

CORONAVIRUS LEGISLATION AND PROGRAMS – WHAT AGRICULTURAL PRODUCERS SHOULD KNOW

Hodgson Russ Agriculture Alert
April 20, 2020

For weeks, farmers, ranchers, and other agricultural producers across the country have been working to address COVID-19 and the wide-ranging negative effects experienced across their industry. The federal government passed several major pieces of legislation in response to the Coronavirus pandemic and COVID-19, including the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). FFCRA requires certain employers to provide paid sick and other leave to address COVID-19 issues, while the CARES Act provides emergency economic relief to individuals and businesses. There are provisions in both Acts that apply to agricultural producers. Additionally, programs created under the Acts provide for economic relief specifically directed to farmers and other agricultural producers.

Below is a summary of some of the key provisions in each Act that affect farmers and other agricultural producers. Note that available guidance and interpretation of the FFCRA and CARES Act is evolving at a rapid pace. For additional and up to date information, please visit our Coronavirus Resource Center or contact Melissa Subjeck at 716.848.1719 or Sarah Miller at 716.848.1509.

Coronavirus Food Assistance Program

On April 17, 2020, the USDA announced the Coronavirus Food Assistance Program (CFAP), which will provide immediate relief to farmers and ranchers, and will allow for the purchase and distribution of agricultural product to food banks and other non-profit organizations in need. CFAP uses funding provided for by the CARES Act, the FFCRA, and other existing USDA programs. The program includes two targeted components:

1. Direct Support to Farmers and Ranchers. According to the USDA, the program provides \$16 billion in direct support based on actual losses for agricultural producers, where prices and market supply chains have been impacted. This funding will assist producers with additional adjustment and marketing costs resulting from lost demand and oversupply for the 2020 marketing year caused by COVID-19.

Attorneys

Patrick Fitzsimmons
John Godwin
Michael O'Neill
Daniel Spitzer
Melissa Subjeck

Practices & Industries

Agriculture

CORONAVIRUS LEGISLATION AND PROGRAMS - WHAT AGRICULTURAL PRODUCERS SHOULD KNOW

2. **USDA Purchase and Distribution.** USDA will partner with regional and local distributors whose workforce has been significantly impacted by the closure of restaurants, hotels, and other food service businesses to purchase \$3 billion in fresh produce, dairy, and meat. The USDA will begin by obtaining approximately \$100 million per month in fresh fruits and vegetables, \$100 million per month in dairy products, and \$100 million per month in meat products. Distributors and wholesalers will then provide the fresh produce, dairy and meat products to food banks, community and faith-based organizations, and other non-profits that serve communities in need.

The USDA will also utilize other funding sources to purchase and distribute food to those in need. The USDA's full press release is available [here](#).

The USDA has stated that further details regarding eligibility, rates, and other implementation will be released at a later date. Hodgson Russ will continue to monitor additional developments.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Among other things, the \$2 trillion CARES Act provides direct cash payments to individuals, expands unemployment benefits, and establishes small business and payroll protection loan programs. The CARES Act also makes changes to tax laws that may impact certain agriculture businesses and employers.

Relief specifically targeted to farmers and agricultural producers.

Financial Support to Agricultural Producers Impacted by Coronavirus. Under the CARES Act, the Office of the Secretary of the Department of Agriculture will receive \$9.5 billion to provide financial assistance to farmers and ranchers impacted by the Coronavirus. This funding is to be specifically allocated to producers of specialty crops, producers that supply local food systems (including farmers markets, restaurants, and schools), and livestock and dairy producers. The USDA recently created the CFAP, discussed above, which utilizes funding provided for by the CARES Act.

\$14 Billion Replenishment to the Commodity Credit Corporation. The CARES Act provides an additional \$14 billion to the USDA's Commodity Credit Corporation ("CCC") for fiscal year 2020. The CCC is the funding mechanism for agricultural programs, including commodity, conservation, dairy, livestock and disaster, export and foreign assistance, and other domestic programs.

