are not traded.

[2]The futures markets were closed on Friday, April 10, 2020, for Good Friday, so the weekly average futures price for the week starting on Monday, April 6, 2020, does not include Friday, April 10, 2020.

inventory by a pre-specified payment rate calculated as 55 percent of the futures (or cash, if futures are unavailable) price decline. These two separate payments will be issued as one payment to the eligible producer.

For producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) that incurred a 5-percent-or-greater reduction in sales price between the average for the week of January 13-17, 2020, and the average for the week of April 6-10, 2020, payments will be based on the producer's sales (volume) during that timeframe multiplied by a pre-specified payment rate calculated as 80 percent of the given crop's mid-January to mid-April price change. For producers of specialty crops that have been shipped from the farm by April 15, 2020, but subsequently spoiled due to loss of marketing channels, payments will be based on the volume of shipped, spoiled crops multiplied by a pre-specified payment rate expected to represent 30 percent of the crop's sales value. For producers with specialty crop shipments that have not left the farm or mature crops that were unharvested between January 15, 2020 and April 15, 2020, and which have not been and will not be sold, payments will be based on the volume of unharvested and/or unshipped crops multiplied by a pre-specified payment rate expected to represent 5.875 percent of the crop's value.

For cattle, hog and pig, and lamb and yearling producers, payments will be made using CARES Act funds by multiplying a payment rate per head—specified by species and class—by the volume of sales occurring between January 15 and April 15, 2020, by the applicable payment rate. CCC funds will be used to make a payment to the producer by multiplying a payment rate per head—specified by species—by the highest inventory number between April 16 and May 14, 2020.

For producers of wool, a single average payment rate on a clean basis per pound will be determined using the Eastern Market Indicator, as reported by AMS in the *National Wool Review*, for the weeks ending with January 17, 2020, and April 10, 2020. Only the comparison between those two-week periods is used. Producers are paid based on inventory held on January 15, 2020. Eligible inventory for the purpose of wool is the lower of self-certified unpriced inventory that an eligible producer has vested ownership in as of January 15, 2020, or 50 percent of the eligible producer's 2019 production of that commodity. CARES Act funds will be used to make a payment for a producer by multiplying 50 percent of the producer's January 15, 2020, eligible inventory, by a pre-specified payment rate calculated as 50 percent of the calculated price decline. CCC funds will be used to make a payment to the producer by multiplying 50 percent of such inventory by a pre-specified payment rate calculated as 55 percent of such price decline.

For dairy producers, payments using funding from the CARES Act will be determined by multiplying a producer's milk production for the first quarter of calendar year 2020 by a pre-specified payment rate calculated as 80 percent of the decline in prices as determined by USDA during that quarter. Payments under the CCC Charter Act will be determined by multiplying a producer's milk production for the first quarter of calendar year 2020 by a factor of 1.014 —in order to account for increased production in the second quarter of calendar year 2020—by a pre-specified payment rate calculated as 25 percent of the decline in prices as determined by USDA during the first quarter of calendar year 2020.

Payments under the CARES Act and CCC Charter Act will be issued as one payment to the producer if such producer is eligible to receive both parts, and disbursed in a combination of initial and final payments as previously described.

Producer Eligibility Requirements

To be eligible for a CFAP payment, a person or legal entity must:

1) Complete a CFAP application form and provide any required documentation (as specified in this final rule); and

2) Be a producer having a share in the eligible commodity between January 15, 2020, and April 15, 2020, or April 16, 2020, through May 14, 2020.

Average Adjusted Gross Income Limitation and Payment Limitation

CFAP payments are subject to a per person and legal entity payment limitation of $250,000. This limitation applies to the total amount of CFAP payments made with respect to all eligible commodities. Similar to the manner in which statutory payment limitations are applied in the major commodity and disaster assistance programs administered by FSA, payments will be attributed to an individual through the direct attribution process used in those programs. The total payment amount of CFAP payments attributed to an individual will be determined by taking into account the direct and indirect ownership interests of the individual in all legal entities participating in CFAP.

