

Farmers' Guide to 2021 CFAP Changes: Contract Farmers and Others

February 18, 2021

Farmer Legal Assistance Hotline
877-860-4349

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First Edition

February 18, 2021

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This publication was made possible, in part, with financial support from Farm Aid, the National Sustainable Agriculture Coalition, and by the support of individual contributions to Farmers' Legal Action Group. To help FLAG keep family farmers on the land and to support farmers' guides like this one, please consider making a tax-deductible donation by clicking [here](#).

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Chapter One: Introduction

The Coronavirus Food Assistance Program (CFAP) is a United States Department of Agriculture (USDA) program that gives direct payments to farmers affected by the COVID-19 crisis. While the main deadlines for both versions of CFAP—CFAP 1 and CFAP 2—have passed, USDA recently announced important changes to CFAP that directly affect many farmers. Some farmers, such as many contract producers, are newly eligible for CFAP 2. Further, an extension of deadlines means that many farmers may still apply for or amend their applications for CFAP 2. In addition, a change to CFAP 1 now allows increased benefits for hog and pig producers.

I. Background

The origin of the Coronavirus Food Assistance Program (CFAP) is the CARES Act, which became law on March 27, 2020.¹ On May 21, 2020, USDA began to release rules for CFAP. Many corrections and changes to CFAP followed throughout 2020. Eventually, the first version of CFAP became known as CFAP 1. Signup for CFAP 1 began on May 26, 2020, and ended on September 11, 2020.² Later, on September 18, 2020, USDA announced the creation of the Coronavirus Food Assistance Program 2 (CFAP 2).³ The signup for CFAP 2 started on September 21, 2020. The original deadline for most farmers for CFAP 2 was December 11, 2020.

On December 27, 2020, the Consolidated Appropriations Act, 2021 (2021 Appropriations Act) became law.⁴ It created a number of changes to CFAP. On January 15, 2021, USDA announced how it would implement some of those changes to CFAP.⁵

This Guide focuses on these recent changes introduced by the 2021 Appropriations Act, and on other recent changes made by USDA.

II. Recent Changes to CFAP

The recent changes to CFAP come from two main sources.

¹ Statutory authority for CFAP comes from the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Commodity Credit Corporation Charter. For the CARES Act, see CARES Act, Division B—Emergency Appropriations for Coronavirus Health Response and Agency Operations, Title I, Agricultural Programs, Office of the Secretary, 116 Public Law 136, 134 Stat. 281 (March 27, 2020). A copy can be found here: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>. USDA also relies on 15 U.S.C. § 714b of the Commodity Credit Corporation (CCC) charter for authority for parts of the CFAP program. See 15 U.S.C. § 714c.

² USDA, Coronavirus Food Assistance Program; Additional Assistance (CFAP Additional Assistance Rule), 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021). Some farmers in Louisiana, Oregon, and Texas could apply through October 9, 2020, due to natural disasters.

³ USDA Press Release No. 0378.20, USDA to Provide Additional Direct Assistance to Farmers and Ranchers Impacted by the Coronavirus (September 18, 2020), at: <https://www.usda.gov/media/press-releases/2020/09/18/usda-provide-additional-direct-assistance-farmers-and-ranchers>.

⁴ Consolidated Appropriations Act, 2021, 116 Pub. Law 260 (December 27, 2020). As a bill it was known as H.R. 133. A copy can be found here: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

⁵ USDA, Coronavirus Food Assistance Program—Additional Assistance (February 11, 2021), at: <https://www.farmers.gov/cfap>.

A. 2021 Appropriations Act

On December 27, 2020, the Consolidated Appropriations Act, 2021 (2021 Appropriations Act), became law.⁶ The 2021 Appropriations Act gave more money to CFAP. It also changed some of the rules for CFAP 1 and CFAP 2.⁷

B. Federal Register

On January 19, 2021, changes to CFAP were announced by USDA and published in the Federal Register.⁸ Those changes were partly a product of the 2021 Appropriations Act and were partly changes made by the USDA to the program based on USDA's own judgment. Those regulations will eventually become a part of the Code of Federal Regulations.⁹

C. Handbooks

Handbooks set out the rules used by USDA to carry out its programs. USDA has published a Handbook for CFAP 1 and a Handbook for CFAP 2.¹⁰ FSA also relies on other Handbooks for part of the CFAP rules.¹¹

On January 15, 2021, USDA revised its CFAP 2 Handbook.¹² This revised CFAP 2 Handbook began to adopt the changes made in the 2021 Appropriations Act. The Handbook also includes changes by USDA based on USDA's authority to set the rules for CFAP.¹³ USDA says these changes were made in response to USDA's ongoing evaluation of CFAP and on USDA's understanding of farmer need.

In a Notice released on January 27, 2021, USDA said it also published a revised version of its CFAP 1 Handbook—technically known as 1-CFAP, Amendment 10.¹⁴ As of February 10, 2021, however, this new version of the Handbook has not been made available online.¹⁵ The most recent version of that Handbook was released on December 7, 2020. As a result, FLAG has been unable to incorporate the revised CFAP 1 Handbook into this Guide.

⁶ Consolidated Appropriations Act, 2021, 116 Pub. Law 260 (December 27, 2020).

⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021).

⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021). USDA says more changes are coming.

⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (to be codified at 7 C.F.R. pt. 9) (January 19, 2021).

¹⁰ See FSA Handbook, 1-CFAP, Coronavirus Food Assistance Program (December 7, 2020) (CFAP 1 Handbook); FSA Handbook, 3-CFAP, Coronavirus Food Assistance Program 2 (January 15, 2021) (CFAP 2 Handbook).

¹¹ For example, some CFAP eligibility rules for foreign persons come from FSA Handbook, 5-PL (Amendment 6), Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income – Agricultural Act of 2014 (October 2, 2019). FSA Handbooks can be found here: <https://www.fsa.usda.gov/programs-and-services/laws-and-regulations/handbooks/index>.

¹² FSA Handbook, 3-CFAP, Coronavirus Food Assistance Program 2 (January 15, 2021) (CFAP 2 Handbook).

¹³ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021).

¹⁴ FSA Notice CFAP-14, CFAP Activities Updates (January 27, 2021). As of February 10, 2021, an updated Handbook was not available online.

¹⁵ The available version continues to be FSA Handbook, 1-CFAP, Coronavirus Food Assistance Program, Amendment 9 (December 7, 2020), at https://www.fsa.usda.gov/Internet/FSA_File/1cfap-a9.pdf.

D. Notices

USDA sometimes issues what it calls Notices. These provide additional rules that govern USDA programs. Notices have a published date, as well as a disposal, or expiration, date.¹⁶ This Guide includes Notices released to the public by USDA through February 10, 2021.

E. USDA Website

USDA publishes important information on its programs, including CFAP, online.¹⁷

III. How to Use This Guide

When using this Guide to 2021 CFAP Changes, two general aspects of the discussion warrant a brief initial note.

A. Use with Other FLAG Guides

This Guide is intended to explain recent changes to the CFAP program.¹⁸ This Guide is intended to be read alongside FLAG's Guide to CFAP 1 and FLAG's Guide CFAP 2.¹⁹

B. Types of CFAP Benefits

The 2021 Appropriations Act introduced an additional category of eligible commodities to the CFAP program—contract producers.²⁰ There are now four broad categories of eligible commodities for CFAP 2. They are: (1) price trigger commodities; (2) flat-rate crops; (3) sales commodities; and (4) contract producers. Changes described in this Guide apply to price trigger commodities, sales commodities, and contract producers. Flat-rate crops are not addressed in the Guide. It is important to keep these categories of commodities separate when discussing CFAP benefits—especially because some commodities, such as pullets, can be eligible in more than one category.

