



## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

[Docket ID CCC–2021–0008]

### Notice of Funds Availability (NOFA); Pandemic Assistance for Timber Harvesters and Haulers Program (PATHH)

**AGENCY:** Farm Service Agency, Department of Agriculture (USDA).

**ACTION:** Notification of funding availability.

**SUMMARY:** The Farm Service Agency (FSA) is announcing the availability of assistance for timber harvesting and timber hauling businesses impacted by the effects of the COVID-19 outbreak through PATHH. Timber harvesting and hauling businesses are also commonly referred to as loggers and truckers. This NOFA establishes provisions for FSA to provide direct payments to eligible applicants who have suffered a gross revenue loss of at least 10 percent for the period of January 1, 2020, through December 1, 2020, compared to the period of January 1, 2019, through December 1, 2019. The eligibility requirements, payment calculation, and application procedure for PATHH are included in this NOFA.

**FOR FURTHER INFORMATION CONTACT:** Jody Kenworthy; telephone: (202) 690-5230; email: [Jody.Kenworthy@usda.gov](mailto:Jody.Kenworthy@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

### SUPPLEMENTARY INFORMATION:

#### Background

FSA will provide assistance to timber harvesting or timber hauling businesses for losses due to the COVID-19 pandemic. FSA is implementing PATHH to distribute up to \$200 million as authorized by Subtitle B of Title VII of Division N of the Consolidated

Appropriations Act, 2021 (CAA; Pub. L. 116–260) to support timber harvesting and timber hauling businesses that have experienced a decrease in their gross revenue of 10 percent or more for the period of January 1, 2020, and December 1, 2020, compared to gross revenue for the period of January 1, 2019 and December 1, 2019. PATHH is intended for timber harvesting and hauling businesses that derive the majority of their income from timber harvesting or hauling activities.

Timber harvesting and hauling businesses are also commonly referred to as loggers and truckers. This document uses the terms timber harvesting and timber hauling businesses for consistency with the CAA. FSA is administering the direct payments under the general supervision and direction of the FSA Administrator, and the United States Forest Service (USFS). USFS will provide technical assistance to FSA, which includes, but is not limited to, sharing expertise on the timber sector, connecting with stakeholders, and providing outreach and training materials.

## **Definitions**

For PATHH, the following definitions apply:

*Gross revenue* means the business's gross receipts. Gross receipts are the total amounts the timber harvesting business or timber hauling business received from timber harvesting and timber hauling activities, without subtracting any costs or expenses. For PATHH, applicants should not include sale of physical assets, such as machinery or equipment, when calculating gross revenue.

*Legal entity* means for the purposes of administering PATHH, a timber harvesting business or timber hauling business that is a corporation, joint stock company, association, limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in a business structure as a general partnership, a joint venture, a grantor of a revocable trust, or as a participant in a similar organization, is considered a legal entity, subject to the payment limitation

and payment eligibility requirements described in this NOFA. A business operating as a sole proprietorship is considered a legal entity.

*NAICS* means the 2017 North American Industry Classification System (NAICS). It is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

*Person* means an individual, natural person and does not include a legal entity.

*Principal business code* means a six-digit number that classifies the main type of product a business sells or service offered. It is based on NAICS codes and is synonymous in this notice with NAICS.

*Timber* means trees or logs harvested from forest land. It includes trees or logs that have been minimally processed onsite in the forest before transportation from the forest land (for example, wood chips, slash, etc.).

*Timber harvesting business* means a business, also known as a logging business, with its gross revenue derived from one or more of the following:

- Cutting timber;
- Cutting and transporting timber; or
- Producing wood chips on forest land.

In addition, the business must be classified under NAICS Code 113310 for tax purposes; or as otherwise determined by the Deputy Administrator for Farm Programs.

*Timber hauling business* means a business, also known as a log hauling business, with its gross revenue derived from transporting products harvested directly from forest land with vehicles registered (under the laws of the state or states in which the vehicle is required to be registered) as highway motor vehicles used in the transportation of timber.

