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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA-2020-0006]

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 provide additional assistance under the Coronavirus Food Assistance Program (CFAP) to agricultural producers who continue to be impacted by the effects of the COVID-19 outbreak. This rule specifies the eligibility requirements, payment calculations, and application procedures for a second round of payments (CFAP 2). In addition, it also extends the special payment limitation provisions to trusts and estates for CFAP 1 and amends the provisions regarding applicable year and direct attribution of payments to members of legal entities that qualify for the increased payment limitation.

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

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SUPPLEMENTARY INFORMATION:

Background

In response to the COVID-19 outbreak, USDA implemented CFAP through a final rule published in the *Federal Register* on May 21, 2020 (85 FR 30825-30835), with corrections published in the *Federal Register* on June 12, 2020 (85 FR 35799-35800), July 10, 2020 (85 FR 41328-41330), August 14, 2020 (85 FR 49593-49594), and [FPAC will add date and citation for the CFAP 1 correction, which is being published separately] and documents published in the *Federal Register* on May 22, 2020 (85 FR 31062-31065), June 12, 2020 (85 FR 35812), July 10, 2020 (85 FR 41321-41323), and August 14, 2020 (85 FR 49589-49593). The application period for the first round of CFAP payments (referred to in this rule and hereinafter as CFAP 1) was May 26, 2020, through September 11, 2020.

In this final rule, USDA is implementing a second round of payments under CFAP (CFAP 2) for producers of agricultural commodities who face continuing market disruptions, low farm-level prices, and significant marketing costs. These additional significant marketing costs are associated with declines in demand, surplus production, and disruptions to shipping patterns and the orderly marketing of commodities.

CFAP 2 will provide eligible producers with financial assistance that gives them the ability to absorb increased marketing costs associated with the COVID-19 outbreak. 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, with an estimated \$13.21 billion being made available. These funds 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 by enabling them to:

- Purchase materials and facilities required in connection with the production and marketing of agricultural commodities;
- Remove or dispose of surplus agricultural commodities; and
- Develop new and additional markets, marketing facilities, and uses for the commodities.

Funds available under 15 U.S.C. 714c(b), (d), and (e) cannot be used to provide assistance for tobacco; however, tobacco will be eligible for CFAP 2 with payments funded by remaining funds authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; Pub. L. 116-136).

Payments

CFAP 2 payments will be made for three categories of commodities:

1. Price trigger commodities (major commodities that meet a minimum 5-percent price decline over a specified time period);
2. Flat-rate crops; and
3. Sales commodities.

Eligible price trigger commodities include barley, corn, sorghum, soybeans, sunflowers, upland cotton, wheat (all classes), broilers, eggs, beef cattle, dairy, hogs and pigs, and lambs and sheep. Price trigger commodities are commodities that had a 5 percent or greater price decline due to COVID 19 in a comparison of the average price

for the week of January 13-17, 2020, and the average price for the week of July 27-31, 2020. For price trigger crops, payments will be based on eligible acres of the crop, which are the producer's share of 2020 determined acres if established by FSA, or reported acres on FSA-578 if determined acres have not been established by FSA, excluding prevented planting and experimental acres. Payments for price trigger crops will be the greater of: 1) the eligible acres multiplied by a payment rate of \$15 per acre; or 2) the eligible acres multiplied by a nationwide crop marketing percentage, multiplied by a crop-specific payment rate, and then by the producer's weighted 2020 Actual Production History (APH) approved yield, or if the APH is not available, 85 percent of the 2019 Agriculture Risk Coverage-County Option (ARC-CO) benchmark yield for that crop. For broilers and eggs, payments will be based on 75 percent of the producer's 2019 production. For dairy, payments will be based on April 1 to August 31, 2020, actual milk production and September 1, 2020, to December 31, 2020, estimated milk production (based on the producer's daily average production from April 1 to August 31, 2020, multiplied by the number of days the dairy operation commercially markets milk from September 1, 2020, through December 31, 2020). For price-triggered livestock, payments will be based on a fixed number of head, which is defined as the lower of the maximum owned inventory of eligible livestock, excluding breeding stock, on a date selected by the eligible producer from April 16, 2020, through August 31, 2020, or a specific number of head (4,546 head of cattle or 10,870 head of hogs). In the payment calculation, the maximum number of head of cattle and hogs, respectively, will be multiplied by the number of payment limitations for the producer.