The categories for CFAP 1 are somewhat different than those in CFAP 2. Each of the eligible commodities for CFAP 1 falls into one of the following categories: (1) dairy; (2)

¹⁶ See, for example, FSA Notice CFAP-14, CFAP Activity Updates (August 1, 2021). Notices may be downloaded from the FSA website. To search for downloadable FSA Notices, visit: <https://www.fsa.usda.gov/FSA/notices>.

¹⁷ See USDA website, Coronavirus Food Assistance Program—Additional Assistance, at: <https://www.farmers.gov/cfap> (February 11, 2021); see also USDA website, Coronavirus Food Assistance Program – Additional Assistance FAQ (CFAP Additional Assistance FAQ) (January 22, 2021).

¹⁸ Thanks to Farm Aid, the National Sustainable Agriculture Coalition (NSAC), the Intertribal Agriculture Council (IAC), and the Indigenous Food and Agriculture Initiative (IFAI) for helpful suggestions. Additional helpful discussion is provided by the National Agricultural Law Center. National Agricultural Law Center, COVID-19 Resource Library, at: <https://nationalaglawcenter.org/covid19/>.

¹⁹ For CFAP 1, see Farmers' Guide to the Coronavirus Food Assistance Program (CFAP), Third Edition (October 23, 2020), at: <http://www.flaginc.org/2020/10/farmers-guide-to-the-coronavirus-food-assistance-program-cfap-3rd-edition-october-23-2020/>. For CFAP 2, see Farmers' Guide to Coronavirus Food Assistance Program 2 (CFAP 2) (November 11, 2020), at: <http://www.flaginc.org/wp-content/uploads/2020/11/Farmers-Guide-to-the-Coronavirus-Food-Assistance-Program-2-CFAP-2-November-11-2020.pdf> <http://www.flaginc.org/>.

²⁰ The 2021 Appropriations Act refers to contract producers as “contract growers.” See Consolidated Appropriations Act, 2021, Division A, Title I, Subtitle B, Chapter 1, Section 751 (December 27, 2020).

eggs; (3) wool; (4) livestock, including cattle, swine and sheep; and (5) crops, including non-specialty crops and specialty crops; (6) aquaculture; and (7) floriculture/nursery.²¹ Changes in this Guide to CFAP 1 apply to livestock commodities, and in particular to swine.

IV. Current Through February 10, 2021

This FLAG Guide to 2021 CFAP Changes is current through February 10, 2021. If USDA makes changes to the program, FLAG may issue an updated Guide.

V. Summary of Changes to CFAP

The following sections briefly describe some of the changes to CFAP discussed in this Guide. More details on these changes follow in longer sections.

A. CFAP 2: Deadline Now February 26, 2021 for Some Farmers

The original signup for CFAP 2 started September 21, 2020, and ended for most farmers on December 11, 2020.²² The new deadline for some farmers to apply for CFAP 2 is February 26, 2021. This is also the deadline for many farmers to amend their previously submitted CFAP 2 applications.

B. New Farmers and Commodities Now Eligible for CFAP 2

For CFAP 2, the new rules add the following eligible farmers and commodities.²³

1. Contract Farmers Now Eligible

Contract producers of hogs and poultry are now eligible for CFAP 2.²⁴ Because contract producers had not been able to apply for CFAP 2 until recently, this is the first time there has been a deadline for them. That deadline for a completed application, including the farmer's signature, is February 26, 2021.²⁵ The application form must either be submitted or post-marked by that date. These changes are described in Chapter Two of this Guide.

²¹ See FLAG, Farmers Guide to CFAP (Third Edition) (October 23, 2020).

²² USDA, Coronavirus Food Assistance Program (CFAP 2 Rule), 85 Fed. Reg. 59,380, 59,382, 59,385 (September 22, 2020) (to be codified at 7. C.F.R. § 9.4(a)(2)); CFAP 2 Handbook, page 2-14, para. 21.B, page 3-3, para. 50.C (January 15, 2021); USDA website, CFAP—Additional Assistance, Apply for Additional Assistance (February 11, 2021).

²³ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

²⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.A, page 3-7, para. 51.E, page 9-1, para. 300.A (January 15, 2021); USDA website, CFAP—Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP—Additional Assistance FAQ, "Are contract livestock producers eligible for CFAP 2 additional assistance?" (January 22, 2021).

²⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.B (January 15, 2021); USDA website, CFAP—Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP—Additional Assistance FAQ, "Are contract livestock producers eligible for CFAP 2 additional assistance?" (January 22, 2021).

2. Pullets Now Eligible

Pullets are now eligible for CFAP 2 as a sales commodity.²⁶ They are considered “other livestock” by USDA.²⁷ Because pullets were not an eligible commodity until recently, this is the first time there has been a deadline for pullets. The deadline for a completed application, including the farmer’s signature, is February 26, 2021.²⁸ The application form must either be submitted or post-marked by that date. These changes are described in Chapter Three of this Guide.

3. CFAP 2: Turfgrass Sod Now Eligible

Turfgrass sod is now eligible for CFAP 2 as a sales commodity.²⁹ Because turfgrass sod was not an eligible commodity until recently, this is the first time there has been a deadline for it. The deadline for a complete application, including the farmer’s signature, is February 26, 2021.³⁰ The application form must either be submitted or post-marked by that date. Turfgrass sod is discussed in Chapter Four of this Guide.

C. CFAP 2: Sales Commodities Calculation Changes

The calculation for CFAP 2 benefits for sales crops has changed in a way that likely benefits a number of farmers.³¹ Farmers can amend already submitted applications to include additional income in their listed 2019 crop year sales.³² This is helpful because benefits are based in part on the amount of those sales. Income can be added to 2019 crop sales from: (1) federal crop insurance indemnities; (2) Noninsured Crop Disaster Assistance Program (NAP) payments, and (3) Wildfire and Hurricanes Indemnity Program Plus (WHIP+) payments.³³ The deadline for those amendments is February 26, 2021. These changes are described in Chapter Five of this Guide.

²⁶ CFAP 2 Handbook, page 3-3, para. 50.C, page 3-7, para. 51.E, page 7-21, para. 221.A (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP—Additional Assistance FAQ, “What new commodities are now eligible for CFAP additional assistance?” (January 22, 2021).

²⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7. C.F.R. § 9.201) (January 19, 2021); CFAP 2 Handbook, page 7-21, para. 221.A (January 15, 2021).

²⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.B (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

²⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7. C.F.R. § 9.201) (January 19, 2021); CFAP 2 Handbook, page 2-13, para. 21.A, page 3-7, para. 51.E, page 7-22, para. 221.A (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP—Additional Assistance FAQ, “Are contract livestock producers eligible for CFAP 2 additional assistance?” (January 22, 2021).

³⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.B (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

³¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021). USDA says this was done to implement the 2021 Appropriations Act.

³² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7. C.F.R. § 9.203) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.A, page 3-8, para. 52.B (January 15, 2021).

³³ CFAP 2 Handbook, page 3-3, para. 5.B, page 3-7, para. 51.E (January 15, 2021); USDA website, CFAP—Additional Assistance FAQ, “I grow or raise a CFAP 2 sales-based commodity that suffered a loss covered by crops insurance indemnity, NAP, or WHIP+ in crop year 2019,” “I applied for CFAP 2, and my payment calculation only included eligible sales. Can I revise my application to update how the payment is calculated?” (January 22, 2021).

D. CFAP 2: Price-Trigger Crop Calculation Changes

For price trigger crops, the rules have been changed for yield calculations.³⁴ The change applies to the calculation of approved yields, which are part of the basis for calculating price trigger crop benefits. Farmers can amend already submitted applications to include these changes.³⁵ The deadline for those amendments is February 26, 2021.

E. CFAP 1: Hogs and Pigs Payments

For CFAP 1 hog and pig producers, the new rules provide an increased benefit.³⁶ There is no need for farmers to take action to receive this benefit.

