

Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2021–0007]

Notice of Funds Availability; Pandemic Livestock Indemnity Program (PLIP)

AGENCY: Farm Service Agency, USDA.

ACTION: Notification of funding availability.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice announcing the availability of funds for the Pandemic Livestock Indemnity Program (PLIP) to provide assistance to producers for losses of livestock and poultry depopulated from March 1, 2020, through December 26, 2020, due to insufficient processing access as a result of the COVID-19 pandemic and for the cost of depopulation and disposal. FSA is implementing PLIP, as authorized by the Consolidated Appropriations Act, 2021 (CAA).

FOR FURTHER INFORMATION CONTACT: Kimberly Graham, Director; telephone: (202) 720–6825; email: Kimberly.Graham@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

FSA is implementing PLIP, as authorized by CAA (Pub. L. 116-260) and as directed by the USDA Secretary, to make payments to producers of livestock and poultry for losses of livestock or poultry depopulated before December 27, 2020, due to insufficient processing access, based on 80 percent of the fair market value of that

livestock and poultry, and for the cost of depopulation (other than costs already compensated under the Environmental Quality Incentives Program (EQIP)¹). The CAA also provides that the Secretary may take into consideration whether a producer has been compensated for the cost of depopulation under a State program. This assistance will be available to producers through PLIP as provided in this notice. FSA is administering PLIP.

Definitions

The definitions in parts 718 and 1400 of this title apply to PLIP, except as otherwise provided in this document.

Contract grower means a person or legal entity who grows or produces eligible livestock under contract for or on behalf of another person or entity. The contract grower's income is dependent upon the successful production of livestock or offspring from livestock. The contract grower does not have ownership in the livestock and is not entitled to a share from sales proceeds of the livestock.

Depopulation means, consistent with the American Veterinary Medical Association (AVMA)² definition, the rapid destruction of a population of livestock or poultry due to insufficient processing access during the COVID-19 pandemic with as much consideration given to the welfare of the animals as practicable.

¹EQIP is administered by USDA's Natural Resources Conservation Service according to the regulations in 7 CFR part 1466.

²The AVMA Guidelines for the Depopulation of Animals is available at: <https://www.avma.org/sites/default/files/resources/AVMA-Guidelines-for-the-Depopulation-of-Animals.pdf>

Live poultry dealer means a live poultry dealer as defined in section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(10)). Therefore, live poultry dealer means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce.

Packer means a packer as defined in section 201 of the Packers and Stockyards Act, 1921 (7 U.S.C. 191)). Therefore, packer means any person engaged in the business:

- (a) Of buying livestock in commerce for purposes of slaughter;
- (b) Of manufacturing or preparing meats or meat food products for sale or shipment in commerce; or
- (c) Of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

Swine means a domesticated omnivorous pig, hog, sow, or boar. Swine for purposes of dividing into categories for payment calculations are further delineated by sex and weight, as determined by FSA.

Eligible Livestock and Poultry

Eligible livestock and poultry include swine, chickens, and turkeys because FSA has determined that producers of these livestock and poultry types suffered losses and incurred costs for depopulation due to insufficient processing access during the COVID-19 pandemic. In addition to the eligible livestock and poultry types listed in this notice, the Deputy Administrator for Farm Programs may announce additional eligible livestock

categories if FSA later determines that other livestock were also depopulated due to insufficient processing access as a result of the COVID-19 pandemic.

Eligible livestock and poultry must have been depopulated from March 1, 2020, through December 26, 2020, due to insufficient processing access as a result of the COVID-19 pandemic in order to be eligible for PLIP. The livestock and poultry must have been physically located in the United States or a territory of the United States at the time of depopulation to be eligible. Eligible livestock does not include livestock not born, such as unborn swine that were depopulated during pre-farrowing.

Eligible Livestock Owners and Poultry Owners

Eligible livestock owners and poultry owners include only persons or legal entities who, as of the day the eligible livestock or poultry was depopulated, had the legal ownership of the livestock or poultry.

To be eligible for PLIP, a livestock or poultry owner must be any of the following:

- (1) Citizen of the United States;
- (2) Resident alien, which for purposes of this subpart means “lawful alien” as defined in 7 CFR part 1400;
- (3) Partnership of citizens or resident aliens of the United States;
- (4) Corporation, limited liability company, or other organizational structure organized under State law solely owned by U.S. citizens or resident aliens; or
- (5) 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).

Ineligible Livestock Owners and Poultry Owners

Ineligible livestock owners and poultry owners include:

- (1) Contract growers;
- (2) Federal, State and local governments, including public schools;
- (3) Live poultry dealers; and
- (4) Packers.