Flat-rate crops are crops that either do not meet the 5-percent price decline trigger noted above or do not have data available to calculate a price change, but will have CFAP 2 payments calculated based on eligible acres of the crop planted in 2020, similar to price trigger crops. Eligible flat-rate crops include alfalfa, Extra Long Staple (ELS) cotton, oats, peanuts, and rice, as well as some crops with relatively small acreage—such as amaranth grain, buckwheat, canola, crambe (colwort), einkorn, emmer, flax, guar, hemp, indigo, industrial rice, kenaf, Khorasan, millet, mustard, oats, peanuts, quinoa, rice, sweet rice, wild rye, safflower, sesame, speltz, sugar beets, sugarcane, teff, triticale, and rapeseed. For flat-rate crops, payments will be computed by multiplying: 1) the producer's share of reported or determined 2020 planted acres of the crop, excluding prevented planted and experimental acres, by 2) \$15 per acre.

The sales commodities category includes:

- Aquaculture grown in a controlled environment;
- Nursery crops and floriculture;
- Other livestock (excluding breeding stock) not included under the price trigger category that were grown for food, fiber, fur, or feathers;
- Other crops not included in the price trigger and flat-rate categories, including tobacco;
- Goat milk;
- Mink (including pelts);
- Mohair; and
- Wool.

Payment calculations for the sales commodities will use a sales-based approach based on five payment gradations associated with the producer's 2019 sales of the commodity.

Payments cannot be calculated using the methods described above for producers of broilers, eggs, and sales commodities who began farming in 2020 and had no 2019 production or sales. Payments for such producers will be based on the producer's actual 2020 production or sales as of the date the producer submits an application for payment.

Eligibility

Only commercially produced commodities are eligible.

Producer must be in the business of farming at the time of application.

Hay, except alfalfa, and crops intended for grazing are ineligible for CFAP 2 and will not receive a CFAP 2 payment. Crops with intended uses of green manure and left standing are also ineligible.

Contract growers are ineligible for CFAP 2 and will not receive a CFAP 2 payment.

Average Adjusted Gross Income Limitation and Payment Limitation

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.

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 2 payments are subject to a per person and legal entity payment limitation of \$250,000. This payment limitation is separate from the CFAP 1 payment limitation, and it applies to the total amount of CFAP 2 payments made with respect to all eligible commodities under all three categories.

This rule also amends the special payment limitations in § 9.7(e) for both CFAP 1 and CFAP 2. Previously, the special payment limitation provisions applied to corporations, limited liability companies, and limited partnerships. Those corporate entities may receive up to \$750,000 in CFAP 1 payments based on the number of shareholders or members (not to exceed three shareholders or members) who are contributing at least 400 hours of active personal labor or active personal management or combination thereof with respect to the operation of the corporate entity.

This change amends the CFAP general provisions to extend those special payment limitation provisions to trusts and estates, allowing them to be eligible for the optional payment limitation increase based on the labor or management contributions of the beneficiaries or heirs of such trusts and estates. Extending these provisions to trusts and estates is necessary to recognize that, similar to members, partners, and stockholders of corporate entities, beneficiaries and heirs of trusts and estates may contribute at least 400 hours of active personal labor or active personal management or a combination thereof.

Furthermore, trusts and estates are also affected by the price declines caused by COVID-19.

This rule also changes the method by which payments under the special payment limitation provisions are attributed to individuals and legal entities for both CFAP 1 and CFAP 2. The increased CFAP payment limitation for corporations, limited liability companies, limited partnerships, trusts, and estates based on contributions of at least 400 hours of active personal labor or active personal management or combination thereof is unlike the payment limitation under any other program administered by FSA. FSA's method of attributing CFAP payments based on ownership share of the legal entity in accordance with 7 CFR 1400.105, which applies to other FSA-administered programs subject to payment limitation, creates inequity when the pay limit for the legal entity is increased under the special provisions but not increased for each member of the entity.