F. Minor Corrections to CFAP

The recent rules also made minor corrections to CFAP that USDA says will not affect the administration of the program.³⁷ These corrections involve amending the definitions of fruits and tree nuts for CFAP 2, as well as providing additional eligibility guidance for livestock under both CFAP 1 and CFAP 2. It does not appear that these corrections will have any substantive impact, and there is no action to be taken by farmers as a result of the changes.

³⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021).

³⁵ CFAP 2 Handbook, page 3-3, para. 5.B, page 3-7, para. 51.E (January 15, 2021); USDA website, CFAP—Additional Assistance FAQ, “What if I had crop insurance but applied for CFAP 2 without a 2020 actual production history (APH) for my price-trigger crops?” (January 22, 2021).

³⁶ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021).

³⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

Chapter Two: Contract Farmer Eligibility for CFAP 2

Contract farmers are now eligible for CFAP 2.³⁸ They previously have not been eligible for either CFAP 1 or CFAP 2. In its 2021 changes to CFAP 2, USDA created a completely separate category of payment for contract farmers. Contract farmers, are not, for example, raising sales-based commodities or price trigger commodities.³⁹ Rather, they fall within their own, separate CFAP 2 category of “contract producers.”⁴⁰

To receive CFAP 2 funds, a contract farmer must meet USDA eligibility requirements. That includes meeting the definitions of both an eligible producer and an eligible contract producer.⁴¹

This Chapter refers to contract producers and contract farmers interchangeably.

I. Eligible Producer Definition

To be eligible for CFAP 2, a contract farmer must be what USDA calls an eligible producer.⁴² The USDA definition of a producer has several parts. A short description of that USDA definition is in this section. For more details, see FLAG's Farmers' Guide to CFAP 2.⁴³

First, an eligible producer can be a natural person.⁴⁴ An eligible producer can also be a legal entity—such as an LLC or a corporation. Second, a producer must share in the risk of producing a commodity. Third, a farmer must be in the business of farming at the time the CFAP 2 application is filed.

II. Contract Producer Definition

In order to qualify as a contract producer for purposes of CFAP 2, a farmer must first meet the USDA definition of a contract producer.⁴⁵ This definition has three parts.

³⁸ USDA website, CFAP – Additional Assistance FAQ, “Are contract livestock producers eligible for CFAP 2 additional assistance?” (January 22, 2021). USDA says the following about the reason for the change. First, USDA did not include contract producers under CFAP 1 because USDA believed that the impacts of COVID-19 on contract farmers was not well known at the time. Second, the harm caused by delayed delivery of young poultry and hogs to contract producers, decreased housing densities, increased costs for keeping animals longer than normal, and damage caused by keeping animals too large for the housing on the farm were known to USDA when it issued rules for CFAP 2. USDA describes these losses in some detail. USDA, however, believed that the authority under the CCC Charter did not allow payments to farmers that did not market their contract production. Now, however, CARES Act funding, which does allow such assistance, is available. CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

³⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.202(a)-(b)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A (January 15, 2021).

⁴⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203) (January 19, 2021).

⁴¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, “Contract producer”) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A (January 15, 2021).

⁴² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, “Contract producer”) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 2-15, para. 22.A (January 15, 2021).

⁴³ FLAG, Farmers' Guide to CFAP 2, pages 5-14 (November 11, 2020).

⁴⁴ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,386 (to be codified at 7 C.F.R. § 9.201, “Producer”) (September 22, 2020); CFAP 2 Handbook, page 2-1, para. 15.A, Exhibit 2, page 4, “Producer” (January 15, 2021).

⁴⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, “Contract producer”) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A (January 15, 2021).

A. Produced Under Contract

In order to be a contract producer, the farmer must produce the commodity under a contract for, or on behalf of, another person or legal entity.⁴⁶

B. No Ownership of Commodity

To be an eligible contract producer, the farmer must not have an ownership interest in the commodity.⁴⁷

C. Not Entitled to Share of Proceeds

To be a contract producer, the farmer must not have the right to a share in the sale proceeds of the commodity.⁴⁸

III. Eligible Commodities of Contract Producers: Swine or Poultry

For a contract producer to be eligible under CFAP 2, the farmer must grow or raise what USDA counts as an “eligible commodity.”⁴⁹ Contract farmers can be eligible if they produced hogs or poultry under contract. No other commodities are eligible. The following sections discuss this requirement in more detail.

A. Swine

Swine are an eligible commodity for CFAP 2 contract producers. By swine, USDA means hogs and pigs.⁵⁰ Hogs are defined as any swine weighing 120 pounds or more. Pigs are defined as swine weighing less than 120 pounds.

⁴⁶ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Contract producer”) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 9-1, para. 300.A, page 9-21, para. 311, Exhibit 2, page 1, “Contract producer” (January 15, 2021).

⁴⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Contract producer”) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 2-15, para. 22.A, page 9-21, para. 311.A (January 15, 2021).

⁴⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Contract producer”) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 9-21, para. 311.A (January 15, 2021).

⁴⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. §§ 9.201, “Contract producer,” 9.202(b)(1)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 9-1, para. 300.A, page 9-21, para. 311.A (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP – Additional Assistance FAQ, “Are contract livestock producers eligible for CFAP 2 additional assistance?” (January 22, 2021).

⁵⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.202(b)(1)) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.A, page 9-1, para. 300.B, Exhibit 2, page 3-4, “Hogs,” “Pigs” (January 15, 2021).

B. Poultry

Poultry is an eligible commodity for CFAP 2 contract producers. By poultry, USDA means chickens, chicken eggs, and turkeys.⁵¹ Chickens include broilers, pullets, and layers.⁵² Broilers are defined as any chicken that is commercially produced for meat purposes, has not been used for laying or breeding purposes, and left the farm for slaughter.⁵³ By layer, USDA means a chicken that produces table or commercial type shell eggs.⁵⁴ By pullet, USDA means a young female chicken that has not laid an egg.⁵⁵ By chicken eggs, USDA means shell, dried, frozen, or liquid eggs.⁵⁶

IV. Under Contract in Both 2019 and 2020

In order for a contract producer to be eligible for CFAP 2, the farmer must have produced an eligible commodity under contract in both calendar year 2019 and calendar year 2020.⁵⁷ As a result, new contract producers in 2020 are not eligible.

USDA provides the following example.

If a farmer who raises chickens under a production contract, and the chickens are owned by a company that produces chicken products, the farmer can be eligible under any of the following circumstances: (1) the farmer does not receive payment for chickens that die before reaching maturity; (2) the farmer does not receive payment when young animals are not supplied to the farmer by the company; or (3) the farmer does not receive a normal payment even if there are fewer young animals than normal provided by the company.⁵⁸

This seems to mean that a contract grower is not eligible if under the contract the farmer receives payment if chickens die before maturity.⁵⁹ In addition, the contract grower would not be eligible if the contract said that the farmer would still get paid if young animals are not supplied by the company. Further, the farmer would not be eligible if the contract said the farmer's income is not reduced if fewer young animals than normal are supplied by the company.

⁵¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.202(b)(1)) (January 19, 2021); CFAP 2 Handbook, page 9-1, para. 300.B, page 9-21, para. 311.A (January 15, 2020).

⁵² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.202(b)(1)) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.A, page 2-51, para. 35.A, page 9-1, para. 300.B, page 9-21, para. 311.A (January 15, 2021).

⁵³ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,386 (to be codified at 7 C.F.R. § 9.201, "Broilers") (September 22, 2020); CFAP 2 Handbook, Exhibit 2, page 1, "Broilers" (January 15, 2021).

⁵⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, "Layers") (January 19, 2021); CFAP 2 Handbook, Exhibit 2, page 3, "Layer" (January 15, 2021).

