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of appropriate Cooperative Extension office, as follows:

(1) Approval of the County Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is confined to the area served by the County Cooperative Extension Service.

(2) Approval of the State Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is multi-county or Statewide.

(3) Approval of the Director of the National Institute of Food and Agriculture, United States Department of Agriculture, or a designee, if the fund-raising program is multi-State or Nationwide.

(b) When used to promote 4-H educational programs, the 4-H Club name and emblem, subject to obtaining authorization as provided in these regulations, may be used on or associated with products and services sold in connection with 4-H fund-raising programs so long as no endorsement or the appearance of an endorsement of a commercial firm, product or service is either intended or effected. Tributes to 4-H contained on or associated with commercial products or services, when such products or services are used for the fund-raising activities, are subject to the requirements of this paragraph. All moneys received from 4-H fund-raising programs, except those necessary to pay reasonable expenses, must be expended to further the 4-H educational programs.

[52 FR 8432, Mar. 17, 1987, as amended at 60 FR 52293, Oct. 6, 1995; 76 FR 4803, Jan. 27, 2011]

PART 9—CORONAVIRUS FOOD ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.

9.1 Applicability and administration.
9.2 Definitions.
9.3 Producer eligibility requirements.
9.4 Time and method of application.
9.5 [Reserved]
9.6 Eligibility subject to verification.
9.7 Miscellaneous provisions.
9.8 Perjury.

Subpart B—CFAP 1

9.101 Definitions.
9.102 Calculation of payments.

Subpart C—CFAP 2

9.201 Definitions.
9.202 Eligibility.
9.203 Calculation of payments.

AUTHORITY: 15 U.S.C. 714b and 714c; Division B, Title I, Pub. L. 116–136, 134 Stat. 505; and Division N, Title VII, Subtitle B, Chapter 1, Pub. L. 116–260.

SOURCE: 85 FR 30830, May 21, 2020, unless otherwise noted.

Subpart A—General Provisions

SOURCE: Redesignated at 85 FR 59384, Sept. 22, 2020, unless otherwise noted.

§9.1 Applicability and administration.

(a) This part specifies the eligibility requirements and payment calculations for the Coronavirus Food Assistance Program (CFAP). CFAP will provide payments with respect to commodities that have been significantly impacted by the effects of the COVID–19 outbreak. CFAP is being implemented through two rounds of payments, with the first round (CFAP 1) determined as specified in subpart B of this part, and the second round (CFAP 2) determined as specified in subpart C of this part. To be eligible for CFAP payments, participants must comply with all provisions under this subpart and the relevant particular subpart for CFAP 1 or CFAP 2. Payments will be made with respect to only commodities produced in the United States; commodities other than livestock that are imported into the United States may not be used to determine any payment made under this part. For livestock, ''produced in the United States'' means physically located in the United States:

(1) For assistance under subpart B of this part:

(i) On January 15, 2020, and remaining in the United States until sold, for livestock sold between January 15, 2020, and April 15, 2020; or

(ii) On the applicable date selected for livestock in inventory between April 16, 2020, and May 14, 2020; and

(2) For assistance under subpart C of this part, on the applicable date selected for livestock in inventory between April 16, 2020, and August 31, 2020.

(b) The program is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) with the assistance of the Agricultural Marketing Service (AMS).

(c) The FSA State committee will take any action required by this part that an FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by an FSA State or county committee.

[85 FR 30830, May 21, 2020, as amended at 85 FR 59174, Sept. 21, 2020; 85 FR 59384, Sept. 22, 2020; 86 FR 4881, Jan. 19, 2021]

§ 9.2 Definitions.

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

AMS means USDA's Agricultural Marketing Service.

Application means the CFAP application form.

Cattle means commercially raised or maintained bovine animals, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Commodity means an agricultural commodity produced in the United States and intended to be marketed for commercial production that has been designated as eligible for payments under CFAP.

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media (including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

Foreign entity means a corporation, trust, estate, or other similar organization that has more than 10 percent of its beneficial interest held by individuals who are not:

(1) Citizens of the United States; or

(2) Lawful aliens possessing a valid Alien Registration Receipt Card.

Foreign person means any person who is not a citizen or national of the United States or who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Hogs means any swine 120 pounds or more.

NOFA means a Notice of Funding Availability under this part published in the FEDERAL REGISTER.

Pigs means any swine weighing less than 120 pounds.

Wool means the fiber sheared from a live sheep and includes, unless noted otherwise, graded and nongraded wool. Graded wool is paid on a clean basis, and ungraded wool is paid on a greasy basis.