Loan Maturity for Marketing Assistance Loans (MAL) Extended to 12 Months. The Act allows the U.S. Secretary of Agriculture to extend the term of nonrecourse marketing assistance loans to agricultural producers under the Agricultural Act of 2014 up to 12 months. On April 9, 2020, the USDA officially announced that effective immediately, agricultural producers of eligible commodities now have up to 12 months to repay their commodity loans. The maturity extension applies to nonrecourse loans for crop years 2018, 2019, and 2020. Loans must be in good standing and have a maturity date of March 31, 2020 or later, or be new crop year (2019 or 2020) loans requested by September 30, 2020. The extension for current, active loans will be automatically extended for an additional three months.

Additional agriculture-related provisions in the CARES Act. The CARES Act also provides funding to the Office of Inspector General, Animal and Plant Health Inspection Service, Agricultural Marketing Service, Food Safety and Inspection Service, Farm Service Agency, Rural Business Cooperative Service, Rural Utilities Service, and Foreign Agricultural Service for

CORONAVIRUS LEGISLATION AND PROGRAMS - WHAT AGRICULTURAL PRODUCERS SHOULD KNOW

various programs.

U.S. Secretary of Agriculture Sonny Perdue said in an official statement that the CARES Act “will provide much needed relief to Americans across this country,” and that the USDA “will deliver relief assistance to farmers and ranchers as quickly as possible.” Hodgson Russ will continue to monitor developments on the agricultural-related assistance promised under the CARES Act, and will provide additional, updated information as it becomes available.

\$349 Billion Paycheck Protection Program (PPP).

Under the CARES Act and beginning on April 3, 2020, a wide variety of businesses may apply for a forgivable loan guaranteed by the Small Business Association. A business is eligible under the PPP if it, considered in the aggregate with its affiliates, employs fewer than 500 employees (excluding independent contractors and employees whose principal place of residence is outside the United States). A business is also eligible if it fits within the revenue-based sized standard. Farms and other businesses with more than 500 employees can also qualify if they meet SBA’s “alternative size standard” (currently: (1) a maximum net worth of the business not more than \$15 million and (2) the average net income after Federal income taxes of the business for the two full fiscal years before the date of the application is not more than \$5 million). Additionally, PPP loans are available to non-profits organized under Section 501(c)(3) and 501(c)(19) of the Internal Revenue Code (but not other non-profits) provided they comply with the size standards.

Eligible borrowers must make a good faith certification that, among other things, the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19 and that the funds will be used to retain workers, and maintain payroll, or make mortgage payments, lease payments, and utility payments. The maximum loan amount is 2.5 times the borrower’s average total monthly “payroll costs”, not to exceed \$10 million. Payroll costs include salary and wages up to \$100,000 per employee (annualized) and additional employee benefits. Note that payroll costs include compensation paid to general partners of a partnership, but does not include payment to independent contractors.

No collateral or personal guarantees are required to obtain a loan under the PPP. PPP loans are eligible for full or partial forgiveness to the extent the loan proceeds are used in the 8 weeks following the loan closing for payroll costs (which must amount to at least 75% of the forgiveness amount), interest on mortgages, rent, and utilities. The amount of loan forgiveness will be reduced if the full-time employee headcount declines, or if salaries or wages of employees remaining on the payroll decrease. There are exemptions for such reductions (aka, forgiveness is still available) if the employer re-hires its employees or re-instates salaries not later than June 30, 2020. Any unforgiven loan amounts will have a 1% interest rate and a 2-year term. Loan payments under the program will be deferred for six months.

Businesses considering applying for a PPP loan should contact their lender. As of the date of this alert, the initial round of \$349 billion of PPP funding is exhausted, and news reports are stating that Congress is working toward a possible second round of PPP funding. Applications are still being accepted by lenders in anticipation of this potential additional funding.

Agency guidance and interpretation of the PPP continues to be forthcoming. Click [here](#) for a more detailed alert on the PPP.

CORONAVIRUS LEGISLATION AND PROGRAMS - WHAT AGRICULTURAL PRODUCERS SHOULD KNOW

Economic Injury Disaster Loan Program.