⁵⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, "Pullet") (January 19, 2021); CFAP 2 Handbook, Exhibit 2, page 3, "Pullet" (January 15, 2021).

⁵⁶ CFAP 2 Handbook, page 9-1, para. 300.B, Exhibit 2, page 2, "Eggs" (January 15, 2021).

⁵⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.202(b)(1)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 9-1, para. 300.A, page 9-21, para. 311.A-B (January 15, 2021); USAD website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP – Additional Assistance FAQ, "Are contract livestock producers eligible for CFAP 2 additional assistance?" (January 22, 2021).

⁵⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

⁵⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

The rules seem to be trying to ensure that if a contract farmer gets paid a normal amount even if the bird dies, or fewer young animals are provided than normal, that farmer is not eligible.

V. Revenue from Contract

The farmer must have received revenue under the 2019 or 2020 contract at some point during the period of January 1, 2020, through December 27, 2020.⁶⁰ Revenue received from December 28, 2020, through December 31, 2020, is not relevant for this purpose.

VI. Had an Eligible Revenue Loss

To be eligible for a payment, contract growers must have had what USDA calls a loss of eligible revenue.⁶¹ The eligible revenue loss is calculated the following way.

A. Eligible Revenue Defined

USDA defines eligible revenue for a contract farmer.⁶² It is defined as the revenue the contract farmer received for contract production of an eligible commodity. The eligible commodity must be broilers, pullets, layers, chicken eggs, turkeys, hogs, or pigs. The revenue must be based on the revenue reported on the farmer's Internal Revenue Service (IRS) Form 1099.

Only revenue received between January 1 and December 27 of either 2019 or 2020 is considered eligible revenue.⁶³ Any revenue received between December 28 and December 31 of either 2019 or 2020 is not eligible revenue.

B. Eligible Revenue Loss Defined

An eligible revenue loss is calculated by comparing the eligible revenue from period of January 1, 2020, to December 27, 2020, to the eligible revenue from January 1, 2019, to December 27, 2019.⁶⁴ In other words, in general, to be eligible for a payment a contract producer must have had less eligible revenue in 2020 than the farmer had in eligible revenue in 2019.

It appears, therefore, that even though the rules do not require a contract farmer to have received contract revenue in 2019, no payment will be allowed unless eligible revenue in the 2020 period is less than eligible revenue from the 2019 period. As a result, a contract

⁶⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.202(b)(1)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, page 9-21, para. 311.A, 9-22, para. 312.B (January 15, 2021).

⁶¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.202(b)(2)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para. 15.A, 2-14, para. 21.A, page 9-1, para. 300.A (January 15, 2021).

⁶² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, "Eligible revenue") (January 19, 2021); CFAP 2 handbook, page 9-22, para. 312.B, Exhibit 2, page 2, "Eligible revenue" (January 15, 2021).

⁶³ CFAP 2 Handbook, page 9-22, para. 312.B (January 15, 2021).

⁶⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.202(b)(2)), 4883 (to be codified at 7 C.F.R. § 9.203(l)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para 15.A, page 9-1, para. 300.A, page 9-21, para. 311.A-B, page 9-22, para. 312.B, page 9-45, para. 326.A (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021); USDA website, CFAP–Additional Assistance FAQ, "Are contract livestock producers eligible for CFAP 2 additional assistance?" (January 22, 2021).

farmer that had no eligible contract revenue in 2019 will not be eligible for a payment under the new rules.

VII. Meet All Other Requirements for Eligibility for CFAP 2

In order to be considered eligible producers under CFAP 2, contract producers must also comply with a number of other rules.⁶⁵ These rules are discussed in FLAG's Farmers Guide to CFAP 2.⁶⁶ These concern, for example, conservation compliance, some adjusted gross limits, controlled substance rules, possible acreage reports, and others.⁶⁷

VIII. CFAP 2 Payments for Contract Producers

The following rules apply to CFAP 2 payments for contract producers.

A. Payment Eligibility Requirements

In order for an eligible contract farmer to receive a CFAP 2 payment, the following requirements must be met.⁶⁸

1. Copy of Contract

An eligible contract farmer must give a copy of the contract for their eligible commodity to USDA.⁶⁹

2. Self-Certification

Farmers must self-certify information that is on the CFAP 2 application.⁷⁰ For contract farmers, this means certification of revenue. In particular, farmers must self-certify their 2019 and 2020 revenue for eligible commodities.⁷¹

B. Payment Calculation

Payments to eligible contract producers will be calculated by subtracting the contract producer's eligible revenue received between January 1, 2020, through December 27, 2020, from their eligible revenue received between January 1, 2019, through December 27, 2019.⁷²

⁶⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.202(b)(3)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para 15.A, page 9-21, para. 311.A-B (January 15, 2021).

⁶⁶ FLAG, Farmers' Guide to CFAP 2, pages 14-18 (November 11, 2020).

⁶⁷ For example, farmers are not eligible if they have been suspended or excluded from federal programs, if the farm is a public school, or if the farm is a government.

⁶⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F. R. § 9.202(c)) (January 19, 2021).

⁶⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882-4883 (to be codified at 7 C.F.R. § 9.202(c)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para 15.A, page 9-31, para. 311.A (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

⁷⁰ CFAP 2 Handbook, page 3-4, para 51.B, page 9-22, para. 312.A (January 15, 2021); see also USDA, Coronavirus Food Assistance Program 2 (CFAP 2) Application, form AD-3117 (January 19, 2021), available at: <https://www.farmers.gov/sites/default/files/documents/AD3117-01192021.pdf>.

⁷¹ CFAP 2 Handbook, page 9-22, para. 312.A (January 15, 2021).

⁷² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4883 (to be codified at 7 C.F.R. § 9.203(l)(1)) (January 19, 2021); CFAP Handbook page 2-16, para. 22.A, page 9-45, para.

That result is then multiplied by 80 percent in order to determine the CFAP 2 payment.⁷³

C. Payment Limits Apply

Contract farmers are subject to a payment limitation of \$250,000 for all CFAP 2 payments.⁷⁴ Some farmers may be eligible for an increase on the payment limitation.⁷⁵ The deadline for farmers to request an optional increase in limitation on a new or revised application is February 26, 2021.⁷⁶

D. Availability of Funds

USDA says the CFAP 2 payment for contract farmers is subject to available funds.⁷⁷ It may therefore be factored. It is not clear how USDA would go about this factoring, but it likely means that payments would be reduced across the board by a certain percentage.

IX. CFAP 2 Application and Documentation for Contract Farmers

Contract farmers should use the same CFAP 2 application form as other farmers—form AD-3117.⁷⁸

A. Application Deadline

Contract producers must submit a complete CFAP 2 application by February 26, 2021.⁷⁹ If the farmer already submitted an application, that application can be amended to include contract production. Signup started on January 19, 2021.

B. Application Can Be Revised

As with other CFAP 2 applications, a contract farmer application can be revised by the farmer if the revenue or other information was in error or additional revenue was not originally reported.⁸⁰ These revisions should be documented when they are submitted to USDA.

326.B, Exhibit 20, page 5 (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

⁷³ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4883 (to be codified at 7 C.F.R. § 9.203(l)(1)) (January 19, 2021); CFAP Handbook page 2-16, para. 22.A, page 9-45, para. 326.B, Exhibit 20, page 5 (January 15, 2021); USDA website, CFAP – Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

⁷⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

⁷⁵ CFAP 2 Handbook, pages 2-3 and 2-4, para. 16.B (January 15, 2021).

⁷⁶ CFAP 2 Handbook, page 2-7, para. 16.D (January 15, 2021).

⁷⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4883 (to be codified at 7 C.F.R. § 9.203(l)(3)) (January 19, 2021); CFAP Handbook page 9-45, para. 326.B (January 15, 2021). The 2021 Appropriations Act limits spending for contract CFAP 2 payments. 2021 Appropriations Act, Division A, Title I, Subtitle B, Chapter 1, Section 751 (December 27, 2020).

