

**Billing Code: 3410-05-P**

**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**Notice of Funds Availability (NOFA) for the Commodity Container Assistance Program**

**[Docket ID FSA-2022-0006]**

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

**ACTION:** Notification of funds availability.

**SUMMARY:** The Farm Service Agency (FSA) is announcing the availability of funding for the Commodity Container Assistance Program (CCAP) in response to temporary market disruptions that have created logistical challenges associated with all aspects of the availability and flow of containers to transport agricultural commodities and products made from those commodities (collectively referred to as “agricultural commodities”), and are preventing or delaying American-grown agricultural commodities from reaching their markets. CCAP will be focused on increasing intermodal container capacity through partnerships with the Port of Oakland, in Oakland, California, and the Northwest Seaport Alliance (NWSA), a marine cargo operating partnership between the Port of Seattle and the Port of Tacoma in Washington State. Both the Port of Oakland and the ports managed by NWSA have been identified as key gateways for American-grown agricultural commodities, and each have also experienced significant challenges with the flow of containerized agricultural commodities. To assist owners of American-grown agricultural commodities in shipping their commodities from U.S. ports to global markets, CCAP will support improved use of empty shipping containers, along with the

prepositioning and temporary storage of filled shipping containers near export terminals. USDA may pursue additional temporary partnerships with other ports or intermodal facilities as supply chain conditions warrant, if funding is available. In this document, FSA is providing the eligibility requirements, application process, and payment calculations for CCAP.

**DATES:** *Funding availability:* Implementation will begin [**Insert date of publication in the *FEDERAL REGISTER***].

*Applications Due Date:* We will accept applications for funding through January 31, 2023.

*Comment Due Date:* We will consider comments on the information collection request discussed in the Paperwork Reduction Act section that we receive by: [**Insert date 60 days from the date of publication in the *FEDERAL REGISTER***].

**ADDRESSES:** *Comments:* We invite you to submit comments on the information collection request. You may submit comments using any of the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FSA–2021–0012. Follow the online instructions for submitting comments.
- Mail, Hand-Delivery, or Courier: Director, Price Support Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250-0522. In your comment, specify the docket ID FSA-2022-0006.

All comments received, including those received by mail, will be posted without change and will be publicly available on <http://www.regulations.gov>.

*Applications:* To apply, send a complete form FSA-862, Commodity Container Assistance Program (CCAP) Application, to the FSA National Office by e-mail to: [SM.FPAC.FSA.CCAP@usda.gov](mailto:SM.FPAC.FSA.CCAP@usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Danielle L. Cooke; telephone: (202) 720-1919; or by email: [danielle.cooke@usda.gov](mailto:danielle.cooke@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice) or (844) 433-2774 (toll-free nationwide).

**SUPPLEMENTARY INFORMATION:**

**Background**

As agricultural producers and companies deal with the continued impacts of the COVID-19 pandemic, ocean carriers' poor service and refusal to serve customers, including refusing to provide and ship containers, have exacerbated existing challenges. Specifically, ocean carriers have made fewer shipping containers available for U.S. agricultural commodities, repeatedly changed return dates, and charged unjust fees. These same ocean carriers have short-circuited the pathways typically used to make shipping containers available to be filled with agricultural and other goods, and they have subsequently rushed these containers back to foreign ports empty. These trends have and continue to be seen at several U.S. ports, including but not limited to the Port of Oakland, the Port of Seattle, and the Port of Tacoma, where many ocean carriers have partially or completely suspended their services. Historically, approximately 60 percent of the products marketed through the Port of Oakland were agricultural commodities. Now,

because of ocean carriers' disruptive behavior, some American-grown agricultural commodities have faced severe challenges in reaching their markets. Containerized exports of agricultural goods fell by 17 percent from California ports, costing California agriculture an estimated \$2.1 billion May to September 2021,<sup>1</sup> with a more severe decline of 34 percent for the Port of Oakland. Similar challenges exist at the ports managed by the NWSA in Washington, where congestion-induced impacts to vessel schedules have made it difficult for agricultural goods to be loaded on ships at the export terminals. Containerized exports of agricultural commodities from Seattle are down 30 percent during the last 6 months of 2021 while empty shipping containers leaving the Port of Seattle have increased by a similar percentage.