[85 FR 30830, May 21, 2020, as amended at 85 FR 35799, June 12, 2020; 85 FR 59175, Sept. 21, 2020; 85 FR 59384, Sept. 22, 2020]

§ 9.3 Producer eligibility requirements.

To be eligible for a CFAP payment, a producer must:

(a) Meet all of the requirements in this part;

(b) Be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of this part means ''lawful alien'' as defined in part 1400 of this title;

(3) Partnership of citizens of the United States;

(4) Corporation, limited liability company, or other organizational structure organized under State law;

(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); or

(6) Foreign person or foreign entity who meets all requirements as described in part 1400 of this title; and

(c) For payments under § 9.102 of this part, have had a share in the eligible commodity on January 15, 2020, or April 16, 2020, through May 14, 2020.

[85 FR 30830, May 21, 2020, as amended at 85 FR 59384, Sept. 22, 2020]

§ 9.4 Time and method of application.

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

(1) September 11, 2020, for payments issued under § 9.102; and

(2) October 12, 2021, for payments issued under § 9.203.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60-days from the date of signing the CFAP application, may result in no payment or a reduced payment:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this title;

(2) Form CCC–901 Member Information for Legal Entities (if applicable);

(3) An average adjusted gross income statement for the 2020 program year for the person or legal entity, including the legal entity's members, partners, or shareholders, as provided in part 1400 of this title; form CCC–941 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information;

(4) CCC–942 Certification of Income From Farming, Ranching and Forestry Operations (optional); and

(5) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this title (form AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification for CFAP applicant and applicable affiliates).

(c) If requested by USDA, the applicant must provide documentation that:

(1) Establishes the applicant's ability and intent to harvest, transport, and market the commodity for the intended market or crop's expected production in a quantity determined based on the producer's approved yield, expected level of production, or inventory of the livestock, crop, or commodity;

(2) Establishes the applicant's ownership share in the commodity; and

(3) Establishes the applicant's value at risk in the commodity.

(d) A producer applying for assistance for a crop subject to § 9.203(a) or (b) must file a report of all acreage of the crop on FSA–578, Report of Acreage.

[85 FR 30830, May 21, 2020, as amended at 85 FR 49594, Aug. 14, 2020; 85 FR 59384, Sept. 22, 2020; 86 FR 4882, Jan. 15, 2021; 86 FR 48017, Aug. 27, 2021]

§ 9.5 [Reserved]

§ 9.6 Eligibility subject to verification.

(a) Producers who are approved for participation in CFAP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving CFAP 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.

§ 9.7 Miscellaneous provisions.

(a) If a CFAP payment resulted from erroneous information provided by a participant, or any person acting on their behalf, the payment will be recalculated and the participant must refund any excess payment with interest calculated from the date of the disbursement of the payment.

(1) If FSA determines that the applicant intentionally misrepresented either the total amount or applicant's share of the commodities, acres, sales,

or revenue on their application, the application will be disapproved and the applicant must refund the full payment to FSA with interest from the date of disbursement.

(2) Any required refunds must be resolved in accordance with part 3 of this title.

(b) The regulations in part 718, subpart D, and parts 11 and 780 of this title apply to determinations made under this part.

(c) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title do not apply to payments made under this part.

(d) The $900,000 average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for CFAP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities. The average AGI will be calculated for a person or such legal entity based on the 2016, 2017, and 2018 tax years. If the person or such legal entity's average AGI is below $900,000 or at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities, the person or legal entity, is eligible to receive payments under this part.

(e)(1) The total amount of CFAP payments that a program applicant who is an individual may receive directly or through the attribution of payments as provided in paragraph (e)(3) of this section is $250,000 under each of subparts B and C. The total amount of payments that a program applicant who is a legal entity created under State law may receive is $250,000 under each of subparts B and C, except as provided in paragraph (e)(2) of this section. Payments made to a program applicant who is a joint venture or a general partnership are limited to the aggregated amount of payments that individual or legal entity members of the joint venture or general partnership may otherwise receive.

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

(ii) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is $500,000 under each of subparts B and C if two different individual persons who are members, partners, stockholders, beneficiaries, or heirs of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of commodities for which an application or applications are made in accordance with this part.

(iii) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is $750,000 under each of subparts B and C if three different individual persons who are members, partners, stockholders, beneficiaries, or heirs of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of commodities for which an application or applications are made in accordance with this part.

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

amount specified in paragraph (e)(1) of this section, the payment to the legal entity will be reduced commensurate with the amount of the ownership interest of the individual or legal entity in the legal entity. CFAP payments subject to attribution under this paragraph will be attributed to individuals and legal entities until the attribution is made only to an individual except the attribution will stop at the fourth level of ownership.