Unlike other FSA administered programs, special payment limitation rules will be applied to participants that are corporations, limited liability companies, and limited partnerships (corporate entities). These corporate entities may receive up to $750,000 based upon the number of shareholders (not to exceed three shareholders) who are contributing substantial labor or management with respect to the operation of the corporate entity. For a corporate entity with one such shareholder, the payment limit for the entity is $250,000; for a corporate entity with two such shareholders, the payment limit for the entity is $500,000 if at least two members contribute substantial labor or management with respect to the operation of the corporate entity; and for a corporate entity with three such shareholders, the limit is $750,000 if at least three members contribute substantial labor or management with respect to the operation of the corporate entity. If payments are calculated for a corporate entity and those payments exceed the applicable limit of $250,000, $500,000 or $750,000, the reduction will be attributed to all members of the entity to ensure that a net payment to the entity is not in excess of the applicable limitation. A corporate entity may receive more than $250,000 in CFAP payments if the applicant, under penalty of perjury, certifies that two or three members of the corporation each provide at least 400 hours of active personal management or personal active labor, in which case the corporate entity may be eligible to receive up to $500,000 or $750,000, respectively.

A person or legal entity, other than a joint venture or general partnership, is ineligible for payments if the person's or legal entity's average adjusted gross income (AGI), using the average of the adjusted gross incomes for the 2016, 2017 and 2018 tax years, is more than $900,000, unless at least 75 percent of that person's or legal entity's average AGI is derived from farming, ranching, or forestry-related activities. If at least 75 percent of the person's or legal entity's AGI is derived from farming, ranching, or forestry-related activities and the participant provides the required certification and documentation, the person or legal entity is eligible to receive CFAP payments up to the applicable payment limitation noted above. With respect to joint ventures and general partnerships, this AGI provision will be applied to each member of the joint venture and general partnership.

CFAP General Requirements

General requirements that apply to other FSA-administered commodity programs also apply to CFAP, including compliance with the provisions of 7 CFR part 12, "Highly Erodible Land and Wetland Conservation."

The regulations in 7 CFR part 1400 subpart E are applicable to foreign persons and legal entities containing members, stockholders, or partners who are foreign persons applying for CFAP. Under the subpart E regulations, in order for a foreign person to receive a CFAP payment, the person must provide land, capital, and a substantial amount of active personal labor to the farming operation. For the purposes for this rule, USDA has established that 400 hours of active personal labor or active personal management as defined in 7 CFR 1400.3 is considered a substantial contribution to the farming operation. If a legal entity is owned in whole or in part by a foreign person, then in order for the legal entity to receive a payment that is representative of the foreign person's interest in the entity, the foreign person must provide a substantial amount of active personal labor in the operation of the legal entity. Additionally, United States Federal, State, and local governments are not eligible for CFAP payments.

There is no requirement to have crop insurance coverage or coverage under the Noninsured Crop Disaster Assistance Program (NAP) for an eligible CFAP commodity to be eligible for participation in CFAP.

Appeal regulations specified in 7 CFR parts 11 and 780 apply to determinations under CFAP. The determination of matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed. Such matters of general applicability include, but are not limited to, the determination of payment rates and commodities included in CFAP.

Application Process

USDA will accept CFAP applications beginning May 26, 2020. To apply for CFAP payments, producers must submit a completed CFAP application either in person, by mail, e-mail, or facsimile to an FSA county office. If a producer who applies must submit additional documentation for eligibility, such as certifications of compliance with adjusted gross income provisions and conservation compliance activities, those additional documents and forms must be submitted no later than 60 days from the date a producer signs the application. Payments will not be made until all necessary eligibility documentation is received, and will be reduced or not issued to the individuals or members of the entity when the documentation is not submitted timely.

If supporting documentation is requested to verify the amounts specified on the application, the producer must provide records that substantiate the reported amounts. The producer's production for the commodity, which includes non-specialty crops, dairy, and specialty crops, is based on production records. The producer's inventory, which includes livestock, non-specialty crops, and wool, is based on inventory records. Examples of supporting documentation include evidence provided by the producer that is used to substantiate the amount of production or inventory reported, including copies of receipts, ledgers of income, income statements of deposit slips, veterinarian records, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, or contemporaneous diaries that are determined acceptable by USDA.

For specialty crops, FSA will process applications from producers who experienced loss due to the 5-percent-or-greater reduction in sales price. FSA will send some applications to AMS to be spot-checked prior to payment. AMS will review the applications and provide payment recommendations to FSA.

