

hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0363)

§ 301.76-9 Inspection of regulated nursery stock.

All regulated nursery stock treated with soil drenches or in-ground granular applications and foliar sprays prior to interstate movement from an area quarantined only for Asian citrus psyllid, but not for citrus greening, as well as all nursery stock intended for interstate movement for immediate export from an area quarantined for citrus greening, must be inspected by an inspector⁵ no more than 72 hours prior to movement. The person who desires to move the articles interstate must notify the inspector as far in advance of the desired interstate movement as possible. The articles must be inspected at the place and in the manner the inspector designates as necessary to comply with this subpart. If the inspector has reason to believe that the interstate movement of the articles may lead to the artificial spread of citrus greening or Asian citrus psyllid, he or she may deny issuance of a limited permit for interstate movement of the article or take other remedial measures to prohibit such spread.

(Approved by the Office of Management and Budget under control number 0579-0363)

§ 301.76-10 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, or a copy thereof, must, at all times during the interstate movement, be:

(1) Attached to or legibly printed on the outside of the container containing the regulated article or attached to the regulated article itself, if the article is not packed in a container; and

(2) Attached to or legibly printed on the sealed container in which the article is shipped; and

(3) Attached to the consignee's copy of the accompanying waybill. The host article must be sufficiently described on the certificate or limited permit and on the waybill to identify the article.

(b) The certificate or limited permit for the interstate movement of a host article must be furnished by the carrier or the carrier's representative to the

consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

§ 301.76-11 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

PART 305—PHYTOSANITARY TREATMENTS

■ 3. The authority citation for part 305 continues to read as follows:

7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3

■ 4. Section 305.9 is amended as follows:

■ a. By revising the introductory text of the section and adding new paragraphs (a)(3) and (c)(4) to read as set forth below.

■ b. In paragraph (f)(2) introductory text, by adding the words "or Asian citrus psyllid" after the words "fruit flies".

■ c. In paragraph (f)(3), by adding the words "or Asian citrus psyllid" after the words "fruit flies".

§ 305.9 Irradiation treatment requirements.

Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for any imported regulated article (i.e., fruits, vegetables, cut flowers, and foliage); for any regulated article moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Marianas Islands (referred to collectively, in this section, as Hawaii and U.S. territories); for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.32-2(a) of this chapter; and for any regulated article listed in 301.76-2 of this chapter and intended for consumption, as apparel or as a similar personal accessory, or for decorative use.

(a) * * *

(3) For articles that are moved interstate from areas quarantined only for Asian citrus psyllid, and not for citrus greening, irradiation facilities must be located within an area that is not quarantined for citrus greening.

* * * * *

(c) * * *

(4) Irradiation facilities treating articles moved interstate from areas

quarantined only for Asian citrus psyllid, and not for citrus greening, must complete a compliance agreement with APHIS as provided in § 301.76-8 of this chapter.

* * * * *

Done in Washington, DC, this 8th day of June 2010.

Ann Wright,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2010-14495 Filed 6-16-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 755

RIN 0560-A108

Reimbursement Transportation Cost Payment Program for Geographically Disadvantaged Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule specifies regulations to implement the new Reimbursement Transportation Cost Payment (RTCP) Program for geographically disadvantaged farmers and ranchers authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the RTCP Program is to assist farmers and ranchers in Hawaii, Alaska and insular areas who paid to transport either an agricultural commodity or an input used to produce an agricultural commodity. The payments provided by the RTCP Program are intended to offset a portion of the costs of transporting agricultural inputs and products over long distances. This rule specifies eligibility requirements, payment application procedures, and the method for calculating individual payments.

DATES: *Effective Date:* June 16, 2010.

FOR FURTHER INFORMATION CONTACT:

Solomon Whitfield, Director, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512; telephone (202) 720-7901; fax (202) 690-3307; e-mail,

Solomon.Whitfield@wdc.usda.gov.

Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

⁵ Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

SUPPLEMENTARY INFORMATION:**Background**

U.S. farmers and ranchers outside the continental United States (the 48 contiguous United States) operate at a competitive disadvantage relative to farmers and ranchers in the continental United States. This disadvantage is due to the high cost of transporting agricultural commodities from those areas to markets in the continental United States and in other countries, and the high cost of transporting agricultural inputs to those areas. Rising fuel costs have made this competitive disadvantage worse. Section 1621 of the 2008 Farm Bill (Pub. L. 110–246) authorizes the RTCP Program, subject to appropriations, to address this issue by providing payments to “geographically disadvantaged farmers or ranchers” to compensate them for a portion of the costs of transporting agricultural inputs and commodities. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80, the 2010 Agriculture Appropriations Bill) provides \$2.6 million for this program in Fiscal Year (FY) 2010 and this was the first time that monies were made available for RTCP.

