

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

05.27.2020

ATTORNEYS

Nathan G. Patterson

On May 19, 2020, the U.S. Department of Agriculture (“USDA”) released the final regulations for the Coronavirus Food Assistance Program (“CFAP”) and provided additional guidance on direct payment aid to agricultural producers affected by the coronavirus pandemic. These direct payments aim to compensate farmers and ranchers for sale losses due to price declines between January and April 2020 and costs associated with loss of marketing channels and marketplace disruptions. Direct payments made to eligible producers will be made from two separate funding sources: approximately \$9.5 billion under the CARES Act and an additional \$6.5 billion from the Commodity Credit Corporation (“CCC”) Charter Act. The USDA, through county Farm Service Agency (“FSA”) offices, is scheduled to begin accepting a single application for payments made from both funding sources on May 26, 2020.

How will direct payments be calculated?

CFAP direct payments will be split into two portions: one payment made under the CARES funding and one made under the CCC funding. These two payment sources will be separately tracked, but consolidated into a single direct payment to the producer. Eligible producers will receive an initial payment of 80% of their total direct payment after submitting the application. The remaining 20% will be withheld and paid out at a to-be-determined future date if funding

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

under each source is still available at that time.

Direct payments made to eligible producers will be calculated based on the type of commodity and the applicable payment rate provided for each. The calculation and payment rate for each listed commodity is as follows:

Non-Specialty Crops and Wool

For non-specialty crops and wool, eligible producers will receive a direct payment for 50% of the producer's unpriced inventory of the specified commodity held as of January 15, 2020, multiplied by each of the applicable payment rates. Unpriced inventory is any produced commodity which is not yet subject to an agreed price for the future such as through a forward contract or other binding agreement, meaning the inventory was still subject to price risk moving forward.

Direct Payment = (units of unpriced inventory x 50% x CARES payment rate) + (units of unpriced inventory x 50% x CCC payment rate) **Commodity Unit CARES Act Payment Rate CCC Payment Rate**

| | | | | | | | | |
|---------------------|---------------------------------------|--------|-----------|--------------------------|--------|---------|-------------------------------|--------|
| Barley (malting) bu | \$0.34 | \$0.37 | Canola lb | \$0.01 | \$0.01 | Corn bu | \$0.32 | |
| \$0.35 | Durum Wheat bu | \$0.19 | \$0.20 | Hard Red Spring Wheat bu | \$0.18 | \$0.20 | Millet bu | \$0.31 |
| \$0.34 | Oats bu | \$0.15 | \$0.17 | Sorghum bu | \$0.30 | \$0.32 | Soybeans bu | \$0.45 |
| \$0.50 | Sunflowers lb | \$0.02 | \$0.02 | Upland Cotton lb | \$0.09 | \$0.10 | Wool (graded, clean basis) lb | \$0.71 |
| \$0.78 | Wool (non-nongraded, greasy basis) lb | \$0.36 | \$0.39 | | | | | |

Specialty Crops

For specialty crops, eligible producers will receive a direct payment for all of the following quantities of specialty crops occurring between January 15 and April 15, 2020, multiplied by the applicable payment rate:

- Sold specialty crops;
- Harvested and shipped specialty crops, which spoiled due to the loss of a marketing channel; and
- Harvested specialty crops, which remained on the farm, and unharvested specialty crops left in the field mature.

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

Direct Payment = (quantity of specialty crop sold x applicable CARES payment rate) + (quantity of specialty crop spoiled x applicable CARES payment rate) + (quantity of specialty crop left on farm x CCC payment rate)

Commodity CARES Act Payment Rate for Sold Crops

(\$/lb) CARES Act Payment Rate for Spoiled Crops

(\$/lb) CCC Payment Rate (\$/lb)