The CFAP application period will end August 28, 2020. If any supporting documentation or form is required in order to process the CFAP application and that documentation or form is not submitted to FSA within 60 days of the producer's signature date on the application, the CFAP application that had been submitted will not be processed and will not be acted on by USDA.

Provisions Requiring Refund to USDA

In the event that any application for a CFAP payment resulted from erroneous information reported by the producer, the payment will be recalculated, and the producer must refund any excess payment to USDA. If the error was the producer's error, the refund must include interest[3] to be calculated from the date of the disbursement to the producer.

If USDA determines that the producer's application misrepresented either the total amount or producer's share of the crop, head of livestock, or production, or if the CFAP payment would exceed the payment as calculated based on the correct amount of

[3]The program interest rate is based on the CCC borrowing rate in effect for the month the payment was disbursed. The CCC borrowing rate for May is 0.125 percent.

production and share, the application will be disapproved and the participant must refund to USDA all CFAP payments made to the producer with interest from the date of disbursement.

If any corrections to the ownership interest in the crop are made and would result in a lower CFAP payment, the producer must refund the difference with interest from date of disbursement.

Any required refunds must be resolved in accordance with debt settlement regulations at 7 CFR part 3.

Effective Date and Notice and Comment

The Administrative Procedure Act (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 that 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 income losses due to 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 emphasizes 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 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Further, 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, "Regulatory Planning and Review," and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Cost Benefit Analysis Summary

USDA is implementing CFAP for producers of agricultural commodities who have suffered a 5-percent-or-greater price loss due to COVID-19 and face additional significant marketing costs associated that are eligible for compensation under section 5(b), (d), and (e) of the CCC Charter Act for currently held inventories. These additional significant marketing costs are associated with lower prices given significant declines in demand, surplus production, or by disruptions to shipping patterns and the orderly marketing of commodities. Non-specialty crops eligible for CFAP payments are malting barley, canola, corn, upland cotton, millet, oats, soybeans, sorghum, sunflowers, durum wheat, and hard red spring wheat. Payments also will be available to producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) and livestock commodities (including dairy, cattle, hogs and pigs, lambs and yearlings, and wool). CFAP eligibility for certain other agricultural commodities including agricultural commodities for which sufficient information is not currently available to USDA may be announced through a NOFA. Approximately 4 percent of the CFAP budget--$637 million-- is available to provide assistance to producers of other commodities that are identified through the NOFA process.

CFAP will provide producers of agricultural commodities with financial assistance that gives them the ability to absorb sales losses and increased marketing costs associated with the COVID-19 pandemic. Producers will receive payments under the CARES Act, in the amount of $9.5 billion, to partially compensate producers for losses due to price declines that occurred between mid-January 2020 and mid-April, 2020, and for specialty crops that have been shipped from the farm by April 15th but subsequently spoiled due to loss of marketing channel. Producers will also receive payments under sections 5(b), (d), and (e) of the CCC Charter Act to partially compensate producers for $6.5 billion for on-going market disruptions and will assist with the transition to a more orderly marketing system as the COVID-19 pandemic wanes. CCC funds will assist producers with the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities and aid in the development of new and additional markets, marketing facilities, and uses for such commodities.

For producers of non-specialty crops, a single average payment rate per unit (bushel, pound, or hundredweight) will be determined for each eligible commodity based on the decline in the average of such futures price (or cash price, if futures price is unavailable) using the average of such future price for the week of January 13-17, 2020, in a comparison with the average of such future price for the week of April 6-9, 2020. If the decline of such futures price over this time frame is 5 percent or greater, a payment for that commodity is triggered and producers are paid based on unpriced inventory held on January 15, 2020. For non-specialty crops, inventory held is defined as the lower of self-certified unpriced inventory that an eligible producer has vested ownership in on January 15, 2020, or 50 percent of the eligible producer's 2019 production of that commodity. Payments made under the CARES Act will be made by multiplying 50 percent of the producer's unpriced inventory held on January 15, 2020, by 50 percent of the calculated price decline. Payments made using CCC funds will be determined by multiplying 50 percent of the unpriced inventory held on January 15, 2020, by 55 percent of the same price decline used with respect to payments made using CARES Act's funds. The producer will receive one payment consisting of funds made available under the CARES Act and the CCC Charter Act.

For producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) that realized a 5-percent-or-greater reduction in sales price between the average for the week of January 13-17, 2020, in a comparison with the average for the week of April 6-10, 2020, payments will be based on the grower's sales volume, multiplied by 80 percent of the given crop's price change between mid-January and mid-April 2020. Producers with specialty crops that have been shipped from the farm by April 15 but subsequently spoiled due to loss of marketing channel and were not paid are eligible to apply for up to 30 percent of the crop's sales value of that shipment. The 30 percent was determined assuming the field value of the crop is 60 percent of the sales value; the field value is then multiplied by a 50 percent coverage level. Producers of specialty crop shipments that did not leave the farm or mature crops that remained unharvested by April 15, 2020, are eligible to submit a loss claim for compensation of up to 5.875 percent of the crop's value. The 5.875 percent is calculated as 25 percent coverage of the average price loss across specialty crops for which data are available.[4] (That average price loss is 23.5 percent).

For dairy, cattle, hogs and pigs, and lambs and yearlings, payments will be made in a manner similar to crops—inventory (or sales) of the commodity (hundredweight or number of animals) times the payment rate per unit for the commodity (again, in a comparison of mid-January to mid-April price data). For dairy, CARES Act funds will be used to partially compensate producers for price losses from the first quarter of

[4]The price data for specialty crops was provided by AMS and represents an average of all units shipped of domestic production, whether conventional or organic. The raw data source for the prices is the AMS Market News Portal, https://www.ams.usda.gov/market-news/fruits-vegetables. The prices are for the shipping point if available, or terminal market if not. For any particular crop, shipping point and terminal market prices are not mixed. The list of crops for which AMS has data for domestic production for the time periods of interest is covered by Table 5 in the full cost benefit analysis, which is available on regulations.gov in docket FSA-2020-0004.

calendar year 2020. CCC funds will be used to partially compensate for increased marketing and adjustment costs for additional milk production in the second quarter of 2020 associated with COVID-19 disruptions to marketing channels and demand destruction. For hogs and pigs, cattle, and lambs and yearlings, payments using CARES Act funds are based on actual sales between January 15 to April 15, 2020; payments using CCC funds will be based on spring inventories.

USDA will accept CFAP applications starting on May 26, 2020, and payments to eligible producers are expected to be made once applications are processed. Total payments to eligible producers, after accounting for payment limit reductions, are estimated at $16 billion. USDA estimates that payments made using CARES Act funding will total $9.5 billion and based upon funds available to CCC on the date of issuance of this rule, will total $6.5 billion. The payments represent benefits to producers, which is the government cost of CFAP.

USDA will make an initial payment of 80 percent of an eligible 2020 CFAP participant’s calculated 2020 CFAP payment. By issuing initial payments, FSA can quickly provide assistance to those eligible participants that immediately apply for assistance while trying to ensure that 2020 CFAP payments do not exceed the $16 billion funding limit to ensure those funds are distributed equitably among all eligible producers. If funds remain available after the initial payment to eligible applicants, USDA will disburse the remainder of available funding not to exceed the $16 billion funding limit and funds may prorated if necessary.

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, Pub. L. 104-121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act 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 USDA is not required by the Administrative Procedure Act or any other law to publish a proposed rule 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), 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 1508.14). 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 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(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, individually or cumulatively. 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 affect 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 to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must 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 for compliance with 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 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. 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 Congress.

Outside of Tribal consultation, USDA is working with Tribes to provide information about CFAP and other issues. Specifically, to date, USDA held a call with Navajo Nation on Tuesday, May 12, 2020; CFAP was one of the items presented – there were no questions raised about CFAP. OTR will host a listening session between FSA, AMS, and Tribal leaders on Thursday, May 21, 2020, at 3:00 p.m.

The Unfunded Mandates Reform Act of 1995

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 on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit 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 title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is Coronavirus Food Assistance Program and 10.130.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports CFAP was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. A request for comments on the information collection will be included in the NOFA issued subsequent to this rule.

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, USDA adds Part 9 to title 7 of the Code of Federal Regulations to read as follows:

PART 9 – CORONAVIRUS FOOD ASSISTANCE PROGRAM

Sec.

9.1 Applicability and Administration.
9.2 Definitions.
9.3 Producer eligibility requirements.
9.4 Time and method of application.
9.5 Calculation of payments.
9.6 Eligibility subject to verification.

