



National Bison Association

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National Bison Association Analysis Of Coronavirus Food Assistance Program Impact for Bison Producers

Prepared May 19, 2020

The [Final Rule](#) regarding the agricultural assistance provided under the Coronavirus Food Assistance Program released today excludes bison as an eligible commodity to receive assistance under the first phase of the program. The rule specifically lists eligible livestock commodities as: dairy, cattle, lambs and yearlings, wool, and hogs and pigs.

On the [website](#) announcing the CFAP program, USDA notes, “Producers of commodities not included on the original CFAP list who believe they’ve suffered a five percent-or-greater price decline between January and April 2020, and who face additional marketing costs due to COVID-19, may submit comments to provide information about additional commodities.”

The only official USDA report collected for the bison business is the monthly wholesale bison carcass and cuts report.

However, the rule specifies that \$637 million has been set aside for “certain other agricultural commodities including agricultural commodities for which sufficient information is not currently available to USDA.” The rule mentions that a Notice of Funds Available (NOFA) will be issued to identify commodities to receive those funds. In other words, we will likely be submitting something akin to a grant application to vie for funding under that process. And, the rule offers no indication of when a NOFA will be issued.

The full Final Rule can be viewed [here](#). Below are some pertinent sections from the 40-page rule.

(Note, there are two sections. The Preamble provides a discussion of the rationale that USDA utilized in making its decision. The Rule is the actual regulatory language.)

PREAMBLE LANGUAGE

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Background

Non-specialty crops eligible for CFAP payments are malting barley, canola, corn, upland cotton, millet, oats, sorghum, soybeans, sunflowers, durum wheat, and hard red spring wheat. Payments also will be available for specialty crops (including, but not limited to almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes), dairy, cattle, lambs and yearlings, wool, and hogs and pigs. Additional eligible commodities, such as aquaculture and nursery crops (including cut flowers) will be announced in a subsequently announced Notice of Funding Availability (NOFA) issued by FSA on behalf of the Secretary; any additional commodities would also need to meet the eligibility requirements in this rule. Throughout this rule, “producer” refers to 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.

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Effective Date and Notice and Comment

The Administrative Procedure Act (5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs CFAP for payments to certain commodity producers and therefore falls within that exemption.

The Office of Management and Budget (OMB) designated this rule as major under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been significantly impacted by the COVID-19 outbreak, which has resulted in income losses due to significant declines in demand and market disruptions. USDA finds that notice and public procedure are contrary to the public interest.

Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, USDA is not required to delay the effective date for 60 days from the date of publication to allow for 15 Congressional review. Accordingly, this rule is effective upon publication in the Federal Register.

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Cost Benefit Analysis Summary

USDA is implementing CFAP for producers of agricultural commodities who have suffered a 5-percent-or-greater price loss due to COVID-19 and face additional significant marketing costs associated that are eligible for compensation under section 5(b), (d), and (e) of the CCC Charter Act for currently held inventories. These additional significant marketing costs are associated with lower prices given significant declines in demand, surplus production, or by disruptions to shipping patterns and the orderly marketing of commodities. Non-specialty crops eligible for CFAP payments are malting barley, canola, corn, upland cotton, millet, oats, soybeans, sorghum, sunflowers, durum wheat, and hard red spring wheat. Payments also will be available to producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) and livestock commodities (including dairy, cattle, hogs and pigs, lambs and yearlings, and wool). CFAP eligibility for certain other agricultural commodities including agricultural commodities for which sufficient information is not currently available to USDA may be announced through a NOFA. Approximately 4 percent of the CFAP budget--\$637 million-- is available to provide assistance to producers of other commodities that are identified through the NOFA process.

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Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the

relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by Congress.

Outside of Tribal consultation, USDA is working with Tribes to provide information about CFAP and other issues. Specifically, to date, USDA held a call with Navajo Nation on Tuesday, May 12, 2020; CFAP was one of the items presented – there were no questions raised about CFAP. OTR will host a listening session between FSA, AMS, and Tribal leaders on Thursday, May 21, 2020, at 3:00 p.m.

FORMAL RULE LANGUAGE

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§ 9.2 Definitions.

The following definitions apply to CFAP. The definitions in parts 718 and 1400 of this title 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.

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

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§ 9.5 Calculation of payments.

(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.

Signed:

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