(ii) A payment subject to the increased payment limitation in (e)(2)(ii) or (iii) of this section will be limited to the lesser of the amount specified in either (e)(2)(ii) or (iii) of this section, or the sum of the amount specified in (e)(1) of this section that each eligible member, stockholder, partner, heir, or beneficiary of the legal entity may receive, regardless of ownership share. Payments attributed to a legal entity with an ownership interest in the legal entity will be further attributed to individuals and legal entities until the attribution is made only to an individual, except the attribution will stop at the fourth level of ownership.

(4) If an individual or legal entity is not eligible to receive CFAP payments due to the individual or legal entity failing to satisfy some other payment eligibility provision such as AGI in or conservation compliance provisions or some other payment eligibility impediment, 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. The application of this ineligibility to receive a CFAP payment due to the excessive AGI of an individual or legal entity will stop at the fourth level of ownership.

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

(g) In addition to any other Federal laws that apply to CFAP, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 1001; and 31 U.S.C. 1001.

(h) This part applies to applications submitted under CFAP through the applicable date in §9.4(a), or until funds made available for CFAP are exhausted.

[85 FR 30830, May 21, 2020, as amended at 85 FR 49594, Aug. 14, 2020; 85 FR 59385, Sept. 22, 2020; 86 FR 48017, Aug. 27, 2021]

§9.8 Perjury.

In either applying for or participating in CFAP, or both, the producer 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 producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in CFAP, or both, then the producer 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 producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

Subpart B—CFAP 1

SOURCE: 85 FR 59385, Sept. 22, 2020, unless otherwise noted.

§9.101 Definitions.

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

All other cattle means commercially raised or maintained bovine animals not meeting the definition of another category of cattle in this part, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Aquaculture means only those species as announced in a NOFA.

Cattle raised or maintained for breeding purposes means animals commercially raised or maintained for use as either a

sire or dam for the production of livestock offspring or lactation.

Crop means non-specialty crops and specialty crops.

Feeder cattle 600 pounds or more means cattle weighing more than 600 pounds but less than the weight of slaughter cattle-fed cattle as defined in this section.

Feeder cattle less than 600 pounds means cattle weighing less than 600 pounds.

First quarter means January, February, and March of 2020.

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

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

Producer means a person or legal entity who shares in the risk of producing a crop or livestock and who is entitled to a share in the crop or livestock available for marketing or would have shared had the crop or livestock been produced and marketed. A contract grower who does not own the livestock, will be considered a producer if the contract allows the grower to have risk in the livestock.

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

Slaughter Cattle—fed cattle means cattle with a weight of 1,200 pounds or more that are intended for slaughter.

Slaughter cattle—mature cattle means culled cattle raised or maintained for breeding purposes, but which were removed from inventory and are intended for slaughter.

Specialty crops means any of the following crops: Almonds; apples; artichokes; asparagus; avocados; beans; blueberries; broccoli; cabbage; cantaloupe; carrots; cauliflower; celery; corn, sweet; cucumbers, eggplant; garlic; grapefruit; kiwifruit; lemons; lettuce, iceberg; lettuce, romaine; mushrooms; onions, dry; onions, green; oranges; papayas; peaches; pears; pecans; peppers, bell type; peppers, other; potatoes; raspberries; rhubarb; spinach; squash; strawberries; sweet potatoes; tangerines; taro; tomatoes; walnuts; watermelons; and any crops for which funds are made available. The term excludes crops intended for grazing.

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

§ 9.102 Calculation of payments.

(a) Payments for eligible non-specialty crops will be the sum of:

(1) Unpriced inventory that is harvested but held in inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the Coronavirus Aid, Relief, and Economic Stability Act (CARES Act) payment rate in paragraph (h) of this section; and

(2) Unpriced inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the Commodity Credit Corporation (CCC) payment rate in paragraph (h) of this section.