Authority: 15 U.S.C. 714b and 714c; and Division B, Title I, Pub. L. 116-136.

Coronavirus Food Assistance Program

§ 9.1 Applicability and Administration.

(a) This part specifies the eligibility requirements and payment calculations for the Coronavirus Food Assistance Program (CFAP). CFAP will provide payments with respect to commodities that have been significantly impacted by the effects of the COVID-19 outbreak. Payments will be made with respect to only commodities produced in the United States; commodities imported into the United States may not be used to determine any payment made under this part.

(b) The program is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) with the assistance of the Agricultural Marketing Service (AMS).

(c) The FSA State committee will take any action required by this part that an FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by an FSA State or county committee.

§ 9.2 Definitions.

The following definitions apply to CFAP. The definitions in parts 718 and 1400 and this title apply, except where they conflict with the definitions in this section.

All other cattle means commercially raised or maintained bovine animals not meeting the definition of another category of cattle in this rule excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

AMS means USDA's Agricultural Marketing Service.

Application means the CFAP application form.

Aquaculture means only those species as announced in a subsequent NOFA.

Cattle means commercially raised or maintained bovine animals, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Cattle raised or maintained for breeding purposes means animals commercially raised or maintained for use as either a sire or dam for the production of livestock offspring or lactation.

Commodity means an agricultural commodity produced in the United States and intended to be marketed for commercial production that has been designated as eligible for payments under CFAP.

Crop means non-specialty crops and specialty crops.

Feeder cattle 600 pounds or more means cattle weighing more than 600 pounds but less than the weight of slaughter cattle-fed cattle as defined in this section.

Feeder cattle less than 600 pounds means cattle weighing less than 600 pounds.

First quarter means January, February, and March of 2020.

Foreign entity means a corporation, trust, estate, or other similar organization that has more than 10 percent of its beneficial interest held by individuals who are not:

(1) Citizens of the United States; or

(2) Lawful aliens possessing a valid Alien Registration Receipt Card.

Foreign person means any person who is not a citizen or national of the United States or who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Hogs means any swine 120 pounds or more.

Lambs and yearlings means all sheep less than 2 years old.

NOFA means a Notice of Funding Availability published in the Federal Register.

Non-specialty crop means any of the following crops: malting barley, canola, corn, upland cotton, millet, oats, sorghum, soybeans, sunflowers, durum wheat, hard red spring wheat, and any crops subsequently announced in a NOFA. The term excludes crops intended for grazing.

Pigs means any swine weighing less than 120 pounds.

Producer means a person or legal entity who shares in the risk of producing a crop or livestock and who is entitled to a share in the crop or livestock available for marketing or would have shared had the crop or livestock been produced and marketed. A contract grower who does not own the livestock, will be considered a producer if the contract allows the grower to have risk in the livestock.

Slaughter Cattle—fed cattle means cattle with an average weight in excess of 1,400 pounds which yield average carcass weights in excess of 800 pounds and are intended for slaughter.

Slaughter cattle—mature cattle means culled cattle raised or maintained for breeding purposes, but which were removed from inventory and are intended for slaughter.

Specialty crops means any of the following crops: Almonds; apples; artichokes; asparagus; avocados; beans; blueberries; broccoli; cabbage; cantaloupe; carrots; cauliflower; celery; corn, sweet; cucumbers, eggplant; garlic; grapefruit; kiwifruit; lemons; lettuce, iceberg; lettuce, romaine; mushrooms; onions, dry; onions, green; oranges; papayas; peaches; pears; pecans; peppers, bell type; peppers, other; potatoes; raspberries; rhubarb; spinach; squash; strawberries; sweet potatoes; tangerines; taro; tomatoes; walnuts; watermelons; and any crops for which funds are made available and announced in a subsequent NOFA. The term excludes crops intended for grazing.

Unpriced inventory means any production that is not subject to an agreed-upon price in the future through a forward contract, agreement, or similar binding document.

Wool means the fiber sheared from a live sheep and includes, unless noted otherwise, graded and nongraded wool. Graded wool is paid on a clean basis, and ungraded wool is paid on a greasy basis.

§ 9.3 Producer eligibility requirements.