Application Process

FSA will accept the applications from July 20, 2021, through September 17, 2021. To apply for PLIP, eligible livestock owners and poultry owners must submit a complete FSA-620, Pandemic Livestock Indemnity Program (PLIP) Application, in person, by mail, e-mail, or facsimile to any FSA county office.

Applicants must also submit all of the following items, if not previously filed with FSA:

- AD-2047, Customer Data Worksheet for new customers or existing customers needing to update their customer profile;
- Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- Form CCC-901, Member Information for Legal Entities (if applicable);
- An average adjusted gross income statement for the 2020 program year for the person or legal entity, including the legal entity's members, partners, shareholders, heirs, or beneficiaries as provided in 7 CFR part 1400; form CCC-941 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and

- A highly erodible land conservation (sometimes referred to as HELC) and wetland conservation certification as provided in 7 CFR part 12 (form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification for PLIP applicant and applicable affiliates).

Applicants must submit all required eligibility documentation specified above, as applicable, no later than 60 days from the date an applicant signs and submits the FSA-620. When the applicant does not timely submit the required eligibility documentation, FSA will not issue a payment. When the required documentation is not timely submitted for a member of a legal entity, FSA will reduce the payment based on the member's ownership share of the legal entity.

If requested by FSA, the applicant must provide supporting documentation to substantiate the information on their application and ownership of the livestock and poultry claimed on the application. Examples of supporting documentation that may be requested include veterinarian records, feeding records, inventory records, rendering receipts, purchase receipts, and other records determined acceptable by the relevant FSA county committee. 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

PLIP payments compensate participants for both the loss of the eligible livestock or poultry and for the cost of depopulation and disposal. To simplify administration of PLIP, FSA has determined a single payment rate per head for each of the categories in

the table below. The categories and market values are consistent with the categories and nationwide prices used to administer the Livestock Indemnity Program (LIP), 7 CFR Part 1416, Subpart D, for 2020. The estimated cost of depopulation is based on USDA’s estimates of the average costs of common methods used to depopulate animals.³ The estimated cost of disposal is based on the costs of common disposal methods and rates used in EQIP. The disposal rates are weighted based on the number of participants paid under EQIP by disposal method. If additional categories are determined to be eligible after publication of this notice, those categories and payments rates will be announced by press release and outreach to stakeholders by the Deputy Administrator for Farm Programs.

Eligible Livestock or Poultry Category	Market Value per Head (after 80 percent factor)	Depopulation & Disposal Cost per Head (after 80 percent factor)	Depopulation Payment Rate per Head (after 80 percent factor)
Swine: boars and sows; 451 lbs. or greater	\$173.25	\$85.32	\$258.57
Swine: sows, boars, barrows, and gilts; 251-450 lbs.....	\$111.74	\$47.13	\$158.88
Swine: sows, boars, barrows, and gilts; 151-250 lbs.....	\$87.97	\$34.13	\$122.10
Swine: lightweight barrows and gilts; 50-150 lbs.....	\$68.38	\$20.32	\$88.70
Swine: suckling nursery pigs; less than 50 lbs.	\$48.81	\$6.50	\$55.31
Chickens: chicks.....	\$0.26	\$0.06	\$0.32
Chickens: super roasters and parts; 7.76 lbs. or greater.....	\$4.17	\$1.14	\$5.31
Chickens: roasters; 6.26 - 7.75 lbs.	\$3.17	\$0.87	\$4.04

³Information on common methods of depopulation and associated costs is available from the Animal and Plant Health Inspection Service at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/livestock-coordination-center/livestock-coordination-center>.

Eligible Livestock or Poultry Category	Market Value per Head (after 80 percent factor)	Depopulation & Disposal Cost per Head (after 80 percent factor)	Depopulation Payment Rate per Head (after 80 percent factor)
Chickens: broilers, pullets; 4.26-6.25 lbs.....	\$2.50	\$0.68	\$3.18
Chickens: pullets, Cornish hens; less than 4.26 lbs.....	\$1.70	\$0.46	\$2.16
Chickens: layers	\$3.64	\$1.30	\$4.94
Turkeys: poults	\$1.33	\$0.82	\$2.15
Turkeys: toms, fryers, and roasters	\$12.85	\$2.72	\$15.57

PLIP payments will be calculated by multiplying the number of head of eligible livestock or poultry by the depopulation payment rate per head from the table above, and then subtracting the amount of any payments the eligible livestock owner or poultry owner has received for disposal of the livestock or poultry under EQIP or a State program. The payments will also be reduced by any Coronavirus Food Assistance Program 1 and 2 (CFAP 1 and 2) payments paid on the same inventory of swine that were depopulated.⁴ FSA will issue payments to eligible livestock owners and poultry owners as applications are received. PLIP is not subject to payment limitation.