(b) CFAP covers losses for specialty crops that experienced immediate losses, a price decline, spoiled, were unpaid, or were unharvested due to market conditions between January 15, 2020, and April 15, 2020. Specialty crops in inventory or in storage facilities that may be sold after April 15, 2020, are not eligible. Specialty crops that were under an agreed upon set price before January 15, 2020, and were or will be paid at that price or higher, do not qualify for assistance under paragraph (b)(1) of this section, but may qualify under paragraphs (b)(2) or (b)(3) of this section. Payments for eligible specialty crops will be the sum of:

(1) For specialty crops listed in paragraph (h) of this section that were sold between January 15, 2020, and April 15, 2020, the quantity sold multiplied by the payment rate in column 2 of Table 1 in paragraph (h) of this section;

(2) For specialty crops harvested and shipped but that were subsequently spoiled or unpaid due to loss of marketing channels between January 15, 2020, and April 15, 2020, the harvested and shipped quantity that spoiled or is unpaid multiplied by the payment rate in column 3 of Table 1 in paragraph (h) of this section; and

(3) For specialty crops that did not leave the farm, were donated, or were mature crops that remained unharvested between January 15, 2020, and April 15, 2020, due to loss of marketing channel, the sum of the quantity of crops that did not leave the farm or were donated, or the quantity of mature crops that remained unharvested, multiplied by the payment rate in column 4 of Table 1 in paragraph (h) of this section.

(c) Payments for cattle will be the sum of the results of the following two calculations:

(1) Unpriced cattle sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Cattle inventory owned between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(d) Payments for hogs and pigs will be equal to the sum of the results of the following three calculations:

(1) Unpriced hogs and pigs sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section;

(2) Hog and pig inventory owned between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section; and

(3) Hog and pig inventory owned between April 16, 2020, to May 14, 2020, multiplied by a payment rate of $17 per head.

(e) Payments for dairy will be equal to the sum of the results of the following two calculations:

(1) First quarter production, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) First quarter production, multiplied by 1.014, multiplied by the CCC payment rate in paragraph (h) of this section.

(3) Dairy operations that dissolved on or before March 31, 2020, are eligible for payment under paragraph (e)(1) of this section. Dairy operations that dissolve or have dissolved after March 31, 2020, are eligible for a prorated payment under paragraph (e)(2) of this section for the number of days the dairy operation commercially markets milk in the second quarter.

(f) Payments for lambs and yearlings will be equal to the sum of the results of the following two calculations:

(1) Unpriced lambs and yearlings sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Lambs and yearlings in inventory owned between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(g) Payments for wool are the sum of:

(1) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CARES Act payment rate paragraph (h) of this section; and

(2) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CCC payment rate in paragraph (h) of this section.

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

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
Almonds	$0.26	$0.57	$0.11
Apples	$0.05	$0.22	$0.04
Artichokes	0.88	0.69	0.13
Asparagus	.....	0.25	0.05
Avocados	.....	0.14	0.03
Beans	0.17	0.16	0.03
Blueberries	0.20	0.93	0.18
Broccoli	0.62	0.49	0.10

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS—Continued

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
Cabbage	0.04	0.07	0.01
Cantaloupes		0.14	0.03
Carrots	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	0.18	0.17	0.03
Eggplant	0.07	0.15	0.03
Garlic	0.17	1.10	0.22
Grapefruit		0.11	0.02
Kiwifruit		0.44	0.09
Lemons	0.08	0.21	0.04
Lettuce, iceberg	0.20	0.15	0.03
Lettuce, romaine	0.07	0.12	0.02
Mushrooms		0.58	0.11
Onions, dry	0.01	0.05	0.01
Onions, green	$0.51	$0.70	$0.14
Oranges		0.14	0.03
Papaya		0.31	0.06
Peaches		0.30	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
Potatoes fresh—other	0.01	0.04	0.01
Potatoes fresh—Russets	0.07	0.09	0.02
Potatoes—processing	0.02	0.03	0.01
Potatoes—seed	0.02	0.04	0.01
Raspberries	0.44	1.69	0.33
Rhubarb		0.76	0.15
Spinach	0.37	0.37	0.07
Squash	0.72	0.39	0.08
Strawberries	0.84	0.72	0.14
Sweet potatoes		0.18	0.04
Tangerines	0.05	0.25	0.05
Taro	0.12	0.29	0.06
Tomatoes	0.64	0.38	0.07
Walnuts	0.26	0.34	0.07
Watermelons	0.04	0.06	0.01

TABLE 2 TO PARAGRAPH (h)—PAYMENT RATES FOR NON-SPECIALTY CROPS, DAIRY, LIVESTOCK, AND WOOL

Commodity	Unit	CARES Act payment rate ($/unit)	CCC payment rate ($/unit)
Barley	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
Dairy	cwt	4.71	1.47
Slaughter cattle—mature cattle	head	92	33
Slaughter cattle—fed cattle	head	214	33
Feeder cattle less than 600 pounds	head	102	33
Feeder cattle 600 pounds or more	head	139	33
All other cattle	head	102	33
Pigs	head	28	17
Hogs	head	18	17