⁷⁸ USDA, Coronavirus Food Assistance Program 2 (CFAP 2) Application, form AD-3117 (January 19, 2021), available at: <https://www.farmers.gov/sites/default/files/documents/AD3117-01192021.pdf>.

⁷⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.4(a)(2)) (January 19, 2021); CFAP 2 Handbook page 2-14, para. 21.B (January 15, 2021); USDA website, CFAP Additional Assistance FAQ, “I applied for CFAP 2, but I am also a contract livestock producer. Do I submit a new application or modify an existing one?” (January 22, 2021).

⁸⁰ CFAP 2 Handbook, page 3-6, para 52.A (January 15, 2021).

C. Documentation for Contract Farmers

Contract producers must have documentation to support the information provided on their application and must give that information to USDA if USDA asks for it.⁸¹ For contract farmers, that includes documentation of revenue.

The following records may be used to document and support the CFAP 2 application.⁸²

1. 1099-MISC Forms

MISC-1099 forms from 2019 and 2020 are a source of documentation for contract producers⁸³

USDA notes that these forms document calendar year income.⁸⁴ For CFAP 2, the period for revenue losses does not quite match the calendar year. Revenue to be certified by the farmer is from January 1 through December 27. Revenue received between December 28 and December 31 in either year is not relevant for CFAP 2.

2. Agreements, Ledgers, Statements, and Reports

USDA says that contract grower agreements, ledgers of commerce, income or revenue statements, and reports issued by the owners of the commodity can be used as supporting documentation for contract growers.⁸⁵

3. Other Records

USDA says that other records can also be used.⁸⁶ These records must be acceptable to USDA.

D. USDA Decides Reasonableness of Application and Documentation

USDA will look at the CFAP 2 application to see if they believe it is reasonable before approving the application.⁸⁷ This will include an evaluation of whether a contract farmer's revenue information is reasonable. If USDA does not think that the revenue described is reasonable, USDA can ask the farmer to provide documentation to substantiate information included in the application by the farmer. This includes requesting a copy of the production contracts.

USDA may also ask for additional documentation to support the farmer certification on the application.⁸⁸ If the farmer does not provide the addition information USDA may adjust the application or deny it.⁸⁹

⁸¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.202(c)) (January 19, 2021); CFAP 2 Handbook, page 2-1, para 15.A, page 2-51, para. 36.B, page 3-5, para. 51.B, page 9-21, para. 311.A (January 15, 2021). For general CFAP 2 rules on documentation, see FLAG, Farmers' Guide to CFAP 2, pages 58-61 (November 11, 2020).

⁸² CFAP 2 Handbook, page 3-5, para 51.B (January 15, 2021).

⁸³ CFAP 2 Handbook, page 3-5, para 51.B (January 15, 2021).

⁸⁴ CFAP 2 Handbook, page 3-5, para 51.B (January 15, 2021).

⁸⁵ CFAP 2 Handbook, page 3-5, para 51.B (January 15, 2021).

⁸⁶ CFAP 2 Handbook, page 3-5, para 51.B (January 15, 2021).

⁸⁷ CFAP 2 Handbook, page 3-6, para 51.D, page 9-22, para. 312.A (January 15, 2021).

⁸⁸ CFAP 2 Handbook, page 3-4, para 51.B (January 15, 2021).

⁸⁹ CFAP 2 Handbook, page 3-4, para 51.B (January 15, 2021).

E. USDA May Adjust Application Numbers

USDA may adjust the revenue numbers for both 2019 and 2020.⁹⁰ The adjustment can be made if USDA decides that the revenue numbers are unreasonable or inaccurate.

Revenue numbers may also be adjusted to reflect the actual 2019 or 2020 revenue, based on documentation, if USDA thinks the adjustment is necessary.⁹¹

F. Spot Checks Possible

USDA may spot check the information on the CFAP 2 application.⁹²

⁹⁰ CFAP 2 Handbook, page 9-22, para. 312.D (January 15, 2021).

⁹¹ CFAP 2 Handbook, page 9-22, para. 312.D (January 15, 2021).

⁹² CFAP 2 Handbook, page 3-4, para. 51.B (January 15, 2021).

Chapter Three: Additional “Other Livestock” as Eligible CFAP 2 Sales Commodities

I. Introduction

Sales commodities are a group of commodities that are eligible for CFAP 2.⁹³ Within sales commodities are a variety of livestock that are eligible as “other livestock.” The following sections describe recent additions and changes to the rules for other livestock.

Additional descriptions and rules for sales commodities are discussed in detail in FLAG’s Guide to CFAP 2.⁹⁴

II. Pullets Now Eligible as “Other Livestock”

Originally, CFAP 2 did not cover pullets. They now qualify as sales commodities.⁹⁵ In particular, pullets may be counted as an “other livestock” sales commodity under CFAP 2.⁹⁶ Sales commodities, including other livestock as a sales commodity, are discussed in detail in FLAG’s Guide to CFAP 2.⁹⁷ USDA defines a “pullet” as a young female chicken that has not laid an egg.⁹⁸

A. Payment Calculation for Pullets

Payments for commodities in the sales category—including pullets—are calculated, in part, using one of five pre-set payment factors that USDA has created.⁹⁹ These payment factors range from 8.8 percent to 10.6 percent. Each of the payment factors corresponds to one of the following five sales ranges: (1) up to \$49,999; (2) between \$50,000 and \$99,999; (3) between \$100,000 and \$499,000; (4) between \$500,000 and \$999,999; and (5) one million dollars and over.

CFAP 2 payments for pullets in the sales category will be calculated by taking the farmer’s eligible sales from 2019 and multiplying that value by the pre-set payment factor that

⁹³ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,386 (to be codified at 7 C.F.R. § 9.201, “Sales-based commodities”) (September 22, 2020); CFAP 2 Handbook, pages 7-21 and 7-22, para. 221.A (January 15, 2021).

⁹⁴ FLAG, Farmers’ Guide to CFAP 2, pages 36-45 (November 11, 2020).

⁹⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Other livestock”) (January 19, 2021); CFAP 2 Handbook, page 7-21, para. 221.A, Exhibit 2, page 5, “Sales-based commodities” (January 15, 2021); USDA website, CFAP Additional Assistance FAQ, “What new commodities are now eligible for CFAP additional assistance?” (January 22, 2021). USDA says this change is made because these producers face market disruptions, low prices, and significant marketing costs due to COVID-19. USDA website, CFAP Additional Assistance FAQ, “What new commodities are now eligible for CFAP additional assistance?” (January 22, 2021).

⁹⁶ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Other livestock”) (January 19, 2021). USDA says this change is made because these producers face market disruptions, low prices, and significant marketing costs due to COVID-19.

⁹⁷ FLAG, Farmers’ Guide to CFAP 2, pages 36-45 (November 11, 2020).

⁹⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, “Pullets”) (January 19, 2021); CFAP 2 Handbook, Exhibit 2, page 3, “Pullet” (January 15, 2021).

⁹⁹ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,387 (to be codified at 7 C.F.R. § 9.202(i)) (September 22, 2020); CFAP 2 Handbook, page 7-45, para. 235.A-B (January 15, 2021).

corresponds to the farmer's sales range.¹⁰⁰ The CFAP 2 website provides examples of how payments are calculated for pullets.¹⁰¹

B. Application Deadline for Pullets

The deadline for a CFAP 2 application for pullets is February 26, 2021.¹⁰² If the farmer already submitted an application, that application can be amended to include pullets.¹⁰³ Signup started on January 19, 2021.

III. Additional "Other Livestock" Now Eligible

A variety of additional "other livestock" are now eligible under the sales commodity category of CFAP 2.