Under 7 CFR 1400.105 for attributing payments for most commodity programs, the maximum amount that a legal entity could receive is limited by the maximum amount each eligible member may receive (directly or indirectly) based on ownership interest in the legal entity, which is \$250,000. For example, under current attribution rules, a corporation that qualifies for the increased limitation of \$500,000 may only receive \$450,000 when stockholders have unequal ownership shares in the legal entity. In this example, Stockholder A holds 60 percent ownership share and Stockholder B holds 40 percent ownership share. The payment to the legal entity is determined by multiplying each stockholder's ownership interest by the payment limitation of the corporation. (For Stockholder A, 60 percent x \$500,000 = \$300,000 (not to exceed \$250,000); for Stockholder B, 40 percent x \$500,000 = \$200,000). The maximum payment to the legal

entity in this case is \$450,000 (\$250,000 + \$200,000). With the change to attribution in this rule applicable to CFAP 1 and CFAP 2, the payment to the legal entity qualifying for the increased payment limitation will not be reduced for ownership share, except for ineligibility or prior payments to a member, stockholder, partner, heir or beneficiary. The correction in how FSA attributes and limits CFAP payments under the special provisions to the members of the legal entity provides the ability for the legal entity to receive the maximum amount, not to exceed \$500,000 or \$750,000 as applicable, under the increased payment limitation, regardless of the ownership interests of the members, partners, and stockholders, beneficiaries, or heirs contributing at least 400 hours of active personal labor or active personal management. However, a member, stockholder, partner, beneficiary, or heir cannot receive, directly or indirectly, more than \$250,000 under each round of payments (CFAP 1 and CFAP 2), regardless of whether payments attributed to them are subject to the regular payment limitation or the special increased limitations.

This rule removes “2019” as the applicable commodity year in § 9.7(e)(2)(ii) and (iii) because CFAP eligibility may be based on 2019 or 2020 production of the commodity, as specified in the applicable payment calculations.

CFAP General Requirements

The general eligibility requirements that applied to CFAP 1 also apply to CFAP 2, including requiring compliance with 7 CFR part 12, “Highly Erodible Land and Wetland Conservation” and 7 CFR part 1400 subpart E, “Foreign Persons.” Appeal regulations in 7 CFR parts 11 and 780 also apply to CFAP 2.

As under CFAP 1, 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 CFAP 2.

Application Process

FSA will be responsible for implementing CFAP 2. FSA will accept CFAP 2 applications beginning September 21, 2020, and ending December 11, 2020. To apply for CFAP 2 payments, producers must submit a completed CFAP 2 application either in person, by mail, e-mail, or facsimile to an FSA county office. 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. Producers who are applying for payment for price trigger or flat-rate crops must file a report of all acreage for the crop on FSA-578, Report of Acreage.

If supporting documentation is requested to verify the information specified on the application, the producer must provide records that substantiate the reported information. Examples of supporting documentation include evidence provided by the producer that is used to substantiate the acres, sales, inventory, or production 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.

Provisions Requiring Refund to USDA

In the event that any application for a CFAP 2 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 interest¹ 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 acres, production, head of livestock, or sales, or if the CFAP 2 payment would exceed the payment as calculated based on the correct share of the acres, production, head of livestock, or sales, the application will be disapproved and the participant must refund to USDA all CFAP 2 payments made to the producer with interest from the date of disbursement.

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

Other Changes

In addition to the changes necessary to implement CFAP 2, USDA is moving definitions and payment calculation provisions that are specific to CFAP 1 to a new subpart B. This change is for organizational purposes only; this rule does not change those definitions and provisions.

¹The program interest rate is based on the CCC borrowing rate in effect for the month the payment was disbursed.

This rule also adds a definition of “controlled environment” in § 9.2. This definition is consistent with how the term has been interpreted for the administration of CFAP 1 and for other FSA disaster programs (see FSA handbook for CFAP 1 and the NAP handbook, found under Disaster Assistance on the following webpage: <https://www.fsa.usda.gov/programs-and-services/laws-and-regulations/handbooks/index>); it is added only to provide clarity.