(a) To be eligible for a CFAP payment, a producer must:

(1) Meet all of the requirements in this part;

(2) Be a:

(i) Citizen of the United States;

(ii) Resident alien, which for purposes of this part means “lawful alien” as defined in part 1400 of this title;

(iii) Partnership of citizens of the United States;

(iv) Corporation, limited liability company, or other organizational structure organized under State law;

(v) 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); or

(vi) Foreign person or foreign entity who meets all requirements as described in part 1400 of this title;

(3) Have had a share in the eligible commodity on January 15, 2020, or April 16, 2020, through May 14, 2020.

(b) [Reserved]

§ 9.4 Time and method of application.

(a) An application under this subpart must be submitted in person, by mail, e-mail, or facsimile to any FSA county office by the close of business on August 28, 2020.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60-days from the date of signing the CFAP application, may result in no payment or a reduced payment:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this title;

(2) Form CCC-901 Member Information for Legal Entities (if applicable);

(3) An average adjusted gross income statement for the 2020 program year for the person or legal entity, including the legal entity's members, partners, or shareholders, as provided in part 1400 of this title; form CCC-941 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information;

(4) CCC-942 Certification of Income From Farming, Ranching and Forestry Operations (optional); and

(5) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this chapter (form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification for CFAP applicant and applicable affiliates).

(c) If requested by USDA, the applicant must provide documentation that:

(1) Establishes the applicant's ability and intent to harvest, transport, and market the commodity for the intended market or crop's expected production in a quantity determined based on the producer's approved yield, expected level of production, or inventory of the livestock, crop, or commodity;

(2) Establishes the applicant's ownership share in the commodity; and

(3) Establishes the applicant's value at risk in the commodity.

§ 9.5 Calculation of payments.

(a) Payments for eligible non-specialty crops will be the sum of:

(1) Unpriced inventory that is harvested but held in inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Unpriced inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CCC payment rate in paragraph (h) of this section.

(b) Payments for eligible specialty crops will be the sum of:

(1) For specialty crops listed in paragraph (h) of this section that were sold between January 15, 2020, and April 15, 2020, the quantity sold multiplied by the payment rate in column 2 of Table 1 in paragraph (h) of this section;

(2) For specialty crops harvested and shipped but subsequently spoiled due to loss of marketing channels between January 15, 2020, and April 15, 2020, the harvested and shipped quantity that spoiled multiplied by the payment rate in column 3 of Table 1 in paragraph (h) of this section;

(3) For unpriced specialty crops that did not leave the farm or mature crops that remained unharvested between January 15, 2020 and April 15, 2020 due to loss of marketing channel, the sum of the quantity of crops that did not leave the farm and the quantity of mature crops that remained unharvested, multiplied by the payment rate in column 4 of Table 1 in paragraph (h) of this section.

(c) Payments for cattle will be the sum of the results of the following two calculations:

(1) Cattle sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Unpriced cattle inventory between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(d) Payments for hogs and pigs will be equal to the sum of the results of the following two calculations:

(1) Hogs and pigs sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Unpriced hog and pig inventory between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(e) Payments for dairy will be equal to the sum of the results of the following two calculations:

(1) First quarter production, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) First quarter production, multiplied by 1.014, multiplied by the CCC payment rate in paragraph (h) of this section.

(f) Payments for lambs and yearlings will be equal to the sum of the results of the following two calculations:

(1) Lambs and yearlings sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section;

(2) Unpriced lambs and yearlings in inventory between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(g) Payments for wool are the sum of:

(1) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CARES Act payment rate paragraph (h) of this section; and

(2) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CCC payment rate in paragraph (h) of this section.

(h) The payment rates in Tables 1 and 2 will be used to calculate CFAP payments:

Table 1 to paragraph (h). Payment rates for specialty crops (including, but not limited to, the listed commodities).