TABLE 2 TO PARAGRAPH (h)—PAYMENT RATES FOR NON-SPECIALTY CROPS, DAIRY, LIVESTOCK, AND WOOL—Continued

Commodity	Unit	CARES Act payment rate ($/unit)	CCC payment rate ($/unit)
Lambs and yearlings	head	33	7
Wool (graded, clean basis)	lb	0.71	0.78
Wool (non-graded, greasy basis)	lb	0.36	0.39

(i) Payments for cattle and hogs will be calculated separately for the following categories:

(1) Slaughter cattle—mature cattle;

(2) Slaughter cattle—fed cattle;

(3) Feeder cattle less than 600 pounds;

(4) Feeder cattle 600 pounds or more;

(5) All other cattle;

(6) Pigs; and

(7) Hogs.

(j)(1) USDA may make payments with respect to other commodities. In order to determine whether other commodities will be included in CFAP, a notice will be issued that will specify the types of market information the public may submit for consideration by USDA. After receipt of the information and the use of other related information available to USDA, a NOFA will specify the other eligible commodities and the manner in which payments will be determined.

(2) Producers that are privately owned aquaculture businesses growing freshwater and saltwater products in controlled environments, including raceways, ponds, tanks, and recirculating systems, extending to all farmed shrimp and salmonids (trout and salmon) are included in CFAP to the extent USDA determines individual types of the products have incurred qualifying losses between January 15, 2020, and April 15, 2020. The determination of which species are included will be specified in the NOFA referenced in paragraph (j)(1) of this section. CFAP does not provide assistance for molluscan shellfish and marine algae.

(k) An initial payment will be issued for 80 percent of each CFAP payment calculated. A final payment will be issued on a date determined by the Secretary, to the extent such funds are available. The total of all CFAP payments made, including all initial and final payments, cannot exceed a total of $9.5 billion for CARES Act funds and $6.5 billion for CCC funds.

[85 FR 30830, May 21, 2020, as amended at 85 FR 35799, June 12, 2020' 85 FR 41329, July 10, 2020; 85 FR 49594, Aug. 14, 2020; 85 FR 59175, Sept. 21, 2020. Redesignated at 85 FR 59385, Sept. 22, 2020; 86 FR 4882, Jan. 19, 2021]

Subpart C—CFAP 2

SOURCE: 85 FR 59386, Sept. 22, 2020, unless otherwise noted.

§ 9.201 Definitions.

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

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

Average revenue loss level means the average percentage of revenue loss for contract producers determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by contract producers for the same area and type of livestock or poultry.

Breeding stock means:

(1) For cattle, bulls and cows;

(2) For hogs and pigs, boars and sows; and

(3) For lambs and sheep, rams and ewes.

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

Contract producer means a producer who grows or produces an eligible commodity under contract for or on behalf of another person or entity. The contract producer does not have ownership in the commodity and is not entitled to a share from sales proceeds of the commodity.

Crop insurance means an insurance policy reinsured by Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

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

Eligible contract livestock or poultry means broilers, pullets, layers, poultry eggs, turkeys, ducks, geese, pheasants, quail, hogs, pigs, and other livestock or poultry types determined eligible and announced by USDA, including breeding stock of those eligible livestock and poultry types.

Eligible revenue means the revenue received by a contract producer for contract production of eligible contract livestock or poultry, as reported on Internal Revenue Service Form 1099.

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

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

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

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

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

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

Fruits means any of the following fruits: Abiu, acerola (Barbados cherry), achachairu, antidesma, apples, apricots, aronia (chokeberry), atemoya (custard apple), avocados, bananas, blueberries, breadfruit, cacao, caimito, calabaza melon, canary melon, canary seed, caneberries, canistel, cantaloupes, carambola (star fruit), casaba melon, cherimoya (sugar apple), cherries, Chinese bitter melon, citron, citron melon, coconuts, cranberries, crenshaw melon, dates, donaqua (winter melon), durian, elderberries, figs, genip, gooseberries, grapefruit, grapes, ground cherry, guamabana (soursop), guava, guavaberry, honeyberries, honeydew, huckleberries, Israel melons, jack fruit, jujube, juneberries, kiwiberry, kiwifruit, Korean golden melon, kumquats, langsat, lemons, limequats, limes, longan, loquats, lychee, mangos, mangosteen, mayhaw berries, mesple, mulberries, nectarines, noni, olives, oranges, papaya, passion fruits, pawpaw, peaches, pears, persimmons, pineapple, pitaya (dragon fruit), plantain, plumcots, plums, pomegranates, prunes, pummelo, quinces, raisins, rambutan, sapodilla, sapote, schizandra berries, sprite melon, star gooseberry, strawberries, tangelos, tangerines, tangors, wampee, watermelon, wax jamboo fruit, and wolfberry (goji).