Notice and Comment and Effective Date

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 the benefits exemption.

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

Executive Orders 12866, 13563, and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 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](https://www.regulations.gov).

Cost Benefit Analysis Summary

CFAP 2 will provide producers with financial assistance that gives them the ability to absorb increased marketing costs associated with the COVID-19 outbreak. Producers will receive payments under the CCC Charter Act (section 5(b), (d), and (e)) with an estimated \$13.21 billion being made available (after payment limitations).

Producers will be compensated for on-going market disruptions and to transition to a more orderly marketing system. Payments will assist producers with the purchase of

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

For the price trigger commodities, the approach to calculating CFAP 2 payments is very similar to that used for CFAP 1 (which covered Quarter 1 of 2020), although the focus now is on Quarter 2 through Quarter 4 of calendar 2020. Payments are based on the price decline calculated between mid-January and late-July and use an 80 percent coverage factor. Where available, mid-January and late July futures prices (for either the November or December contract) were used to estimate the market's price expectations toward the end of calendar 2020. Future contracts are not traded for all crops with a price trigger nor are they available for eggs, broilers, and lamb. For these commodities, actual prices received in mid-January and late July are used as a proxy. Depending on the yield for a given producer's crop in this category, the payment may calculate to less than \$15 per acre. In such cases, the payment is raised to \$15 per acre, which is the payment for the flat-rate category discussed below.

Producers of the flat-rate commodities receive a \$15 per-acre payment based on their eligible 2020 acreage.

For the sales-based commodities, payment calculations will use a sales-based approach, where producers are paid based on five payment gradations associated with their 2019 sales. In addition, tobacco is a sales-based commodity under CFAP 2 and a CARES Act payment will be calculated using remaining CARES Act funds, not to exceed \$100 million.

Estimated net payments to producers of \$13.21 billion represent benefits to producers, which is the government cost of CFAP 2. Outlays are estimated at expected maximum levels.

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 2 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 2 (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 2 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 2 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 affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice 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. 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 2 and other issues.

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 2 and 10.132.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA submitted the CFAP 2 information collection request to OMB for emergency approval. OMB approved the 6-month emergency information collection.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 9

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

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

PART 9 – CORONAVIRUS FOOD ASSISTANCE PROGRAM

1. The authority citation for part 9 continues to read as follows:

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

§§ 9.1 through 9.8 [Redesignated as Subpart A]

2. Redesignate §§ 9.1 through 9.8 as subpart A and add a heading for subpart A to read as follows:

Subpart A – General Provisions

§ 9.1 [Amended]

3. In § 9.1 amend paragraph (a) introductory text, by adding the following sentences after the second sentence: “CFAP is being implemented through two rounds of payments, with the first round (CFAP 1) determined as specified in subpart B of this part, and the second round (CFAP 2) determined as specified in subpart C of this part. To be eligible for CFAP payments, participants must comply with all provisions under this subpart and the relevant particular subpart for CFAP 1 or CFAP 2.”

4. Amend § 9.2 as follows:

a. Amend the introductory text, by removing the word “CFAP” and add the words “this part” in their its place;

b. Remove the definitions of “All other cattle”, “Aquaculture”, and “Cattle raised or maintained for breeding purposes”;

c. Add the definition of “Controlled environment”; and

d. Remove the definitions of “Crop”, “Feeder cattle 600 pounds or more”, “Feeder cattle less than 600 pounds”, “First quarter”, “Lambs and yearlings”, “Non-specialty crop”, “Producer”, “Second quarter”, “Slaughter cattle—fed cattle”, “Slaughter cattle—mature cattle”, “Specialty crops”, and “Unpriced”.

The addition reads as follows.

§ 9.2 Definitions.

* * * * *

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media

(including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

* * * * *

§ 9.3 [Amended]

5. In Amend § 9.3 paragraph (c), by removing the word “Have” and adding the words “For payments under § 9.102 of this part, have” in its place.

6. Amend § 9.4 as follows:

- a. Revise paragraph (a); and
- b. Add paragraph (d).