Provisions Requiring Refund to FSA

In the event that any application for a PLIP payment resulted from erroneous information reported by the applicant, the payment will be recalculated, and the participant must refund any excess payment to FSA including interest to be calculated from the date of the disbursement to the PLIP participant. If, for whatever reason, FSA

⁴The portion of the CFAP 1 payment for hogs and pigs that was funded under the Coronavirus Aid, Relief, and Economic Stability Act (CARES Act; Pub. L. 116–136) was based on inventory sold between January 15, 2020, and April 15, 2020; therefore, no reduction is necessary for that portion of the CFAP 1 payment.

determines that the applicant misrepresented either the total amount or the producer's share of the head of livestock or poultry, the application will be disapproved and the participant must refund the full PLIP 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

A person or legal entity, other than a joint venture or general partnership, is ineligible for PLIP 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, exceeds \$900,000. With respect to joint ventures and general partnerships, this AGI provision will be applied to members of the joint venture and general partnership. AGI provisions are applicable to members of a legal entity, including a general partnership or joint venture who are at or above the fourth tier of ownership in the business structure. The eligible livestock owner's payment will be reduced by the portion of a payment attributed to a member who exceeds the \$900,000 AGI limitation or is otherwise ineligible for payment.

Payments will be attributed to individual persons and members of entities through the direct attribution process described in 7 CFR 1400.105. An applicant that is a legal entity will be required to provide the names and taxpayer identification numbers of the members holding an ownership interest in the legal entity as described in 7 CFR 1400.107. A reduction in payment will be applied to the payment entity if the fourth tier of ownership in the legal entity is that of a legal entity and not that of an individual person.

If an individual or legal entity is not eligible to receive PLIP payments due to the individual or legal entity failing to satisfy some other payment eligibility provision such as AGI or conservation compliance provisions, 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.

General requirements that apply to other FSA-administered commodity programs also apply to PLIP, including compliance with the provisions of 7 CFR part 12, “Highly Erodible Land and Wetland Conservation,” and the provisions of 7 CFR 718.6, which address ineligibility for benefits for offenses involving controlled substances. 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 PLIP. 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 eligible livestock and poultry categories for PLIP.

Participants are required to retain documentation in support of their application for 3 years after the date of approval. Participants receiving PLIP 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.

An applicant may file an application with an FSA county office after the PLIP application deadline, and in such case the application will be considered a request to waive the deadline. The Deputy Administrator has the discretion and authority to consider the case and waive or modify application deadlines and other requirements or program provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of PLIP. Although applicants have a right to a decision on whether they filed applications by the deadline or not, applicants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion to consider the request will not be considered an adverse decision and is, by itself, not appealable.

Any payment under PLIP will be made without regard to questions of title under State law and without regard to any claim or lien. The regulations governing offsets in 7 CFR part 3 do not apply to payments made under this part.

In either applying for or participating in PLIP, or both, the eligible livestock owner or poultry owner 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 eligible livestock owner or poultry owner willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the eligible livestock owner or poultry owner knows or believes not to be true, in the course

of either applying for or participating in PLIP, or both, then the eligible livestock owner or poultry owner 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 eligible livestock owner or poultry owner makes such verbal or written declaration, certification, statement, or verification within or without the United States.

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 PLIP but only as to beneficiaries who, as a condition of the waiver, agree to apply the PLIP payments to reduce the amount of the judgment lien.

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

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the emergency information collection request has been submitted to the Office of Management and Budget (OMB). OMB approved the 6-month emergency PLIP information collection activity. FSA will make payments to producers of livestock and poultry for losses of livestock or poultry depopulated before December 27, 2020, due to insufficient processing access, based on 80 percent of the fair market value of the livestock and poultry, and for the cost of depopulation (other than costs already compensated under the Environmental Quality Incentives Program, state funded programs, and CFAP 1 and 2 payments).

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 regulation for compliance with NEPA (7 CFR part 799).

As previously stated, PLIP is providing payments to qualified producers of livestock and poultry for losses of livestock or poultry depopulated before December 27, 2020, due to insufficient processing access based on 80 percent of the fair market value of the livestock and poultry, and for the cost of depopulation. The limited discretionary aspects of PLIP do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the FSA Categorical Exclusions specified in 7 CFR 799.31(b)(6)(iii) that applies to price support programs and § 799.31(b)(6)(vi) that applies to safety net programs.

No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of PLIP and the participation in PLIP 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 Catalog of Federal Domestic Assistance, to which this document applies is 10.138 – Pandemic Livestock Indemnity Program.

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 (202) 720-2600 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.

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Zach Ducheneaux,
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