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

Horticulture means any of the following horticulture: Anise, basil, cassava, chervil (Fresh parsley), chia, chicory (radicchio), cilantro, cinnamon, curry leaves, galanga, ginger, ginseng, guayule, herbs, hops, lotus root, marjoram, meadowfoam, mint,

moringa, niger seed, oregano, parsley, pennycress, peppermint, pohole, psyllium, rosemary, sage, savory, shrubs (forbs), sorrel, spearmint, tangos, tea, thyme, turmeric, vanilla, wasabi, water cress, and yu cha.

Ineligible commodities for CFAP 2 means any of the following commodities: Birdsfoot and trefoil, clover, cover crop, fallow, forage soybeans, forage sorghum, gardens (commercial and home), grass, kochia (prostrata), lespedeza, milkweed, mixed forage, pelts (excluding mink), perennial peanuts, pollinators, sunn hemp, vetch, and seed of ineligible crops other than grass seed.

Layer means a chicken producing table or commercial type shell eggs.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and part 1437 of this title.

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

Other livestock means any of the following livestock: Animals commercially raised for food, fur, fiber, or feathers, including alpacas, bison, buffalo, beefalo, deer, ducks, elk, emus, geese, goats, guinea pigs, llamas, mink, ostrich, pheasants, pullets, quail, rabbits, reindeer, turkey, water buffalo, and yak. It includes by-products of those live animals (such as fleece). It excludes all equine, reptiles, bees, breeding stock (including eggs to be hatched for breeding stock), companion or comfort animals, pets, and animals raised for hunting or game purposes.

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

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

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

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

Producer means a person or legal entity who shares in the risk of producing a commodity. Except for contract producers, producers who are not in the business of farming at the time of application are not considered eligible producers.

Pullet means a young female chicken that has not laid an egg.

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

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

Tree nuts means any of the following tree nuts: Almonds, carob, cashew, chestnuts, coffee, hazel nuts, jojoba, macadamia nuts, pecans, pine nuts, pistachios, and walnuts.

Turn means a group of eligible contract livestock or poultry that is delivered to a contract producer who provides labor and equipment to produce the livestock or poultry for the integrator or owner.

Vegetables means any of the following vegetables: Alfalfa sprouts, aloe vera, artichokes, arugula (greens), asparagus, bamboo shoots, batatas, bean sprouts, beans (including dry edible), beets, bok choy, broccoflower, broccoli, broccolini, broccolo-cavalo, Brussel sprouts, cabbage, calaloo, carrots, cauliflower, celeriac, celery, chickpea (see beans, garbanzo), chives, collard greens, coriander, corn, sweet, cucumbers, daikon, dandelion greens, dasheen (taro root, malanga), dill, eggplant, endive, escarole, frisee, gailon (gai lein, Chinese broccoli), garlic, gourds, greens, horseradish, Jerusalem artichokes (sunchoke), kale, kohlrabi,

leeks, lentils, lettuce, melongene, mesculin mix, microgreens, mushrooms, okra, onions, parsnip, peas (including dry edible), pejibaye (heart of palm), peppers, potatoes, potatoes sweet, pumpkins, radicchio, radishes, rhubarb, rutabaga, salsify (oyster plant), scallions, seed—vegetable, shallots, spinach, squash, swiss chard, tannier, taro, tomatillos, tomatoes, truffles, turnip top (greens), turnips, yam, and yautia (malanga);

WHIP+ means the Wildfires and Hurricanes Indemnity Program Plus (WHIP+) under part 760, subpart O, of this title.

[85 FR 59386, Sept. 22, 2020, as amended at 86 FR 4882, Jan. 19, 2021; 86 FR 48017, Aug. 27, 2021]

§ 9.202 Eligibility.

(a) Producers, excluding contract producers, are eligible for payment under § 9.203(a) through (i) if they meet all other requirements for eligibility under this part.

(b) Contract producers are not eligible for payment under § 9.203(a) through (i). Contract producers are eligible for payment under § 9.203(l) if they:

(1) Produced eligible contract livestock or poultry under a contract in either the 2018 or 2019 calendar year and in the 2020 calendar year;

(2) Received revenue under such a contract during the period from January 1, 2020, through December 27, 2020;

(3) Had a loss in eligible revenue for the period from January 1, 2020, through December 27, 2020, as compared to the period from:

(i) January 1, 2018, through December 27, 2018; or

(ii) January 1, 2019, through December 27, 2019; and

(4) Meet all other requirements for eligibility under this part.