The revision and addition read as follows.

§ 9.4 Time and method of application.

(a) A completed application under this subpart must be submitted in person, by mail, email, or facsimile to any FSA county office by the close of business on:

- (1) September 11, 2020, for payments issued under § 9.102 of this part; and
- (2) December 11, 2020, for payments issued under § 9.202 of this part.

* * * * *

(d) A producer applying for assistance for a crop subject to § 9.202(a) or (b) must file a report of all acreage of the crop on FSA-578, Report of Acreage.

§ 9.5 [Redesignated as § 9.102 and Reserved]

7. Redesignate § 9.5 as § 9.102 and reserve § 9.5.

8. Amend § 9.7 as follows:

a. In paragraph (e)(1) add the words “under each of subparts B and C” after “\$250,000” both times it appears;

b. Revise paragraphs (e)(2)(i)-(iii) and (e)(3); and

c. In paragraph (h), remove “September 11, 2020,” and add the words “the applicable date in § 9.4(a)” in its place.

The revisions read as follows.

§ 9.7 Miscellaneous provisions.

* * * * *

(e) * * *

(2)(i) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is \$250,000 under each of subparts B and C unless the members, partners, stockholders, beneficiaries, or heirs of the legal entity meet the provisions of paragraphs (e)(2)(ii) or (iii) of this section.

(ii) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is \$500,000 under each of subparts B and C if two different individual persons who are members, partners, stockholders, beneficiaries, or heirs 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 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 company, limited partnership, trust, or estate may receive is \$750,000 under each of subparts B and C if three different individual persons who are members, partners, stockholders, beneficiaries, or heirs 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 commodities for which an application or applications are made in accordance with this part.

(3)(i) Except for payments subject to the increased payment limitation in (e)(2)(ii) and (e)(2)(iii) of this section, a CFAP payment made to any legal entity will be attributed to individuals or legal entities with an ownership interest in the legal entity in accordance with §1400.105 of this title. 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 legal entity does not qualify for an increased payment limitation under (e)(2)(ii) or (iii) of this section and the total amount of CFAP payments made directly or indirectly to an individual or legal entity has met the applicable amount specified in paragraph (e)(1) 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 subject to attribution under this paragraph 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.

(ii) A payment subject to the increased payment limitation in (e)(2)(ii) or (iii) of this section will be limited to the lesser of the amount specified in either (e)(2)(ii) or (iii) of this section, or the sum of the amount specified in (e)(1) of this section that each eligible member, stockholder, partner, heir, or beneficiary of the legal entity may receive, regardless of ownership share. Payments attributed to a legal entity with an ownership interest in the legal entity will be further 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.

* * * * *

9. Add subpart B, consisting of §§ 9.101 through 9.102, to read as follows:.

Subpart B – CFAP 1

Sec.

9.101 Definitions.

9.102 Calculation of payments.

§ 9.101 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also 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 part, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Aquaculture means only those species as announced in a NOFA.

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.

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.

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

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

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.

Second quarter means April, May, and June of 2020.

Slaughter Cattle—fed cattle means cattle with a weight of 1,200 pounds or more that 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. The term excludes crops intended for grazing.

Unpriced means not subject to an agreed-upon price in the future through a forward contract, agreement, or similar binding document as of January 15, 2020.

10. Add Subpart C, consisting of §§ 9.201 through 9.202, to read as follows:

Subpart C—CFAP 2

Sec.

9.201 Definitions.

9.202 Calculation of payments.

§ 9.201 Definitions.

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

Aquaculture means any species of aquatic organisms grown as food for human consumption, fish raised as feed for fish that are consumed by humans, ornamental fish propagated and reared in an aquatic medium. Eligible aquacultural species must be raised by a commercial operator and in water in a controlled environment.

Breeding stock means:

- (1) For cattle, bulls and cows;
- (2) For hogs and pigs, boars and sows; and
- (3) For lambs and sheep, rams and ewes.

Broilers includes any chicken that has been commercially produced for meat purposes that has left the farm for slaughter, and not used for laying or breeding purposes.

Eggs means dried, frozen, liquid, and shell eggs.