The business must also be classified under NAICS Code 484220 or 484230 for tax

purposes and have filed IRS Form 2290 for logging vehicles for 2019 and 2020, or otherwise determined by the Deputy Administrator for Farm Programs.

*United States* means all 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any other territory or possession of the United States.

### **Eligibility**

To be eligible for a PATHH payment, an applicant must:

- Be in operation as a timber harvesting business or timber hauling business during the periods of:
  - January 1, 2019, through December 1, 2019, and
  - January 1, 2020, through December 1, 2020<sup>1</sup>;
- Have had at least a 10 percent gross revenue loss when comparing the 2020 period with the 2019 period mentioned above;
- Have 50 percent or more of its gross revenue derived from timber harvesting, timber hauling, or both during the periods of:
  - January 1, 2019, through December 1, 2019, and
  - January 1, 2020, through December 1, 2020;
- Meet all of the requirements in this NOFA;
- Be a:
  - Citizen of the United States;
  - Resident alien, which for purposes of this NOFA means “lawful alien” as defined in 7 CFR part 1400;
  - Partnership of citizens or resident aliens of the United States;

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<sup>1</sup>Applicants must have operated for part of the eligible PATHH period in both 2019 and 2020 to be eligible for PATHH. FSA will adjust the applicant’s gross revenue proportionately if the applicant did not operate during the entire PATHH period.

- Corporation, limited liability company, or other organizational structure organized under State law and solely owned by U.S. citizens or resident aliens; or
- 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);
- Provide names and taxpayer identification numbers of each person or legal entity that holds an ownership interest in an eligible legal entity in accordance with 7 CFR 1400.107<sup>2</sup>; and
- Comply with the provisions of 7 CFR part 12, “Highly Erodible Land and Wetland Conservation,” and the provisions of 7 CFR 718.6, which address ineligibility for benefits for offenses involving controlled substances.

The following types of applicants are ineligible for PATHH:

- Any legal entity that includes a member at any level of ownership in the entity’s ownership structure who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101-1778);
- The following types of businesses or operations:
  - Residential or commercial tree care;
  - Landscape services;
  - Trucking businesses that do not transport trees or logs;
  - Timber broker; and
  - United States Federal, State, and local governments.

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<sup>2</sup>Like all other programs administered by FSA, names and taxpayer identification numbers are required to limit payments to persons and legal entities.

## **Payment Limitation**

A person or legal entity cannot receive payments of more than \$125,000 under PATHH. FSA may reduce the maximum payment limitation after all applications are received based on available funding. Like all other programs administered by FSA, payments made to a PATHH applicant that is a 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), will not be subject to payment limitation.

## **Application**

To apply for PATHH, each eligible timber harvesting business and timber hauling business must complete the form FSA-1118, Pandemic Assistance for Timber Harvesters and Haulers (PATHH) Program Application, which is available at <https://www.farmers.gov/PATHH> and in FSA county offices. A complete form FSA-1118 must be submitted in person, by mail, e-mail, OneSpan,<sup>3</sup> Box,<sup>4</sup> or facsimile to any FSA county office<sup>5</sup> by October 15, 2021.

In addition to the form FSA-1118, an applicant must submit the additional forms discussed below. Failure of an individual, legal entity, or a member(s) of a legal entity to submit the following payment limitation and payment eligibility forms within 60 days

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<sup>3</sup>OneSpan is a secure eSignature solution for FSA customers. No software downloads or eAuthentication is required for OneSpan. Applicants interested in eSignature through OneSpan can confirm their identity through two-factor authentication (2FA). For the second factor of authentication, applicants can use a text message with verification code sent to their mobile device or a personalized question and answer. Once identity is confirmed, documents can be reviewed and e-signed through OneSpan via the applicant's personal email address and, once signed, immediately become available to the appropriate FSA county office staff.