A. Types of Eligible "Other Livestock" that are Now Eligible

Recent changes to CFAP 2 make water buffalo, yak, and pheasants, including chukars, eligible as "other livestock" in the sales commodity category.¹⁰⁴ The rules also appear to add mink as eligible under the definition of other livestock, though the CFAP 2 Handbook describes mink as a "miscellaneous" sales commodity.¹⁰⁵

Under the new rules for CFAP 2, USDA makes clear that reptiles, bees, and breeding stock are not eligible as other livestock within the sales commodity category.¹⁰⁶ For purposes of this rule, breeding stock includes livestock that are a sire or dam maintained to produce offspring.¹⁰⁷

These changes in "other livestock" sales commodities, however, do not appear to allow farmers to amend an already-filed CFAP 2 application or to file a CFAP 2 application for the first time for these additional types of eligible other livestock.¹⁰⁸

¹⁰⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203(i)(1)) (January 19, 2021); CFAP 2 Handbook, page 7-45, para. 235.A-B (January 15, 2021); USDA website, CFAP— Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

¹⁰¹ USDA website, CFAP— Additional Assistance, Apply for Additional Assistance, Expanded Eligibility, Pullets (February 11, 2021); CFAP 2 Handbook, pages 7-45 and 7-46, para. 235.B (January 15, 2021).

¹⁰² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.4(a)(3)) (January 19, 2021).

¹⁰³ USDA website, CFAP Additional Assistance FAQ, "I applied for CFAP 2, but I am also a contract livestock producer. Do I submit a new application or modify an existing one?" (January 22, 2021).

¹⁰⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § "Other livestock") (January 19, 2021); CFAP 2 handbook, page 7-21, para. 221.A (January 15, 2021). USDA says this change is made because these producers face market disruptions, low prices, and significant marketing costs due to COVID-19.

¹⁰⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § "Other livestock") (January 19, 2021). Mink is listed as an eligible sales commodity in the CFAP 2 Handbook. CFAP 2 Handbook, page 2-13, para. 21.A, page 7-22, para. 221.A (January 15, 2021).

¹⁰⁶ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, "Other livestock") (January 19, 2021); CFAP 2 Handbook, page 7-22, para. 221.B (January 15, 2021).

¹⁰⁷ CFAP 2 Handbook, Exhibit 2, page 1, "Breeding Stock" (January 15, 2021).

¹⁰⁸ The CFAP 2 Handbook provides a February 26 deadline—instead of the original December 11, 2020—for only pullets, turfgrass sod, and contract producers. See CFAP 2 Handbook, page 2-14, para. 21.B, page 3-3, para. 50.C, page 3-7, para. 51.E (January 15, 2021)

B. Animal By-Products of “Other Livestock” are Now Eligible

The new USDA rules make clear that by-products of live animals that fall within the other livestock category are included as “other livestock” for CFAP 2.¹⁰⁹ Fleece, milk, and eggs (except for eggs to be batched for breeding stock), for example, can be part of the other livestock by-product eligibility.¹¹⁰

The rules also describe how payments are calculated for the by-products of other livestock.¹¹¹

According to USDA, these changes to animal by-product rules were previously implemented.¹¹² As a result, the CFAP 2 deadline is not extended for by-products of other livestock.

C. Only Raw Commodities Eligible as Sales Commodities

In general, payment for a sales-based commodity is based on the raw commodity only.¹¹³ The part of a sale based on adding value to the commodity, such as through processing and packaging, is not included when calculating a CFAP 2 payment.¹¹⁴ This means, for example, that sales of alpaca fleece can be counted, but if the fleece is further processed into yarn prior to sale, any portion of the sale that comes from that additional processing would not be included in the CFAP 2 payment.¹¹⁵ In other words, farmers may need to convert value-added sales into raw sales.

D. Sales-Based Expenses May Count as Eligible Sales

Expenses for sales-based commodities, such as bin charges and transportation costs, may be included in eligible sales of sales-based commodities, but only if such expenses are broken out and can be distinguished.¹¹⁶ If expenses are recorded as a single line item they cannot be included as eligible sales unless the farmer provides additional information to support the expenses.

¹⁰⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4879 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Other livestock”) (January 19, 2021); CFAP 2 Handbook, page 7-22, para. 222.A (January 15, 2021).

¹¹⁰ CFAP 2 Handbook, page 7-21, para. 221.A (January 15, 2021).

¹¹¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4883 (to be codified at 7 C.F.R. § 9.203(i)(1)) (January 19, 2021).

¹¹² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹¹³ CFAP 2 Handbook, pages 7-22 and 7-23, para. 222.A (January 15, 2021).

¹¹⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4883 (to be codified at 7 C.F.R. § 9.203(i)(1)) (January 19, 2021).

¹¹⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹¹⁶ CFAP 2 Handbook, page 7-24, para. 222.A (January 15, 2021).

Chapter Four: Turfgrass Sod as an Eligible CFAP 2 Sales Commodity

I. Introduction

Sales commodities are a group of commodities that are eligible for CFAP 2.¹¹⁷ Originally, CFAP 2 did not cover turfgrass sod.¹¹⁸ With the recent changes to CFAP 2, turfgrass sod is now eligible as a sales-based commodity.

Sales commodities, and the rules that apply to them, are discussed in detail in FLAG's Guide to CFAP 2.¹¹⁹

II. Turfgrass Sod as a Sales Commodity

Turfgrass sod is now an eligible sales commodity for CFAP 2.¹²⁰

III. CFAP 2 Payment Calculation for Turfgrass Sod

Payments for commodities in the sales category—including turfgrass sod—are calculated, in part, using one of five pre-set payment factors that USDA has created.¹²¹ These payment factors range from 8.8 percent to 10.6 percent. Each of the payment factors corresponds to one of the following five sales ranges: (1) up to \$49,999; (2) between \$50,000 and \$99,999; (3) between \$100,000 and \$499,000; (4) between \$500,000 and \$999,999; and (5) one million dollars and over.

CFAP 2 payments for turfgrass sod will be calculated by taking the farmer's eligible sales from 2019 and multiplying that value by the pre-set payment factor that corresponds to the farmer's sales range.¹²² The CFAP 2 Handbook provides examples of how payments are calculated for sales commodities such as turfgrass sod.¹²³

¹¹⁷ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,386 (to be codified at 7 C.F.R. § 9.201, "Sales-based commodities") (September 22, 2020); CFAP 2 Handbook, pages 7-21 and 7-22, para. 221.A (January 15, 2021).

¹¹⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, "Sales-based commodities") (January 19, 2021); CFAP Handbook, page 2-13, para. 21.A, page 7-22, para. 221.A (January 15, 2021); USDA website, CFAP Additional Assistance FAQ, "What new commodities are now eligible for CFAP additional assistance?" (January 22, 2021).

¹¹⁹ FLAG, Farmers' Guide to CFAP 2, pages 36-45 (November 11, 2020).

¹²⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, "Sales-based commodities") (January 19, 2021); CFAP Handbook, page 2-13, para. 21.A, page 7-22, para. 221.A (January 15, 2021); USDA website, CFAP Additional Assistance FAQ, "What new commodities are now eligible for CFAP additional assistance?" (January 22, 2021).

¹²¹ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,387 (to be codified at 7 C.F.R. § 9.202(i)) (September 22, 2020); CFAP 2 Handbook, page 7-45, para. 235.A-B (January 15, 2021).

¹²² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203(i)(1)) (January 19, 2021); CFAP 2 Handbook, page 7-45, para. 235.A-B (January 15, 2021); USDA website, CFAP— Additional Assistance, Apply for Additional Assistance, Expanded Eligibility (February 11, 2021).