Experimental means a crop for which all of the following apply:

(1) The crop is planted for experimental purposes conducted under the direct supervision of a State experiment station or commercial company;

(2) Production of the crop is destroyed before harvest or used for testing or other experimental purposes; and

(3) A representative of the State experiment station or the commercial company certifies that any production harvested from the experiment will not be marketed in any form.

Flat-rate crop means alfalfa, amaranth grain, buckwheat, canola, cotton, Extra Long Staple (ELS) cotton, crambe (colewort), einkorn, emmer, flax, guar, hemp, indigo, industrial rice, kenaf, khorasan, millet, mustard, oats, peanuts, quinoa, rapeseed, rice, rice, sweet, rice, wild, rye, safflower, sesame, speltz, sugar beets, sugarcane, teff, and triticale. The term excludes hay, except alfalfa, and crops with intended uses of grazing, green manure, or left standing.

Floriculture means cut flowers and cut greenery from annual and perennial flowering plants grown in a container or controlled environment for commercial sale. Floriculture is included in sales commodities.

Fruits means any of the following fruits: abiu, acerola (Barbados cherry), achachairu, antidesma, apples, apricots, aronia (chokeberry), atemoya (custard apple), bananas, blueberries, breadfruit, cacao, caimito, calabaza melon, canary melon, canary seed, caneberries, canistel, cantaloupes, carambola (star fruit), casaba melon, cherimoya (sugar apple), cherries, Chinese bitter melon, citron, citron melon, coconuts, cranberries, crenshaw melon, dates, donaquia (winter melon), durian, elderberries, figs, genip, gooseberries, grapefruit, grapes, ground cherry, guamabana (soursop), guava,

guavaberry, honeyberries, honeydew, huckleberries, Israel melons, jack fruit, jujube, juneberries, kiwiberry, kiwifruit, Korean golden melon, kumquats, langsat, lemons, limequats, limes, longan, loquats, lychee, mangos, mangosteen, mayhaw berries, mesple, mulberries, nectarines, oranges, papaya, passion fruits, pawpaw, peaches, pears, pecans, pineapple, pitaya (dragon fruit), plantain, plumcots, plums, pomegranates, prunes, pummelo, raisins, rambutan, sapodilla, sapote, schizandra berries, sprite melon, star gooseberry, strawberries, tangelos, tangerines, tangors, wampee, watermelon, wax jamboo fruit, and wolfberry (goji).

Hemp means the plant species *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, that is grown under a license or other required authorization issued by the applicable governing authority that permits the production of the hemp.

Horticulture means any of the following horticulture: anise, basil, cassava, chervil (Fresh parsley), chia, chicory (radicchio), cilantro, cinnamon, curry leaves, galanga, ginger, ginseng, guayule, herbs, hops, lotus root, marjoram, meadowfoam, mint, moringa, niger seed, oregano, parsley, pennycress, peppermint, pohole, psyllium, rosemary, sage, savory, shrubs (forbs), sorrel, spearmint, tangos, tea, thyme, turmeric, vanilla, wasabi, water cress, and yu cha.

Ineligible commodities for CFAP 2 means any of the following commodities: birdsfoot and trefoil, clover, cover crop, fallow, forage soybeans, forage sorghum, gardens (commercial and home), grass, kochia (prostrata), lespedeza, milkweed, mixed

forage, pelts (excluding mink), perennial peanuts, pollinators, sunn hemp, vetch, and seed of ineligible crops.

Nursery crops means decorative or nondecorative plants grown in a container or controlled environment for commercial sale. Nursery crops are included in sales commodities.

Other livestock means any of the following livestock: animals commercially raised for food, fur, fiber, or feathers, including alpacas, bison, buffalo, beefalo, deer, ducks, elk, emus, geese, goats, guinea pigs, llamas, mink, ostrich, pheasants, quail, rabbits, reindeer, and turkey. It excludes all equine, breeding stock, companion or comfort animals, pets, and animals raised for hunting or game purposes.

Prevented planting means the inability to plant the intended crop acreage with proper equipment by the final planting date for the crop type because of a natural disaster.