<sup>4</sup>Box is a secure, cloud-based site where FSA documents can be managed and shared. Applicants who choose to use Box can create a username and password to access their secure Box account, where documents can be downloaded, printed, manually signed, scanned, uploaded, and shared digitally with FSA county office staff. This service is available to any FSA customer with access to a mobile device or computer with printer connectivity. Box does not require software downloads or an eAuthentication account.

<sup>5</sup>The FSA county office locator can be found at the following site under the "Find Your Local Service Center" section: <https://www.farmers.gov/>.

from the date of submitting the PATHH application may result in no payment or a reduced payment, as explained in the previous section.

Applicants will be required to complete form AD-2047 Customer Data Worksheet. This form must be filled out for all applicants, as well as members who own a share in any legal entity applicants, who have not previously provided detailed information to USDA that accurately identifies the applicant or member.

To facilitate administration of the payment limitation and eligibility requirements, an applicant that is a legal entity, such as a limited liability company, will be required to complete form CCC-901 Member Information for Legal Entities and provide names and taxpayer identification numbers of all members holding an ownership interest in the legal entity.

A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification (form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification for PATHH applicant and applicable affiliates) will be required for all applicants.

An applicant applying as a timber hauling business must submit a copy of IRS Form 2290 Heavy Highway Vehicle Use Tax Return for logging vehicles for 2019 and 2020 or they will be ineligible for a PATHH payment. For a timber hauling business that only operates on Tribal land, Form 2290 will not be required. The timber hauling business will certify to this on the FSA-1118. Under special circumstances, as determined by FSA, a timber hauling business that does not otherwise use Form 2290 may request an exemption.

If requested by FSA, the applicant must provide additional documentation to verify eligibility of the information included on the application, such as tax records with NAICS 113310 or 484220, as well as evidence that supports the gross revenue the applicant received from timber harvesting or hauling, such as tax returns, payment

receipts, and other documentation that is determined acceptable by FSA.

An applicant, whether a person or legal entity, that either fails to timely provide all required documentation or fails to satisfy an eligibility requirement for the PATHH, is not eligible to receive PATHH payments. A PATHH payment to an eligible legal entity applicant whose member(s) either fails to timely submit a separate AD-2047 form or fails to satisfy an eligibility requirement, other than the requirement that the member be a citizen of the United States or an alien lawfully admitted into the United States for permanent residence,<sup>6</sup> will be reduced proportionate to that member's ownership share.

PATHH participants are required to retain documentation in support of their application for 3 years after the date of approval.

Participants receiving PATHH payments or any other person who furnishes such information to USDA must permit authorized representatives of FSA or the Government Accountability Office, during regular business hours, to enter the participant's business 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.

## **Payment**

For eligible applicants, if gross revenue for the period of January 1, 2020, through December 1, 2020, decreased by at least 10 percent compared to gross revenue for the period of January 1, 2019, through December 1, 2019, the payment amount will be calculated as follows:

- Gross revenue received from January 1, 2019, through December 1, 2019, minus gross revenue received from January 1, 2020, through December 1, 2020;

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<sup>6</sup>If a member fails to satisfy this eligibility requirement, the applicant is not eligible under the PATHH.



- Multiplied by 80 percent.

For applicants whose business either originated between January 1, 2019, and December 1, 2019, or dissolved in between January 1, 2020, and December 1, 2020, the applicant must report the amount of time they were in business during the eligible PATHH periods of January 1, 2019, through December 1, 2019, and January 1, 2020, through December 1, 2020, on their application, and FSA will adjust gross revenue proportionally for the purpose of payment calculation. If there was a change in the ownership of an entity in 2019, but the entity's name and business remain the same, the entity is not considered to have originated in 2019. For example, Timber Business A originated on July 17, 2019. It is still in operation today; therefore, it was in operation during PATHH periods January 1, 2020, through December 1, 2020, (336 days) and July 17, 2019, to December 1, 2019 (138 days). The business's gross revenue is \$140,000 for 2019, and \$200,000 in 2020. Since the number of days the business existed in 2019 is not the same as the number of days it existed in 2020, the business's gross revenue for 2019 will be calculated on a daily basis, and that daily revenue will then be multiplied by the number of days it operated in 2020. This will allow an equitable comparison of the gross revenue for the 2 years to determine the loss. To calculate the business's gross revenue for 2019, \$140,000, will be divided by the number of days its operation existed, 138 days, to get the business's 2019 gross revenue per day. That amount, \$1,014.49275 (not rounded), is then multiplied by the number of days the business existed in 2020 if the business existed during the entire application period, 335 days. This amount, \$339,855.0724 (not rounded) will then be used as the business's 2019 gross revenue in the PATHH payment calculation. Seasonal timber harvesting and timber hauling business will be considered in operation during the entire PATHH applicable period and their gross revenue will not be prorated.