Commodity	CARES Act Payment Rate for Sales Losses ($/lb)	CARES Act Payment Rate for Product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment Rate ($/lb)
Almonds	$0.26	$0.57	$0.11
Apples	--	$0.18	$0.03
Artichokes	$0.66	$0.49	$0.10
Asparagus	--	$0.38	$0.07
Avocados	--	$0.14	$0.03
Beans	$0.17	$0.16	$0.03
Blueberries	--	$0.62	$0.12
Broccoli	$0.62	$0.49	$0.10
Cabbage	$0.04	$0.07	$0.01
Cantaloupe	--	$0.10	$0.02
Carrots	$0.2	$0.11	$0.02
Cauliflower	$0.11	$0.31	$0.06
Celery	--	$0.07	$0.01
Corn, sweet	$0.09	$0.13	$0.03
Cucumbers	$0.13	$0.15	$0.03
Eggplant	$0.07	$0.15	$0.03
Garlic	--	$0.85	$0.17
Grapefruit	--	$0.11	$0.02
Kiwifruit	--	$0.32	$0.06
Lemons	$0.08	$0.21	$0.04
Lettuce, iceberg	$0.20	$0.15	$0.03
Lettuce, romaine	$0.07	$0.12	$0.02
Mushrooms	--	$0.59	$0.11
Onions, dry	$0.01	$0.05	$0.01
Onions green	--	$0.30	$0.06

Commodity	CARES Act Payment Rate for Sales Losses ($/lb)	CARES Act Payment Rate for Product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment Rate ($/lb)
Oranges	--	$0.14	$0.03
Papaya	--	$0.32	$0.06
Peaches	$0.08	$0.32	$0.06
Pears	$0.08	$0.18	$0.03
Pecans	$0.28	$0.93	$0.18
Peppers, bell type	$0.14	$0.22	$0.04
Peppers, other	$0.15	$0.22	$0.04
Potatoes	--	$0.04	$0.01
Raspberries	--	$1.45	$0.28
Rhubarb	$0.15	$1.03	$0.20
Spinach	$0.37	$0.37	$0.07
Squash	$0.72	$0.39	$0.08
Strawberries	$0.84	$0.72	$0.14
Sweet potatoes	--	$0.18	$0.04
Tangerines	--	$0.22	$0.04
Taro	--	$0.23	$0.05
Tomatoes	$0.64	$0.38	$0.07
Walnuts	--	$0.45	$0.09
Watermelons	--	$0.02	--

Table 2 to paragraph (h). Payment rates for non-specialty crops, dairy, and livestock.

Commodity	Unit	CARES Act Payment Rate ($/unit)	CCC Payment Rate ($/unit)
Barley (malting)	bu	$0.34	$0.37
Canola	lb	$0.01	$0.01
Corn	bu	$0.32	$0.35
Durum wheat	bu	$0.19	$0.20
Hard red spring wheat	bu	$0.18	$0.20
Millet	bu	$0.31	$0.34
Oats	bu	$0.15	$0.17
Sorghum	bu	$0.30	$0.32
Soybeans	bu	$0.45	$0.50
Sunflowers	lb	$0.02	$0.02
Upland cotton	lb	$0.09	$0.10
Dairy	cwt	$4.71	$1.47
Slaughter cattle—mature cattle	head	$92	$33

Commodity	Unit	CARES Act Payment Rate ($/unit)	CCC Payment Rate ($/unit)
Slaughter cattle—fed cattle................	head	$214	$33
Feeder cattle less than 600 pounds......	head	$102	$33
Feeder cattle 600 pounds or more.......	head	$139	$33
All other cattle....................................	head	$102	$33
Pigs..	head	$28	$17
Hogs	head	$18	$17
Lambs and yearlings	head	$33	$7
Wool (graded, clean basis).................	lb	$0.71	$0.78
Wool (non-graded, greasy basis)	lb	$0.36	$0.39

(i) Payments for cattle and hogs will be calculated separately for the following categories:

(1) Slaughter cattle—mature cattle;

(2) Slaughter cattle—fed cattle;

(3) Feeder cattle less than 600 pounds;

(4) Feeder cattle 600 pounds or more;

(5) All other cattle;

(6) Pigs; and

(7) Hogs.

(j)(1) USDA may make payments with respect to other commodities. In order to determine whether other commodities will be included in CFAP, a notice will be issued that will specify the types of market information the public may submit for consideration by USDA. After receipt of the information and the use of other related information available to USDA, a NOFA will specify the other eligible commodities and the manner in which payments will be determined.

(2) Producers that are privately owned aquaculture businesses growing freshwater and saltwater products in controlled environments, including raceways, ponds, tanks and recirculating systems, extending to all farmed shrimp and salmonids (trout and salmon) are included in CFAP to the extent USDA determines individual types of the products have incurred a decline in prices of 5 percent or more between January 15, 2020, and April 15, 2020. The determination of which species are included will be specified in the NOFA referenced in paragraph (i)(1) of this section.