Price trigger commodities means price trigger crops and price trigger livestock and products as defined in this section.

Price trigger crops means any of the following crops: barley, corn, sorghum, soybeans, sunflowers, upland cotton, wheat (all classes), excluding crops with an intended use of grazing, green manure, or left standing.

Price trigger livestock and products means any of the following livestock and products: beef cattle, broilers, dairy (cow milk), eggs, lambs, sheep, hogs, and pigs; excluding breeding stock.

Producer means a person or legal entity who shares in the risk of producing a commodity. The term does not include contract growers. Producers who are not in the business of farming at the time of application are not considered eligible producers.

Sales-based commodities means, as defined in this section, aquaculture, sales-based crops, nursery crops and floriculture, other livestock, and the following commodities: goat milk, mink (including pelts); mohair, and wool.

Sales-based crops means ambrosia, arundo, camelina, cactus, cardoon, fruits, honey, horticulture, maple sap, tobacco, tree nuts, and vegetables. Fruits, horticulture, tree nuts, and vegetables are defined in this section. The term excludes crops with an intended use of grazing, green manure, or left standing.

Tree nuts means any of the following tree nuts: almonds, avocados, carob, cashew, chestnuts, coffee, hazel nuts, jojoba, macadamia nuts, noni, olives, persimmons, pine nuts, pistachios, quinces, and walnuts.

Vegetables means any of the following vegetables: alfalfa sprouts, aloe vera, artichokes, arugula (greens), asparagus, bamboo shoots, batatas, bean sprouts, beans (including dry edible), beets, bok choy, broccoflower, broccoli, broccolini, broccolo-cavalo, Brussel sprouts, cabbage, calaloo, carrots, cauliflower, celeriac, celery, chickpea (see beans, garbanzo), chives, collard greens, coriander, corn, sweet, cucumbers, daikon, dandelion greens, dasheen (taro root, malanga), dill, eggplant, endive, escarole, frisee, gailon (gai lein, Chinese broccoli), garlic, gourds, greens, horseradish, Jerusalem artichokes (sunchoke), kale, kohlrabi, leeks, lentils, lettuce, melongene, mesculin mix, microgreens, mushrooms, okra, onions, parsnip, peas (including dry edible), pejobaye (heart of palm), peppers, potatoes, potatoes sweet, pumpkins, radicchio, radishes, rhubarb, rutabaga, salsify (oyster plant), scallions, seed - vegetable, shallots, spinach, squash, swiss chard, tannier, taro, tomatillos, tomatoes, truffles, turnip top (greens), turnips, yam, and yautia (malanga);

§ 9.202 Calculation of payments.

(a) Payments for price trigger crops will be equal to the greater of:

(i) Eligible acres of the crop multiplied by a rate of \$15 per acre; or

(ii) Eligible acres of the crop multiplied by the applicable yield, multiplied by the crop marketing percentage in Table 1 of paragraph (j) of this section, multiplied by the crop payment rate in Table 1 of paragraph (j) of this section.

(iii) Under paragraph (a) of this section, eligible acres include the producer's share of the determined acres, or reported acres if determined acres are not present, of the crop planted for the 2020 crop year, excluding prevented planted and experimental acres. For producers who insured acres of the crop under a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524), the yield will be the average of the producer's 2020 actual production history (APH) approved yield from all of the producer's insured acres nationwide. For producers for whom FSA is unable to obtain a 2020 APH approved yield, the yield will be the 2019 Agriculture Risk Coverage-County Option (ARC-CO) benchmark yield multiplied by 85 percent. ARC-CO yields for producers growing a crop in multiple counties will be weighted based on the producer's crop acreage physically located in each county.

(b) Payments for flat-rate crops will be equal to eligible acres of the crop multiplied by a rate of \$15 per acre. Eligible acres include the producer's share of the determined acres, or reported acres if determined acres are not present, excluding prevented planted and experimental acres.

(c) Payments for beef cattle will be equal to the lower of the producer's maximum owned inventory of eligible beef cattle, excluding breeding stock, on a date

selected by the producer from April 16, 2020, through August 31, 2020, or 4,546 head, multiplied by the number of payment limitations for the producer multiplied by a payment rate of \$55 per head.