FSA will issue an initial payment equal to the lesser of:

- The amount calculated above; or
- \$2,000.

After the close of the application period, FSA will issue a final payment equal to the amount calculated above minus the amount of the applicant's initial payment. If total calculated payments exceed the total funding available for PATHH, the payment limitation may be adjusted and the final payment amounts will be prorated to stay within the amount of available funding. An initial payment to a recipient will not be recalculated or reduced if the factored payment to that recipient is \$2,000 or less.

### **Miscellaneous Provisions**

In the event that a PATHH payment resulted from erroneous information reported by the applicant, the payment will be recalculated, and the applicant must refund any excess payment to FSA, including interest to be calculated from the date of disbursement.

If FSA determines that the applicant intentionally misrepresented their total gross revenue, their application will be disapproved and they must refund to USDA all PATHH payments made to the applicant with interest from the date of disbursement.

If any corrections to the ownership interest in the business result in a lower PATHH payment, the applicant must refund the difference with interest from the date of disbursement.

Any required refunds must be resolved in accordance with debt settlement regulations in 7 CFR part 3.

Equitable relief and finality provisions of 7 CFR 718 subpart D apply to determinations under PATHH, as well as appeal regulations in 7 CFR parts 11 and 780. The determination of matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed. Such matters of general applicability include, but are not limited to, program definitions, payment limitation, the method of determining gross

revenue loss, and the PATHH payment calculation.

A timber hauling business or timber harvesting business may file an application with the FSA county office after the PATHH application deadline, along with a statement as to why the application is being filed after the deadline. In such case the application and statement will be considered a request to waive the application deadline. If funding is available, the Deputy Administrator has the discretion and authority to consider the case and waive or modify application deadlines and other requirements or program provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of PATHH. Although applicants have a right to a decision on whether they filed applications by the deadline or not, applicants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion to consider the request will not be considered an adverse decision and is, by itself, not appealable.

PATHH payments will be made without regard to questions of title under State law and without regard to any claim or lien against the timber harvesting or hauling business. The regulations governing offsets in 7 CFR part 3 do not apply to PATHH payments.

### **Perjury**

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

### **Paperwork Reduction Act Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the emergency information collection request has been submitted to the Office of Management and Budget (OMB). OMB approved the 6-month emergency PATHH information collection activity. FSA is providing direct payments to eligible applicants who have suffered a gross revenue loss of at least 10 percent for the period of January 1, 2020, through December 1, 2020, compared to the period of January 1, 2019, through December 1, 2019.

### **Environmental Review**

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321- 4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

As previously stated, PATHH is providing payments to eligible timber harvesting and hauling businesses who have suffered a gross revenue loss of at least 10 percent for the period of January 1, 2020, through December 1, 2020, compared to the period of January 1, 2019, through December 1, 2019. The limited discretionary aspects of PATHH do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the FSA Categorical Exclusions specified in 7 CFR 799.31(b)(6)(iii) that applies to price support programs and § 799.31(b)(6)(vi) that applies to safety net programs.

No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of PATHH and the participation in PATHH do not constitute major Federal actions that

would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

### **Federal Assistance Programs**

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this document applies is 10.137 – Pandemic Assistance for Timber Harvesters and Haulers Program.

### **USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at

<https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov). USDA is an equal opportunity provider, employer, and lender.

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