(k) An initial payment will be issued for 80 percent of each CFAP payment calculated. A final payment will be issued on a date determined by the Secretary, to the extent such funds are available. The total of all CFAP payments made, including all initial and final payments, cannot exceed a total of $9.5 billion for CARES Act funds and $6.5 billion for CCC funds.

§ 9.6 Eligibility subject to verification.

(a) Producers who are approved for participation in CFAP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving CFAP payments or any other person who furnishes such information to USDA must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation 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.

§ 9.7 Miscellaneous provisions.

(a) If a CFAP payment resulted from erroneous information provided by a participant, or any person acting on their behalf, the payment will be recalculated and the participant must refund any excess payment with interest calculated from the date of the disbursement of the payment. Any required refunds must be resolved in accordance with part 3 of this title.

(b) The regulations in part 11 of this chapter and part 780 of this title apply to determinations made under this part.

(c) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title do not apply to payments made under this part.

(d) The $900,000 average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for CFAP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities. The average AGI will be calculated for a person or such legal entity based on the 2016, 2017, and 2018 tax years. If the person or such legal entity's average AGI is below $900,000 or at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities, the person or legal entity, is eligible to receive payments under this part.

(e)(1) The total amount of CFAP payments that a program applicant who is an individual may receive directly or through the attribution of payments as provided in paragraph (e)(4) of this section is $250,000. The total amount of payments that a program applicant who is a legal entity created under State law may receive is $250,000, except as provided in paragraph (e)(2) of this section. Payments made to a program applicant who is a joint venture or a general partnership are limited to the aggregated amount of payments that individual or legal entity members of the joint venture or general partnership may otherwise receive.

(2)(i) The total amount of CFAP payments a corporation, limited liability corporation, or a limited partnership may receive is $250,000 unless the owners of the legal entity meet the provisions of paragraphs (e)(2)(ii) and (iii) of this section.

(ii) The total amount of CFAP payments a corporation, limited liability corporation, or a limited partnership may receive is $500,000 if two different individual owners of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of 2019 commodities for which an application or applications are made in accordance with this part.

(iii) The total amount of CFAP payments a corporation, limited liability corporation, or a limited partnership may receive is $750,000 if three different individual owners of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of 2019 commodities for which an application or applications are made in accordance with this part.

(4) In accordance with § 1400.105 of this title, a CFAP payment made to any legal entity will be attributed to individuals or legal entities with an ownership interest in

the legal entity. Payments attributed to a legal entity with an ownership interest in the legal entity will be further attributed as provided in § 1400.105 of this title. If the total amount of CFAP payments made directly or indirectly to an individual or legal entity has met the applicable amounts specified in paragraphs (e)(1) through (3) of this section, the payment to the legal entity will be reduced commensurate with the amount of the ownership interest of the individual or legal entity in the legal entity. CFAP payments will be attributed to individuals and legal entities until the attribution is made only to an individual except the attribution will stop at the fourth level of ownership.

(5) If an individual or legal entity is not eligible to receive CFAP payments due to the individual or legal entity failing to satisfy some other payment eligibility provision such as AGI in or conservation compliance provisions or some other payment eligibility impediment, the payment made either directly or indirectly to the individual or legal entity will be reduced to zero. The amount of the reduction for the direct payment to the applicant will be commensurate with the direct or indirect ownership interest of the ineligible individual or ineligible legal entity. The application of this ineligibility to receive a CFAP payment due to the excessive AGI of an individual or legal entity will stop at the fourth level of ownership.

(f) For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under CFAP but only as to beneficiaries who, as a condition of the waiver, agree to apply the CFAP payments to reduce the amount of the judgment lien.

(g) In addition to any other Federal laws that apply to CFAP, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 1001; and 31 U.S.C. 1001.

(h) This part applies to applications submitted under CFAP through August 28, 2020, or until funds made available for CFAP are exhausted.

9.8 Perjury.

In either applying for or participating in CFAP, or both, the producer is subject to laws against perjury and any penalties and prosecution resulting therefrom, with such laws including but not limited to 18 U.S.C. 1621. If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in CFAP, or both, then the producer is guilty of perjury and, except as otherwise provided by law, may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

Stephen L. Censky,
Vice Chairman,
Commodity Credit Corporation, and
Deputy Secretary,
U.S. Department of Agriculture.