(c) Contract producers must provide a copy of their contract pursuant to which they raised an eligible commodity as specified in paragraph (b)(1) of this section and provide documentation to support the information provided on their application if requested by FSA.

(d) Contract producers are eligible for payment under § 9.203(m) if they:

(1) Did not receive eligible revenue from January 1 through December 27 in 2018 or 2019, but received eligible revenue for the period from January 1, 2020, through December 27, 2020; and

(2) Meet all other requirements for eligibility under this part.

[86 FR 4882 Jan. 19, 2021, as amended at 86 FR 48017, Aug. 27, 2021]

§ 9.203 Calculation of payments.

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

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

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

(3) Under paragraph (a) of this section, eligible acres include the producer's share of the determined acres, or reported acres if determined acres are not present, of the crop planted for the 2020 crop year, excluding prevented planted and experimental acres. For producers who insured acres of the crop under a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524), the yield will be the average of the producer's 2020 actual production history (APH) approved yield from all of the producer's insured acres nationwide. For producers for whom FSA is unable to obtain a 2020 APH approved yield, the yield will be:

(i) The 2019 Agriculture Risk Coverage-County Option (ARC–CO) benchmark yield if the applicant:

(A) Has coverage for the crop under an Area Risk Protection Insurance Plan, Margin Protection Plan, Stacked Income Protection Plan, Supplemental Coverage Option, or Whole-Farm Revenue Protection Plan under the Federal Crop Insurance Act;

(B) Is a landlord of the applicable acreage and their share is insured by the tenant under a policy or plan of insurance under the Federal Crop Insurance Act;

(C) Is a tenant of the applicable acreage and their share is insured by the landlord under a policy or plan of insurance under the Federal Crop Insurance Act; or

(D) Is a joint venture and the crop is insured by one of the members under a policy or plan of insurance under the Federal Crop Insurance Act; or

(ii) The 2019 Agriculture Risk Coverage-County Option (ARC–CO) benchmark yield multiplied by 85 percent for all other applicants.

(4) ARC–CO yields in paragraph (a)(3) of this section for producers growing a crop in multiple counties will be weighted based on the producer's crop acreage physically located in each county.

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

(c) Payments for beef cattle will be equal to the lower of the producer's maximum owned inventory of eligible beef cattle, excluding breeding stock, on a date selected by the producer from April 16, 2020, through August 31, 2020, or 4,546 head multiplied by the number of payment limitations for the producer, multiplied by a payment rate of $55 per head.

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

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

(f)(1) Payments for broilers will be equal to 75 percent of the producer's 2019 broiler production multiplied by a payment rate of $1.01 per bird (head).

(2) Payments for broiler producers who began farming in 2020 and had no production in 2019 will be calculated as provided in paragraph (f)(1) of this section, except that the payments will be based on the producer's actual 2020 broiler production as of the date the producer submits an application for payment under this part.

(g)(1) Payments for dairy (cow milk) will be equal to the sum of the following two calculations:

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

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

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

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

(2) Payments for egg producers who began farming in 2020 and had no production in 2019 will be calculated as provided in paragraph (h)(1) of this section, except that the payments will be based on the producer's actual 2020 egg production as of the date the producer submits an application for payment under this part.

(i) Payments for sales-based commodities will be:

(1) Based on one of the following as elected by the producer:

(i) The producer's sales for calendar year 2018 and crop insurance indemnities and NAP and WHIP+ payments for the 2018 crop year for all sales-based commodities; or

(ii) The producer's sales for calendar year 2019 and crop insurance indemnities and NAP and WHIP+ payments for the 2019 crop year for all sales-based commodities.

(2) Equal to the sum of the results for the following calculation for each sales range in Table 2 of paragraph (j) of this section:

(i) The sum of the amount of the producer's eligible sales for the sales-based commodities in the applicable calendar year and the producer's crop insurance indemnities and NAP and WHIP+ payments for the sales commodities for the applicable crop year within the specified range, multiplied by the payment rate for that range in Table 2 of paragraph (j) of this section.

(ii) Eligible sales only includes sales of raw commodities grown by the producer; the portion of sales derived from adding value to the commodity, such as processing and packaging, and from sales of products purchased for resale is not included in the payment calculation unless determined eligible by the Secretary.