In accordance with 15 U.S.C. 714c, the Secretary is using CCC funds to assist owners of agricultural commodities in shipping domestic agricultural commodities out of the Port of Oakland and NWSA. Funds available to CCC will be used as authorized by section 5(b) of the CCC Charter Act (15 U.S.C. 714c(b)). This authority will be used to assist in making available materials and facilities in connection with the marketing of agricultural commodities. It will assist owners of U.S. agricultural commodities with ongoing market disruptions and facilitate the recovery of shipping and other logistical services required to bring domestically produced agricultural commodities to markets.

Specifically, FSA will provide a \$125 per container payment to partially assist agricultural commodity owners with the additional logistical expenses associated with picking up empty shipping containers at the Port of Oakland to be filled with agricultural

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<sup>1</sup>See <https://giannini.ucop.edu/publications/are-update/issues/2021/25/2/containergeddon-and-california-agriculture/>.

commodities. The Port of Oakland has opened a 25-acre temporary terminal to prepare and ease the provision of empty containers to be filled, which will ultimately reduce congestion at the main terminal. Through its separate gate, this terminal will allow for quicker pickup of empty containers and provide a pathway to bypass the congestion at the main terminals. The separate gate will also provide for increased access to available equipment and ultimately help avoid fewer unpredictable congestion surcharges for trucks. Under normal circumstances empty containers would be easily available from ocean carriers at the regular terminals, the combination of congestion, potential for additional drayage, and the terminal fees will add cost to the agricultural commodity owners and necessitates the \$125 per container payment.

Additionally, through the partnerships with both the Port of Oakland and NWSA, FSA will offer payments of \$200 per container for filled dry containers and \$400 per container for filled refrigerated containers (generally referred to as “reefer containers”) to owners who deliver such filled containers to designated temporary storage terminals. These payments will help address the logistical costs of moving a container twice – first to the preposition terminal, and second to the terminal loading the vessel – along with the costs associated with temporary storage. Prior to the recent unpredictable delivery and export windows, owners of agricultural commodities had been provided sufficient delivery windows and notice to deliver the agricultural commodities directly to the terminal that loads the vessel.

In each of these cases, the agricultural commodity owner will likely incur an extra charge for short distance transportation, or “drayage,” fees from the terminal operator or ocean carrier and daily storage for any prepositioned filled containers. The drayage alone

is expected to range between \$150 and \$250 per container based on discussions with agricultural shippers operating in the Oakland, Seattle, and Tacoma regions. Temporary storage of filled containers is expected to cost about \$50 per dry container per day and \$200 for reefer containers. The per-container fee for reefer containers is higher, since reefer containers require additional electricity and labor costs, which directly result in higher storage and transportation costs. The value of CCAP for U.S. companies lies in the benefits of increasing the ability of moving containers to meet narrow and changing shipping windows provided by the ocean carriers. These payments will lessen the burden on owners to manage the logistical challenges and continue to move containers despite the service challenges. All payments to agricultural commodity owners will be made in arrears and verified with terminal records.

USDA will make payments as frequently as monthly to eligible owners or designated marketing agents of U.S. agricultural commodities based on the number of eligible shipping containers they picked up or stored starting retroactively back to March 1, 2022, through December 31, 2022, from eligible ports to ship agricultural commodities to their designated markets on container ships.

FSA is administering the direct payments under the general supervision and direction of the Deputy Administrator.

### **Definitions**

The following definitions apply to this notice:

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

*Designated marketing agent* means an individual or entity that has explicit written permission to apply for CCAP from, and on behalf of, the owner of the agricultural commodities.

*Owner* means a business entity, including cooperative, handler, company, or exporter that is liable for and has ownership of the agricultural commodities in transit. Only one owner is allowed to apply for payment per container.

*Picked up* means the applicant picked up empty shipping containers from the designated port terminal to be filled with eligible agricultural commodities.

*Stored* means the applicant delivered the shipping container filled with eligible agricultural commodities to the designated port terminal for temporary storage at a designated storage terminal.

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

### **Eligible Commodities**

Eligible agricultural commodities are agricultural commodities (other than tobacco) that are grown or produced in the United States for food, feed, or fiber, and products made from those commodities, including forestry products, that are to be or were shipped in a shipping container picked up from the Port of Oakland or contained within a filled shipping container stored at the Port of Oakland or the NWSA locations from March 1, 2022, through December 31, 2022. A list of examples of eligible and ineligible commodities will be posted on the FSA website for CCAP.

