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ASSOCIATION

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June 4, 2020

The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue NW
Washington, D.C. 20250

Re: Coronavirus Food Assistance Program (CFAP) Deficiencies

Dear Secretary Perdue:

Thank you for your leadership at the U.S. Department of Agriculture (USDA) during the COVID-19 pandemic. I am certain this time has been both busy and stressful for you and your staff, as it has been for Kansas farmers and ranchers. While your efforts are appreciated, I am writing on behalf of the Kansas Livestock Association (KLA), and its nearly 5,600 members, to address what are clear deficiencies in the Coronavirus Food Assistance Program (CFAP) and ask for your help to address these issues.

Prior to passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, KLA and our national affiliate, the National Cattlemen's Beef Association (NCBA), worked hard to ensure that the CARES Act provided maximum flexibility in addressing producer needs without creating a program based on actual marketings, which had the potential to set arbitrary timelines, skew marketing decisions, and pick winners and losers between neighbors. Our concept was to simply have all producers certify inventory and then USDA would issue a one-time payment, based on losses, which we had estimated by a team of elite livestock economists, led by Dr. Darrell Peel at Oklahoma State University.

When that study was completed, we thought our message to avoid basing disaster relief payments on actual sales was received by USDA. KLA, and our nearly 5,600 members, were significantly disappointed when we learned that not only had USDA decided to base most of the livestock relief on actual sales, but the chosen timeframe created severe disparity among recipients.

For instance, January 15, 2020, the beginning date for the period of CFAP payments based on actual sales, has no correlation to actual events. On January 15, 2020, cattle markets were performing relatively well. COVID-19 was not discovered in the U.S. until January 20, 2020, and the diagnosis was not made public until the next day. In addition, when examining the cattle futures market, it is clear that systematic, precipitous price declines did not begin until February 20, 2020. In fact, KLA has multiple members who have reported profitable sales of fed cattle well into February that qualify for a $214 per head CFAP payment.

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Conversely, the April 15, 2020, end date for CFAP payments based on actual sales occurred at a time when cattle producers were selling cattle at a significant loss, a scenario which continued through the month of May. More concerning, however, was that many cattle feeders who were ready to market fed cattle prior to April 15, 2020, were denied marketing opportunities because cattle processors were either closed or running at limited capacity due to COVID-19. In fact, processing plants are still not up to the same processing rates as a year ago, and a substantial backlog of market-ready cattle continue to weigh on the markets. Rather than have these cattle qualify for the $214 per head payment, the cattle were relegated to the $33 per head CFAP inventory payment.

In addition, because KLA and other producer organizations believed that USDA would not pick arbitrary, market distorting periods for payments based on actual marketings, we encouraged our members to be reactive to the market, not what a government payment program might look like in the future. In most instances, this meant cow/calf and stocker operations continued to feed cattle and hold the feeder cattle back due to over-capacity issues at feedyards. As a result of USDA's chosen marketing windows, these cattle producers, who otherwise made prudent marketing decisions, were pushed into receiving the $33 per head inventory payment rather than the feeder cattle sales payment of $139 or $102 per head.

The design of CFAP is benefitting some producers, who may not have needed the help, while increasing the competitive disparity of other producers who actually need the assistance. KLA urges you and your staff to find a way to fix these issues. Ideally, USDA would have never initiated a sales-based payment structure. You are now in a position, however, of trying to remedy an already functioning, but flawed program. KLA suggests you simply increase the $33 CFAP inventory payment to mirror the estimated market damages in Dr. Peel's study. This would pose the least amount of market disruption and not require producers to fill out another application.

Another alternative, but not preferred by KLA, would be to widen the sales-based payment window. Unless USDA qualifies the entire calendar year, however, it will simply pick additional winners and losers, further distorting the market. KLA also realizes that CFAP was a final rule and to remedy that situation USDA would have to propose a new regulation to amend the existing CFAP program. If that is not possible, we encourage you to ask Congress for the necessary tools and funding to remedy this situation, and we would agree to be an ally in that request.

KLA would also like to address some of the outstanding issues involving eligibility of cattle under CFAP. A significant marketing tool for fed cattle producers is the use of grid formula contracts. These contracts are typically entered into months prior to the delivery of cattle to the processing plant. The base price is typically set off of the negotiated cash price reported under the USDA Mandatory Price Reports the week prior to delivery. When the contracts are initiated, physical cattle are committed to the processor and a price mechanism is established, although the producer is subject to price risk. When KLA asked the Kansas FSA office how to report these cattle under CFAP, KLA was told the date the contract was agreed upon was the sales date for purposes of CFAP. We believe this is the correct interpretation. Recently, however, we saw correspondence from USDA staff in Washington, DC indicating that the delivery date was the sale date for purposes of CFAP. This creates a difficult situation as a number of Kansas producers have already signed up under the belief that the date a grid formula contract was entered was the sale date. We believe this is the correct outcome and we urge USDA to issue official written guidance to that effect, or alternatively, allow producers to choose what qualifies as the sale date – the contract date or the delivery date.

Similarly, some feedyards use basis contracts to market fed cattle. These contracts obligate physical cattle to a processor often months in advance of delivery. The contract specifies a delivery month, with the processor having the discretion to select the exact delivery date. The contract also prices the cattle based on an adjustment to the nearby Live Cattle futures contract on the date of delivery. As with the grid formula contracts, Kansas FSA clarified to KLA that the date the contract is entered into is the sale date for CFAP purposes. We believe this reasoning is sound, consistent with the abovementioned grid formula contract interpretation, and should be adopted by USDA in formal guidance.

Finally, we are concerned about the payment limitation rules associated with the CFAP program. For feedyards and dairies, which comprise a substantial number of our members, a limit of $250,000 is inadequate to appropriately cover COVID-19 related losses. In addition, many of these operations are organized as corporations or limited liability companies. While the special rule on payment limits helps, we believe an interpretation by the Farm Service Agency (FSA) in its CFAP Handbook on page 2-3 stating, "Spousal provisions as found in 5-PL do not apply," frustrates the regulation's intent to allow up to $750,000 for these entities. More important, however, we believe this guidance violates the regulation itself, which specifically incorporates part 1400, including 7 C.F.R. 1400.202(b) that deems a spouse to have made a significant contribution. KLA encourages you to first amend the CFAP Handbook to delete the guidance referenced above, and if USDA is considering an amended rule, to increase the overall payment limit so it provides meaningful relief to feeder and stocker operations.

Again, thank you for your commitment to U.S. agriculture. We look forward to your response and working with you to remedy the above-mentioned issues.

Sincerely,

Matt Teagarden

Matt Teagarden
Chief Executive Officer