(d) Payments for hogs and pigs will be equal to the lower of the producer's maximum owned inventory of eligible hogs and pigs, excluding breeding stock, on a date selected by the producer from April 16, 2020, through August 31, 2020, or 10,870 head multiplied by the number of payment limitations for the producer, multiplied by a payment rate of \$23 per head.

(e) Payments for lambs and sheep will be equal to the producer's highest owned inventory of eligible lambs and sheep, excluding breeding stock, on a date selected by the producer from April 16, 2020, through August 31, 2020, multiplied by a payment rate of \$27 per head.

(f)(i) Payments for broilers will be equal to 75 percent of the producer's 2019 broiler production multiplied by a payment rate of \$1.01 per bird (head).

(ii) Payments for broiler producers who began farming in 2020 and had no production in 2019 will be calculated as provided in paragraph (f)(i) of this section, except that the payments will be based on the producer's actual 2020 broiler production as of the date the producer submits an application for payment under this part.

(g)(i) Payments for dairy (cow milk) will be equal to the sum of the following two calculations:

(1) The producer's total actual milk production from April 1, 2020, to August 31, 2020, multiplied by the payment \$1.20 per hundredweight; and

(2) The producer's estimated milk production from September 1, 2020, to December 31, 2020, based on the daily average production from April 1, 2020, through August 31, 2020, multiplied by 122, multiplied by a payment rate of \$1.20 per hundredweight.

(ii) Dairy operations that stop commercially marketing milk after the date they apply for CFAP 2 but before December 31, 2020, must notify FSA of the date they stop commercially marketing milk. Those dairies are eligible only for a prorated payment under paragraph (g)(i)(2) of this section for the number of days the dairy operation commercially markets milk from September 1, 2020, through December 31, 2020.

(h)(i) Payments for eggs will be equal to 75 percent of the producer's 2019 egg production multiplied by the payment rate in Table 1 of paragraph (j) of this section.

(ii) Payments for egg producers who began farming in 2020 and had no production in 2019 will be calculated as provided in paragraph (h)(i) of this section, except that the payments will be based on the producer's actual 2020 egg production as of the date the producer submits an application for payment under this part.

(i)(i) Payments for sales commodities will be equal to the sum of the results for the following calculation for each 2019 sales range in Table 2 of paragraph (j) of this section: the amount of the producer's eligible sales within the specified range in calendar year 2019, multiplied by the payment rate for that range in Table 2 of paragraph (j) of this section. Eligible sales only includes sales of raw commodities grown by the producer; the portion of sales derived from adding value to the commodity, such as processing and packaging, and from sales of products purchased for resale is not included in the payment calculation unless determined eligible by the Secretary.

(ii) Payments for producers of sales commodities who began farming in 2020 and had no sales in 2019 will be calculated as provided in paragraph (i)(i) of this section, except that the payments will be based on the producer’s actual 2020 sales as of the date the producer submits an application for payment under this section.

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

Table 1 to Paragraph (j)—Payment Rates for Price Trigger Crops and Eggs.

Commodity	Units	Crop Marketing Percentage (percent)	Payment Rate (\$/unit)
Barley.....	bu	63	\$0.54
Corn	bu	40	0.58
Cotton, Upland.....	lb	46	0.08
Sorghum.....	bu	55	0.56
Soybean.....	bu	54	0.58
Sunflowers	lb	44	0.02
Wheat (all classes)	bu	73	0.54
Shell Eggs	dozen	n/a	0.05
Liquid Eggs.....	lb	n/a	0.04
Dried Eggs	lb	n/a	0.14
Frozen Eggs	lb	n/a	0.05

Table 2 to Paragraph (j)—Payment Rates for Sales Commodities

2019 Sales Range	Percent Payment Factor
Up to \$49,999	10.6
\$50,000-\$99,999	9.9
\$100,000-\$499,999	9.7
\$500,000-\$999,999	9.0
All sales over \$1 million.....	8.8

(k) CFAP 2 payments will not be calculated or issued for ineligible commodities.

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