## **Eligibility**

To be eligible for a CCAP payment, each applicant must:

- Own domestically-grown or produced agricultural commodities or be the designated marketing agent of the owner;
- Have picked up containers from the Port of Oakland or stored containers at the Port of Oakland or NWSA and filled the containers with agricultural commodities that are grown or produced in the United States for food, feed, or fiber, and products made from those commodities;
- Have properly executed power of attorney or signature authority if representing an individual or entity;
- Submit completed application as specified in the Application Process section below; and
- Have a Unique Entity Identifier (created in and used by [www.SAM.gov](http://www.SAM.gov)).

## **Application Process**

FSA will accept applications from May 31, 2022 through January 31, 2023. To apply for CCAP, each eligible applicant must submit a completed form FSA-862, Commodity Container Assistance Program (CCAP) Application to provide the monthly number of containers picked up or stored by type of container and by port. Applicants may submit applications on a monthly basis, all at once at the end of CCAP, or for a combination of months, but applicants should not submit duplicate information for a month that has already been previously submitted. Applications should be submitted to the FSA National Office by e-mail to the following email address:

SM.FPAC.FSA.CCAP@usda.gov.



Applicants are to submit only one FSA-862 for all shipping containers picked up or stored and report the number of containers picked up from the specified port for the relevant month(s), regardless of the number of agricultural commodities that are packed and shipped out of the designated port. In other words, the application is based on the number of shipping containers picked up or stored and used for U.S. agricultural commodities, but it is not based on the type of agricultural commodity. Shipping containers that are filled with non-agricultural commodities are not eligible for CCAP payments. Revised applications will not be allowed without supporting documentation if the application has been approved for payment and any revised applications must be submitted no later than January 31, 2023. Subject to available funds, CCAP payments will not be issued until an applicant certifies the number of containers picked up or stored each month or group of months at the designated port, as applicable. The applicant must certify to the total number of containers picked up or stored by the application period deadline as specified in this document.

The number and type of shipping containers claimed on the FSA-862 will be as certified by the applicant and are subject to spot check. Applicants may also be asked to provide documentation of what agricultural commodity was loaded into the container in order to confirm that the shipping container was used for agricultural commodities.

If requested by FSA, the applicant must provide supporting documentation to verify the accuracy of information provided on the application, including to substantiate the number and type of shipping containers, ownership of the commodities, or authority to act as a designated marketing agent. If any supporting documentation is requested, the

documentation must be submitted to FSA within 30 days from the request or the application will be disapproved by FSA.

**Payment Rates and Calculations**

Information and expert opinion from the Port of Oakland and the NWSA authorities, along with information associated with the logistics movement costs of different container types, were used to estimate the increased additional movement logistics costs associated with agricultural containerized exports.

Payments will be calculated based upon the port, whether containers are picked up or stored, and the type of containers (empty containers versus filled dry or reefer containers). The CCAP payment rate is on a per container basis as shown in the following table.

<b>Location and Action</b>	<b>CCAP Payment Rate (\$/Container)</b>
<b>Picked up empty shipping containers:</b>	
Port of Oakland .....	\$125
<b>Stored filled shipping containers:</b>	
Port of Oakland and NWSA --	
Dry containers .....	\$200
Reefer containers.....	\$400

The CCAP payment will be calculated as follows:

Number of containers picked up from or stored in the designated port multiplied by the respective CCAP payment rate for that type of container.

For example, the owner of agricultural goods that are stored at the NWSA facility submits an application specifying 10 dry containers and 3 reefer containers for the month of March 2022. FSA calculates the payment by multiplying 10 × \$200 for the dry

containers, and  $3 \times \$400$  for the reefer containers, for a total payment of \$3,200 for that month.

The temporary storage of a container should be reported only for the month that the container was delivered to the designated port terminal for temporary storage even if the storage period covers parts of more than one month. This is a one-time storage payment. It does not matter how long a container is stored. Therefore, the same container and shipment should not be included for a storage payment on an application more than once.

The applicant may be eligible to receive separate payments for the same container: once for being picked up empty and later for being temporarily stored at a designated port. For example, if an almond producer picked up 10 empty containers in May to be filled with almonds from the designated terminal to provide empty containers at the Port of Oakland, that almond producer would be eligible to apply for the \$125 per container payment for those 10 empty containers. If that same almond producer then immediately filled and shipped 5 of those containers directly through the export terminal, but the remaining 5 containers were filled and delivered to the designated terminal to be temporarily stored for a few days in June before being drayed to the export terminal and loaded in a vessel later in June, the almond producer would be eligible to apply for the \$200 per container payment for the temporary storage of 5 containers in June (dry containers in this example). Only containers picked up or temporarily stored at the designated storage terminal are eligible, so even if the 5 containers that were exported in May were held for a few days at the export terminal, they would not be eligible for CCAP. In this example, FSA calculates the payment by multiplying  $10 \times \$125$  for

picking up empty containers in May, and  $5 \times \$200$  for the temporary storage of dry containers in June, for a total payment of \$2,250 (\$1,250 for May and \$1,000 for June).