¹²³ USDA website, CFAP— Additional Assistance, Apply for Additional Assistance, Expanded Eligibility, Turfgrass Sod (February 11, 2021); see also CFAP 2 Handbook, pages 7-45 and 7-46, para. 235.B (January 15, 2021).

IV. CFAP 2 Application Deadline for Turfgrass Sod

The CFAP 2 application deadline for turfgrass sod is February 26, 2021.¹²⁴ If the farmer already submitted an application, that application can be amended to include turfgrass.¹²⁵ CFAP 2 signup for turfgrass sod reopened on January 19, 2021.¹²⁶

¹²⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.4(a)(3)) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.B, page 3-3, para. 50.C, page 3-7, para. 51.E, Exhibit 2, page 5, “Sales-Based Commodities” (January 15, 2021).

¹²⁵ USDA website, CFAP Additional Assistance FAQ, “I applied for CFAP 2, but I am also a contract livestock producer. Do I submit a new application or modify an existing one?” (January 22, 2021).

¹²⁶ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

Chapter Five: Calculating CFAP 2 Sales-Based Commodity Benefits to Include Crop Insurance and Other Indemnities

I. Introduction

Sales commodities are a group of commodities that are eligible for CFAP 2.¹²⁷ They include, for example, most specialty crops, aquaculture, as well as nursery crops and floriculture. Sales commodities, and the rules that apply to them, are discussed in detail in FLAG's Guide to CFAP 2.¹²⁸ Recent changes to CFAP 2 changed the way benefits are calculated for sales commodities in a way that will benefit many farmers.

II. New Calculation for Sales-Based Commodities

Payments for sales commodities for CFAP 2 are based in part on the farmer's certification of 2019 sales.¹²⁹ In the new CFAP Additional Assistance Rule, USDA changed that calculation. The amount of crop insurance or other similar indemnities that the farmer received for the 2019 crop year are now included in the farmer's 2019 sales. In particular, the recent changes now allow the following indemnities to be added to a farmer's 2019 sales numbers: (1) federal crop insurance indemnities; (2) Noninsured Crop Disaster Assistance Program (NAP) payments; and (3) Wildfire and Hurricanes Indemnity Program Plus (WHIP+) payments.¹³⁰

Because 2019 crop sales are used as the basis to calculate sales-based commodity losses, this change will increase the CFAP 2 payment for many farmers. USDA notes that for farmers who began farming in 2020 and had no 2019 sales, the CFAP 2 payment will still be based on 2020 actual sales, and will not include crops insurance payments, NAP, or WHIP+ payments.¹³¹

III. Farmers Must Amend CFAP 2 Application

Farmers who applied for CFAP 2 by the original deadline and had sales-based commodities can amend their CFAP 2 application to include these indemnities.¹³² The deadline for amending a CFAP 2 application for this purpose is February 26, 2021. The chance to amend this type of

¹²⁷ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,386 (to be codified at 7 C.F.R. § 9.201, "Sales-based commodities") (September 22, 2020); CFAP 2 Handbook, pages 7-21 and 7-22, para. 221.A (January 15, 2021).

¹²⁸ FLAG, Farmers' Guide to CFAP 2, pages 36-45 (November 11, 2020).

¹²⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203(i)) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.B, page 7-22, para. 222.A (January 15, 2021). This change was created by the 2021 Appropriations Act.

¹³⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, "Crop insurance," "NAP," "WHIP+"), 4883 (to be codified at 7 C.F.R. § 9.203(i)(1)) (January 19, 2021); CFAP Handbook page 2-14, para. 21.B, page 2-16, para. 22.A, page 7-22, para. 222.A, Exhibit 2, page 3, "NAP," Exhibit 2, page 5, "WHIP+" (January 15, 2021). NAP rules are at 7 C.F.R. part 1437 (2021). WHIP+ rules are at 7 C.F.R. part 760, subpart O (2021).

¹³¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021); CFAP Handbook, page 7-24, para. 222.B (January 15, 2021).

¹³² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021); CFAP 2 Handbook, page 2-14, para. 21.B, page 3-8, para. 52.B (January 15, 2021); USDA website, CFAP Additional Assistance FAQ, "I grow or raise a CFAP 2 sales-based commodity . . . Can I revise my application to update how the payment is calculated?" (January 22, 2021).

application began on January 19, 2021.¹³³ The revision will require a new signature for the application.¹³⁴

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¹³³ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹³⁴ CFAP 2 Handbook, page 3-8, para. 52.B (January 15, 2021).

Chapter Six: Calculating Payments for Price-Trigger Crops

I. Introduction

Under CFAP 2, a number of farmers are eligible for payments for what USDA calls price-trigger crops.¹³⁵ USDA has changed the rules for calculating these payments in a way that can benefit many farmers.

Rules for price-trigger crops are discussed in detail in FLAG's Guide to CFAP 2.¹³⁶

II. Price-Trigger Crops Defined

Price-trigger crops can include the following row crops: (1) barley; (2) corn; (3) sorghum; (4) dual purpose sorghum; (5) soybeans; (6) sunflowers; (7) upland cotton; and (8) all classes of wheat.¹³⁷

III. Changes to Price-Trigger Crop Payment Calculations

CFAP 2 payments for price-trigger crops are based on a specific type of crop. They also hinge on whether the farmer insured the crop with federal crop insurance.¹³⁸ As described below, recent changes now allow some farmers without a 2020 APH-approved yield to use 100 percent of the weighted 2019 Agriculture Risk Coverage-County Option (ACR-CO) benchmark yield.¹³⁹

A. Farmer With a Weighted 2020 APH-Approved Yield

If the farmer insured the price-trigger crop, and the farmer has a weighted 2020 APH-approved yield, that will be the basis of the calculation for the farmer's payment.¹⁴⁰ USDA has access to the information from crop insurance records.

B. Farmer Without a Weighted 2020 APH-Approved Yield

The 2021 changes to CFAP 2 apply when the farmer does not have a weighted 2020 APH-approved yield.¹⁴¹ If USDA is not able to obtain the 2020 APH approved yield, payments are based on the 2019 ARC-CO benchmark yield.¹⁴²

¹³⁵ CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,386 (to be codified at 7 C.F.R. § 9.201, "Price trigger crops") (September 22, 2020); CFAP 2 Handbook, page 8-25, para. 261.A (January 15, 2021).

¹³⁶ FLAG, Farmers' Guide to CFAP 2, pages 28-33 (November 11, 2020).

¹³⁷ CFAP 2 Handbook, page 8-25, para. 261.A (January 15, 2021).

¹³⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021); CFAP 2 Handbook, page 8-3, para. 250.D, page 8-27, para. 262.A (January 15, 2021).

¹³⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203(a)(3)) (January 19, 2021). For an explanation of the logic of this change, see CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹⁴⁰ CFAP 2 handbook, pages 8-27 to 8-29, para. 262.B-D (January 15, 2021).

¹⁴¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021); CFAP 2 handbook, page 8-27, para. 262.A, page 8-71, para. 284.A (January 15, 2021).

¹⁴² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4883 (to be codified at 7 C.R. § 9.203(a)(3)) (January 19, 2021).

Previously, every farmer who did not have a weighted 2020 APH-approved yield had to use 85 percent of the 2019 ARC-CO benchmark yield to get a 2020 actual production history (APH) approved yield for CFAP 2 purposes.¹⁴³

The 2021 changes to CFAP 2 allow some farmers that do not have a 2020 APH-approved yield to use 100 percent of the weighted 2019 ACR-CO benchmark yield.¹⁴⁴ That can be the case if the farmer meets one of four conditions.¹⁴⁵ First, 100 percent of the weighted 2019 ACR-CO can be used if the farmer has coverage under certain types of federal crop insurance.¹⁴⁶ Second, it can be used if the farmer is a landlord and the landlord's share is insured by the tenant under an RMA policy or a plan of insurance. Third, it can be used if the farmer is a tenant and the farmer's share is insured by the landlord with federal crop insurance. Finally, it can be used if the farm is a joint venture and the crop is insured by a member under an RMA policy or plan of insurance. In all other situations the rule is not changed, and farmers without a weighted 2020 APH-approved yield must use 85 percent of the 2019 ARC-CO benchmark as an approved yield.¹⁴⁷

USDA provides several examples for how these calculations work.¹⁴⁸

IV. Contact USDA for Payment Recalculation

Because these changes do not affect a farmer's eligibility for CFAP 2, USDA is not extending the application deadline for farmers in this situation.¹⁴⁹ Instead, any farmer who already applied for CFAP 2 and wishes to have the payment recalculated should contact USDA to have the payment changed.