(3) Payments for producers of sales commodities who began farming in 2020 and had no sales in 2019, calculated as provided in paragraph (i)(2) of this section, except that the payments will be based on the producer's actual 2020 sales, without crop insurance indemnities, NAP or WHIP+ payments, as of the date the producer submits an application for payment under this section.

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

TABLE 1 TO PARAGRAPH (J)—PAYMENT RATES FOR PRICE TRIGGER CROPS AND EGGS

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

TABLE 2 TO PARAGRAPH (J)—PAYMENT RATES FOR SALES COMMODITIES

2018 or 2019 Sales range (including crop insurance indemnities and NAP and WHIP+ payments)	Percent payment factor
Up to $49,999	10.6
$50,000-$99,999	9.9
$100,000-$499,999	9.7
$500,000-$999,999	9.0
All sales over $1 million	8.8

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

(l) For eligible contract producers, if eligible revenue for the period from January 1, 2020, through December 27, 2020, decreased compared to eligible revenue for the period from January 1, 2018, through December 27, 2018, or the period from January 1, 2019, through December 27, 2019, then payments will be equal to:

(1) Eligible revenue received from January 1, 2018, through December 27, 2018, or from January 1, 2019, through December 27, 2019; minus

(2) Eligible revenue received from January 1, 2020, through December 27, 2020; multiplied by

(3) 80 percent.

(4) USDA will adjust the eligible revenue based on information certified by the contract producer on form AD–3117B for contract producers who did not have a full period of revenue from January 1 to December 27 for either 2018 or 2019, or who increased their operation size in 2020. Information required to calculate these adjustments may include a contract producer's square footage increase to the operation in 2020, or a contract producer's production or number of turns for 2018, 2019, or 2020, as applicable.

(m) For eligible contract producers who did not receive eligible revenue from January 1 through December 27 in 2018 or 2019, but received eligible revenue for the period from January 1, 2020, through December 27, 2020:

(1) FSA will divide the eligible revenue received from January 1, 2020,

through December 27, 2020, by the result of 1 minus the average revenue loss level, determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by other contract producers for the same area and type of livestock or poultry; and

(2) The payment will be equal to:

(i) The result of the calculation in paragraph (m)(1) of this section minus the contract producer's eligible revenue received from January 1, 2020, through December 27, 2020; multiplied by

(ii) 80 percent.

(n) Payments under paragraphs (l) and (m) of this section and the average revenue loss levels under paragraph (m)(1) of this section will be calculated separately for the following categories:

(1) Chickens—broilers, pullets, and layers;

(2) Chicken eggs;

(3) Turkeys;

(4) Hogs and pigs;

(5) Ducks, geese, pheasants, quail; and

(6) All other eligible poultry eggs.

(o) The calculations in paragraphs (l) and (m) of this section are subject to the availability of funds and will be factored, if needed.

[85 FR 59386, Sept. 22, 2020. Redesignated and amended at 86 FR 4882, 4883, Jan. 19, 2021; 86 FR 48017, Aug. 27 2021]

PART 10 [RESERVED]

PART 11—NATIONAL APPEALS DIVISION

Subpart A—National Appeals Division Rules of Procedures

Sec.

11.1 Definitions.
11.2 General statement.
11.3 Applicability.
11.4 Other laws and regulations.
11.5 Informal review of adverse decisions.
11.6 Director review of agency determination of appealability and right of participants to Division hearing.
11.7 *Ex parte* communications.
11.8 Division hearings.
11.9 Director review of determinations of Hearings Officers.
11.10 Basis for determinations.
11.11 Reconsideration of Director determinations.
11.12 Effective date and implementation of final determinations of the Division.
11.13 Judicial review.
11.14 Filing of appeals and computation of time.
11.15 Participation of third parties and interested parties in Division proceedings.

Subpart B—Organization And Functions

11.20 General statement.
11.21 Organization.
11.22 Functions.

Subpart C—Availability of Information to the Public

11.30 General statement.
11.31 Public inspection and copying.
11.32 Initial request for records.
11.33 Appeals.

APPENDIX A TO SUBPART C OF PART 11—LIST OF ADDRESSES

AUTHORITY: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103–354, 108 Stat. 3228 (7 U.S.C. 6991 *et seq.*); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

SOURCE: 64 FR 33373, June 23, 1999, unless otherwise noted.

Subpart A—National Appeals Division Rules of Procedures

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

(1) The Commodity Credit Corporation (CCC);

(2) The Farm Service Agency (FSA);

(3) The Federal Crop Insurance Corporation (FCIC);

(4) The Natural Resources Conservation Service (NRCS);

(5) The Risk Management Agency (RMA);