The CARES Act continued and created additional availability for the SBA to offer loans of up to \$2 million (with the potential for a short term grant of up to \$10,000 for eligible applicants) to provide economic assistance to certain small businesses negatively impacted by COVID-19. Agricultural cooperatives, aquaculture enterprises, nurseries, and producer cooperatives that meet SBA small size standards are eligible. Currently, this loan program excludes farm businesses (other than agricultural cooperatives, aquaculture enterprises, or nurseries) from eligibility. But interested businesses should review the SBA website for possible options: <https://www.sba.gov/funding-programs/disaster-assistance>. As of this date, funding in the EIDL program has been exhausted. Hodgson Russ will continue to monitor additional developments.

Main Street Lending Program

The Federal Reserve has issued its first guidance on the Main Street Lending Program (MSLP), which is designed to stimulate direct lending to small and mid-sized businesses. Loans under MSLP can either be new loans under the MSLP loan facility, or increased borrowing under an existing facility through the Main Street Expanded Loan Facility. The amount set aside for the program is up to \$600 billion. Loans under MSLP will be made directly by financial institutions, which may then sell 95% of the loans to the Federal Reserve. Unlike the Paycheck Protection Program, loans under MSLP are not forgivable. Information about MSLP eligibility, which loans qualify, restrictions and required attestations can be found [here](#).

Changes to Federal Tax Laws.

The CARES Act enacts various changes to federal tax laws that may impact certain individuals and agricultural businesses and employers. For a recap of the tax-related provisions in the CARES Act, click [here](#).

The provisions in the CARES Act are difficult to summarize in brief. There is nuance to many of their individual provisions; this alert is intended only to flag issues for those considering PPP loans and other relief provided for in the Act, and should not replace advice specific to your business' situation from a qualified legal or financial advisor.

The Families First Coronavirus Response Act (FFCRA)

The FFCRA, which took effect on April 1, 2020, expands the Family Medical Leave Act (FMLA) and adopts emergency paid sick leave to address certain COVID-19 issues. In particular, the Emergency Family and Medical Leave Expansion Act (EFMLEA) requires employers with fewer than 500 employees to provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020. The Emergency Paid Sick Leave Act (EPSLA) requires that employers with fewer than 500 employees provide 80 hours of paid sick time to full-time employees who are unable to work (or telework) for specified virus-related reasons. (The number of EPSLA hours offered to part-time employees must be equal to the average hours worked over a 2-week period.) A complete summary of the FFCRA's paid sick and expanded FMLA leave provisions is [here](#). The U.S. Department of Labor has also issued interpretive guidance on the FFCRA, summarized [here](#).

The FFCRA also provides a variety of employer tax credits, as laid out [here](#), to help mitigate the cost of FFCRA's mandated paid sick and family leave. The government has issued informal guidance to speed tax credits to employers, summarized [here](#).

CORONAVIRUS LEGISLATION AND PROGRAMS - WHAT AGRICULTURAL PRODUCERS SHOULD KNOW

Recent Temporary Rule on H-2A Visa Requirements

On April 15, 2020, the U.S. Department of Homeland Security, with the support of the U.S. Department of Agriculture, announced a temporary final rule to change certain H-2A requirements. The rule is designed to help U.S. agricultural employers avoid disruptions in lawful agricultural-related employment, protect the nation's food supply chain, and lessen impacts from Coronavirus. According to the USDA, these temporary changes are meant to encourage and facilitate the continued lawful employment of foreign temporary and seasonal agricultural workers during the COVID-19 public health emergency. The USDA's April 15, 2020 press release is found here: [DHS and USDA Move to Protect American Farmers and Ensure Continued Flow of America's Food Supply](#)

Additional information relating to Coronavirus:

The Coronavirus and Your Insurance Coverage Questions ([link](#))

Commercial Contracts in the Time of Coronavirus ([link](#))

New York State Empire State Development Corporation Updates "Essential Business" Guidance ([link](#))

Estate Planning During a Market Downturn ([link](#))

FDA Through the Pandemic ([link](#) & [link](#))

The attorneys in Hodgson Russ's Agriculture Practice will continue to monitor legislative and agency responses to the Coronavirus pandemic and will publish additional alerts and updates as information becomes available. For questions or for further information please contact Melissa Subjeck (716.848.1719) or Sarah Miller (716.848.1509).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/subscription-center-hr.html>