¹⁴³ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021); CFAP 2 Rule, 85 Fed. Reg. 59,380, 59,387 (September 22, 2020) (to be codified at 7 C.F.R. § 9.202(a)(3)); CFAP 2 Handbook, page 8-3, para. 250.D, page 8-27, para. 262.A, pages 8-31 and 8-32, para. 262.F-G, pages 8-73 and 8-74, para. 284.C-D (January 15, 2021).

¹⁴⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203(a)(3)) (January 19, 2021). For an explanation of the logic of this change, see CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹⁴⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4883 (to be codified at 7 C.F.R. § 9.203(a)(3)(i)(A)-(D)) (January 19, 2021); CFAP 2 Handbook, page 8-27, para. 262.A, page 8-30, para. 262.E (January 15, 2021).

¹⁴⁶ The qualifying crop insurance plans include Area Risk Protection Insurance Plan, Margin Protection Plan, Stacked Income Protection Plan, Supplemental Coverage Option, or Whole-Farm Revenue Protection Plan.

¹⁴⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4883 (to be codified at 7 C.F.R. § 9.203(a)(3)(ii)) (January 19, 2021).

¹⁴⁸ CFAP 2 Handbook, pages 8-31 to 8-34, para. 262.G-H, pages 8-73 and 8-74, para. 284.C-D (January 15, 2021).

¹⁴⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021); USDA website, CFAP Additional Assistance FAQ, "What if I had crop insurance but applied for CFAP 2 without a 2020 actual production history (APH) for my price-trigger crops?" (January 22, 2021).

Chapter Seven: CFAP 1 Hog and Pig Benefits

I. Introduction

A recent change to the rules for CFAP 1 provides an increased benefit for hog and pig producers.¹⁵⁰ It is important to note that this change is for CFAP 1—and not CFAP 2.

II. Hogs and Pigs in CFAP 1

CFAP 1 makes many types of livestock eligible for payment.¹⁵¹ That includes swine. USDA defines swine as hog and pigs. Hogs are defined as weighing 120 pounds or more.¹⁵² Pigs are defined as weighing less than 120 pounds.¹⁵³

FLAG's Guide to CFAP describes how hogs and pigs were covered by CFAP 1 in detail.¹⁵⁴

III. Increased Payments

For producers of hogs and pigs, the new rules for CFAP 1 provide an increased benefit.¹⁵⁵

For hog and pig producers that had an inventory between April 16, 2020, and May 14, 2020, the payment rate has been increased from seventeen dollars per head to thirty-four dollars per head.¹⁵⁶

Payment limits that applied for CFAP 1 continue to apply to this new payment.¹⁵⁷

IV. No Farmer Action Needed to Receive New Payment

Farmers do not need to send USDA a new application for CFAP 1 or take any other action to receive the payment.¹⁵⁸

USDA is not reopening CFAP 1 to new applications. That means that only farmers that already applied for CFAP 1 are eligible for this assistance.

¹⁵⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021).

¹⁵¹ See, for example, USDA, Coronavirus Food Assistance Program, Final Rule (CFAP 1 Rule), 85 Fed. Reg. 30,825, 30,825 (prefatory remarks) (May 21, 2020).

¹⁵² CFAP 1 Rule, 85 Fed. Reg. 30,825, 30,831 (to be codified at 7 C.F.R. § 9.2, "Hogs") (May 21, 2020).

¹⁵³ CFAP 1 Rule, 85 Fed. Reg. 30,825, 30,831 (to be codified at 7 C.F.R. § 9.2, "Pigs") (May 21, 2020).

¹⁵⁴ FLAG, Farmers' Guide to CFAP 1, pages 39, 103, 108-110 (October 23, 2020).

¹⁵⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks) (January 19, 2021).

¹⁵⁶ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.102(d)(3)) (January 19, 2021). USDA says this change was made because the payment rates were not high enough to match market price loss for those farmers.

¹⁵⁷ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, January 19, 2021 (prefatory remarks). As USDA notes, corporations, limited liability companies, limited partnerships, and estates may qualify for an increased CFAP 1 payment limitation under 7 C.F.R. § 9.7(e). See CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4878 (prefatory remarks) (January 19, 2021).

¹⁵⁸ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4877 (prefatory remarks) (January 19, 2021); USDA website, CFAP Additional Assistance FAQ, "I applied for CFAP 1 and received payments for my swine. Do I need to do anything to receive the "top-up" payment?" "I did not apply for CFAP 1, but I raise swine. Am I now eligible?" (January 22, 2021).

Chapter Eight: Additional Minor Corrections to CFAP

I. Introduction

The new 2021 rules include minor corrections to CFAP that USDA says “do not affect administration of CFAP 2.”¹⁵⁹ It appears, therefore, that there are no actions to be taken by farmers with respect to the corrections described below.

II. New Definition for Fruits and Tree Nuts for CFAP 2

The CFAP Additional Assistance Rule changes the definition of fruits and tree nuts for CFAP 2.¹⁶⁰

While USDA does not explain the changes to the definitions of fruit and tree nuts, it appears that avocados, noni, olives, persimmons, and quinces were added to the list of eligible fruits, while those same commodities were removed from the definition of tree nuts.¹⁶¹

The new rules also say that the calculation of benefits for fruits and tree nuts has changed, though it appears the change is very minor and will not result in any recalculated payments for farmers.¹⁶²

III. Change in Date Livestock Must Have Been in United States for CFAP

The new rule says that it is adding the date that livestock must have been physically located in the United States under CFAP.¹⁶³ USDA says that the dates were accidentally left out of the original rules, and therefore that the change will not affect the administration of CFAP.

According to the rule, in order for livestock to be considered “produced in the United States” under CFAP 2, the livestock must have been in the United States on the date selected by the producer for livestock in inventory between April 16, 2020, and August 31, 2020.¹⁶⁴

The new rule also states that in order to be considered “produced in the United States” under CFAP 1, livestock that were sold between January 15, 2020, and April 15, 2020, must have been in the United States on January 15, 2020, and remained in the United States until sold.¹⁶⁵ In addition, under CFAP 1, livestock that were held in inventory between April 16, 2020, and May 14, 2020, must have been in the United States on the date selected by the producer.

¹⁵⁹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹⁶⁰ CFAP Additional Assistance Rule, 86 Fed. Reg. 4879 (prefatory remarks), 4882 (to be codified at 7 C.F.R. § 9.201, “Fruits,” “Tree nuts” (January 19, 2021).

¹⁶¹ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4882 (to be codified at 7 C.F.R. § 9.201, “Fruits,” “Tree nuts” (January 19, 2021).

¹⁶² CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks), 4880, Table 1 (January 19, 2021).

¹⁶³ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4879 (prefatory remarks) (January 19, 2021).

¹⁶⁴ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4881-4882 (to be codified at 7 C.F.R. § 9.1(a)(2)) (January 19, 2021).

¹⁶⁵ CFAP Additional Assistance Rule, 86 Fed. Reg. 4877, 4881 (to be codified at 7 C.F.R. § 9.1(a)(1)) (January 19, 2021).