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

In the event that any application for a CCAP payment resulted from erroneous information reported by the applicant, FSA will recalculate the payment, and the applicant must refund any excess payment to FSA, including interest to be calculated from the date of the disbursement to the applicant. If, for whatever reason, FSA determines that the applicant misrepresented the number and type of shipping containers, the application will be disapproved, and the applicant must refund the full CCAP payment to FSA with interest from the date of disbursement. Any required refunds must be resolved in accordance with 7 CFR part 3.

### **Miscellaneous Provisions**

All applicants must provide the name and address of the entity receiving payment. Appeal regulations specified in 7 CFR parts 11 and 780 and equitable relief and finality provisions specified in 7 CFR part 718, subpart D, apply to determinations under CCAP. 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 applicable time periods and the payment calculation for CCAP.

Participants are required to retain documentation in support of their application for 3 years after the date of approval. Participants receiving CCAP payments or any other person that furnishes such information to USDA must permit authorized

representatives of USDA or the Government Accountability Office, during regular business hours, to enter the participant's business and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

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

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

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

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

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

to be guilty of perjury. Except as otherwise provided by law, if guilty of perjury the applicant may be fined, imprisoned for not more than 5 years, or both, regardless of whether the applicant makes such verbal or written declaration, certification, statement, or verification within or outside the United States.

### **Paperwork Reduction Act Requirements**

In compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection request associated with CCAP. After the 60-day period ends, the information collection request will be submitted to the Office of Management and Budget (OMB) for a 3-year approval. To start the CCAP information collection approval, prior to publishing this notice, FSA received emergency approval from OMB for 6 months.

*Title:* Commodity Container Assistance Program (CCAP)

*OMB Control Number:* 0560-0310.

*Type of Request:* New Collection.

*Abstract:* FSA will provide assistance to eligible owners or designated marketing agents of U.S. agricultural commodities using eligible shipping containers from the Port of Oakland and designated ports associated with the NWSA. The eligible owners or designated marketing agents must complete the form FSA-862, CCAP Application for FSA to qualify for CCAP payments and to calculate the CCAP payments based upon the port, type of service (temporary storage versus providing empty containers) and the type of the shipping containers (empty containers or filled dry or reefer containers). FSA may

request additional supporting documents for verification of information on a completed CCAP Application.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

*Estimate of Respondent Burden:* Public reporting burden for this information collection is estimated to average 0.33 hours per response to include the time for reviewing instructions, searching for information, gathering and maintaining the data, and completing and reviewing the collection of information.

*Type of Respondents:* Businesses.

*Estimated Annual Number of Respondents:* 200.

*Estimated Number of Responses Per Respondent:* 8.

*Estimated Total Annual Responses:* 1600.

*Estimated Average Time Per Response:* 0.33.

*Estimated Total Annual Burden on Respondents:* 528.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;  
and

(4) Minimize the burden of the collection of information on those that are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

### **Environmental Review**

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321- 4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of CCAP is to establish a marketing assistance program to support agricultural commodity owners of U.S. agricultural commodities for pick up or temporary storage of eligible shipping containers from the Port of Oakland and NWSA from March 1, 2022, through December 31, 2022. The limited discretionary aspects of CCAP do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the Categorical Exclusions in 7 CFR 799.31(b)(6)(iii) that applies to price support programs.

No Extraordinary Circumstances (7 CFR 799.33) exist. As such, the implementation of CCAP and the participation in CCAP do not constitute major Federal



actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

### **Federal Assistance Programs**

The title and number of the Federal assistance programs, as found in the Assistance Listing,<sup>2</sup> to which this document applies is 10.966, Commodity Container Assistance Program (CCAP).

### **USDA Non-Discrimination Policy**

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at

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<sup>2</sup>See <https://sam.gov/content/assistance-listings>.

(202) 720–2600 (voice and TTY) or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

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

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William Marlow,  
Acting Administrator,  
Farm Service Agency.