Almonds

\$0.26

\$0.57

\$0.11

Apples

-

\$0.18

\$0.03

Artichokes

\$0.66

\$0.49

\$0.10

Asparagus

-

\$0.38

\$0.07

Avocados

-

\$0.14

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

\$0.03

Beans

\$0.17

\$0.16

\$0.03

Blueberries

-

\$0.62

\$0.12

Broccoli

\$0.62

\$0.49

\$0.10

Cabbage

\$0.04

\$0.07

\$0.01

Cantaloupe

-

\$0.10

\$0.02

Carrots

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

\$0.02*

\$0.11

\$0.02

Cauliflower

\$0.11

\$0.31

\$0.06

Celery

-

\$0.07

\$0.01

Corn, sweet

\$0.09

\$0.13

\$0.03

Cucumbers

\$0.13

\$0.15

\$0.03

Eggplant

\$0.07

\$0.15

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

\$0.03

Garlic

-

\$0.85

\$0.17

Grapefruit

-

\$0.11

\$0.02

Kiwifruit

-

\$0.32

\$0.06

Lemons

\$0.08

\$0.21

\$0.04

Lettuce, iceberg

\$0.20

\$0.15

\$0.03

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

Lettuce, romaine

\$0.07

\$0.12

\$0.02

Mushrooms

-

\$0.59

\$0.11

Onions, dry

\$0.01

\$0.05

\$0.01

Onions, green

-

\$0.30

\$0.06

Oranges

-

\$0.14

\$0.03

Papaya

-

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

\$0.32

\$0.06

Peaches

\$0.08

\$0.32

\$0.06

Pears

\$0.08

\$0.18

\$0.03

Pecans

\$0.28

\$0.93

\$0.18

Peppers, bell type

\$0.14

\$0.22

\$0.04

Peppers, other

\$0.15

\$0.22

\$0.04

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

Potatoes

-

\$0.04

\$0.01

Raspberries

-

\$1.45

\$0.28

Rhubarb

\$0.15

\$1.03

\$0.20

Spinach

\$0.37

\$0.37

\$0.07

Squash

\$0.72

\$0.39

\$0.08

Strawberries

\$0.84

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

\$0.72

\$0.14

Sweet potatoes

-

\$0.18

\$0.04

Tangerines

-

\$0.22

\$0.04

Taro

-

\$0.23

\$0.05

Tomatoes

\$0.64

\$0.38

\$0.07

Walnuts

-

\$0.45

\$0.09

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

Watermelons

-

\$0.02

-

*USDA corrected payment rate from \$0.20 to \$0.02 due to an error in the official regulation

Livestock

For livestock, the direct payment is calculated using the number of head which were either: (1) sold between January 15 and April 15, 2020; or (2) kept as unpriced inventory between April 16 and May 14, 2020. An eligible producer will receive a direct payment for the number of head, multiplied by the applicable payment rate. The applicable payment rate for cattle varies based on the type and size/maturity, as described below.

Direct Payment = (number of head sold x CARES payment rate) + (number of unpriced head x CCC payment rate) **Commodity Unit**

CARES Act Payment Rate

CCC Payment Rate

Slaughter Cattle, Mature

head

\$92.00

\$33.00

Slaughter Cattle, Fed

head

\$214.00

\$33.00

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

Feeder Cattle, Less than 600 Pounds

head

\$102.00

\$33.00

Feeder Cattle, More than 600 Pounds

head

\$139.00

\$33.00

All Other Cattle

head

\$102.00

\$33.00

Pigs

head

\$28.00

\$17.00

Hogs

head

\$18.00

\$17.00

Lambs and yearlings

head

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

\$33.00

\$7.00

Dairy

For dairy, eligible producers will receive a direct payment based on the producer's certified first quarter milk production for 2020 and a national adjustment made to first quarter production. This payment will be applicable for any milk that was dumped during that time, but will not apply to milk which was already priced under a forward or like contract.

Direct Payment = (first quarter production per hundred weight x \$4.71) + (first quarter production per hundred weight x 1.014 x \$1.47)

Will direct payments be subject to eligibility and payment limitations?

Direct payments made under CFAP will be subject to both the Adjusted Gross Income ("AGI") limitation and total payment limitations under USDA regulations. Producers will only be eligible to receive direct payments if their average AGI for the 2016, 2017, and 2018 tax years does not exceed \$900,000, or, if their AGI does exceed \$900,000, at least 75% of the producer's AGI stems from farming, ranching, or forestry activities. A producer's level of AGI and, if applicable, Farming/Ranching/Forestry portion of AGI will be certified on forms CCC-941 and 942.

Individuals will be limited to a total payment from all commodities of \$250,000. General partnerships and joint ventures will be limited to the aggregate amount of payments available to all such members or partners of the general partnership. Any other type of entity will be limited to a maximum of \$250,000 for all commodities, but may be eligible for an additional \$250,000 or \$500,000 if 2 or 3 individual owners, respectively, each provide at least 400 hours of active personal labor or management to the production of the 2019 commodity. Direct and indirect attribution rules will apply to the CFAP direct payments, as normal. Payments will be attributed through to the fourth level of ownership and reduced to zero when individual payment limitations have been met.

How will sign-up and certification be handled?

The USDA is scheduled to begin accepting applications from eligible producers starting May 26, 2020, through the county FSA offices. To begin the application process, producers will need to call their county FSA office to schedule an appointment and then work with the FSA staff to electronically submit their application. The application process has been streamlined and will not require acreage reports or farm numbers at the time of applying. Application submissions will be

Coronavirus Food Assistance Program: Direct Payments to Farmers and Ranchers Amidst the Coronavirus Pandemic

accepted through August 28, 2020, or until the funds have been exhausted.

It may be necessary for the producer to fill out additional forms certifying the producer's contact, banking, entity ownership and AGI information. For producers who work with the FSA regularly, these forms are likely already on file for the producer's operation. However, if the producer is new to working with the FSA, filling out these additional forms prior to contacting the FSA staff may save some time when working with the FSA staff. These forms and additional information on CFAP may be found here.

When will I receive a payment?

Policymakers have indicated that direct payments will be issued within a week of the producer's application submission. For producers who submit their application in the opening week, this means the first 80% of their direct payment could be received as early as the first week of June.

The implementation of CFAP will provide many farmers and ranchers with much needed support for financial losses and disruptions due to the coronavirus pandemic. Although not covering every financial loss, this direct assistance will likely help keep many producers operating during these difficult times.

** The information contained in this document is provided for informational purposes only. It should not be construed as business, legal, accounting, tax, financial, investment or other advice on any matter and should not be relied upon for such.*

The information in this document may not reflect the most current developments as the subject matter is extremely fluid and may change daily. The content and interpretation of the issues addressed herein is subject to revision. Koley Jessen, P.C., L.L.O. disclaims any and all liability with respect to actions taken or not taken based on any or all of the contents of this document to the fullest extent permitted by law. Do not act or refrain from acting upon the information contained in this document without seeking professional or other advice.