The 2008 Farm Bill specifies the general requirements for eligibility for the RTCP Program, and specifies that the term “geographically disadvantaged farmer or rancher” will have the meaning given the term in section 10906(a) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 2204 note). The Farm Security and Rural Investment Act of 2002, Public Law 107–171, is commonly known as the 2002 Farm Bill. Section 10906(a) of the 2002 Farm Bill provides that the term “geographically disadvantaged farmer or rancher” means a farmer or rancher in—(1) an insular area (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103) (as amended by section 7502(a)); or (2) a State other than 1 of the 48 contiguous States. Section 7502(a) of the 2002 Farm Bill provides that that the term “insular area” means—(A) the Commonwealth of Puerto Rico; (B) Guam; (C) American Samoa; (D) the Commonwealth of the Northern Mariana Islands; (E) the Federated States of Micronesia; (F) the Republic of the Marshall Islands; (G) the Republic of Palau; and (H) the Virgin Islands of the United States. Thus, the 2002 Farm Bill definition of “insular area” includes Micronesia, Palau and the Marshall Islands despite their independent, though federated, status with respect to the United States. That

independent status long preceded the 2002 legislation. By the terms of the 2008 Farm Bill, adopting the 2002 Farm Bill, those areas and the others mentioned in Section 7502 of the 2002 Farm Bill as insular areas, along with Hawaii and Alaska, are the areas that are covered by this program. That is, farmers and ranchers in those areas and States are the beneficiaries of this program as “geographically disadvantaged farmers or ranchers.” The regulations adopted in this rule reflect that geographical scope and provide other details of the program, including the general rate structure for payments, and the types of costs are eligible for payment. This rule details the application process, the rate calculation method, and acceptable documentation of the producer’s actual cost that FSA is implementing. In addition, this rule specifies an \$8,000 cap on payments per producer per fiscal year that FSA is establishing to ensure a fair and reasonable distribution of funds in this program. This program is not expected, at least with respect to the current appropriation, to be sufficient to pay all eligible claims for the fiscal year. Otherwise (without the cap), all or most of the funds would go, in terms of substantial amounts, to large producers only. However, the rule does adopt provisions for exceeding the \$8,000 cap if the total funds available would otherwise not be fully expended. The figure of \$8,000 was chosen because it provides a substantial level of benefits to those who might otherwise have large claims.

The RTCP Program builds on efforts that Congress and USDA have made in the past to address the issue of high transportation costs for geographically disadvantaged farmers and ranchers. As required by section 10906 of the 2002 Farm Bill, the USDA Agricultural Marketing Service (AMS) conducted a study that analyzed barriers in agricultural transportation in non-contiguous U.S. States and Territories. The report on the case study revealed that inadequate port infrastructure, limited access to freight service, and the low priority often given by transportation providers to handling agricultural commodities often create physical and economic barriers that make it difficult for farmers and ranchers in geographically disadvantaged areas to compete successfully with continental United States producers. In all of the non-contiguous United States and insular areas except for some parts of Alaska, local farmers and ranchers must rely on sea or air transportation to ship their

cargo to the continental United States and other markets. Limited transportation choices and the cost of fuel to transport agricultural commodities and inputs negatively impacts agricultural sustainability and viability in geographically disadvantaged areas.

Eligibility Requirements

To be eligible for an RTCP, a producer must be a geographically disadvantaged farmer or rancher and that means a farmer or rancher in the areas noted above.

To be eligible for RTCP Program benefits, the geographically disadvantaged farmer or rancher must be a producer of an eligible agricultural commodity and submit an application during the applicable period announced by the Deputy Administrator. For FY 2010, that period will begin within 45 days after this rule is published and end on September 10, 2010. That date is designed to expedite the making of payments but may be extended to September 30 as the need may arise. Funds under the current appropriation will be made only for transportation expenses incurred during fiscal year 2010—that being the period of October 1, 2009 through September 30, 2010. Applications may be for all expenses incurred during the period or to be incurred in the period. In the instance where the application precedes the actual occurrence, the producer will be allowed 30 days after the expenses were incurred to verify that the expenses actually did occur. Producers may apply for an RTCP using FSA fixed, set, or actual rates for transportation costs, as described below. After the RTCP application is submitted, those producers who request RTCP by using FSA fixed or set rates must submit supporting documentation within 30 days after the end of the FY to provide eligibility for a payment based on actual cost. No claims will be paid for applications not filed within the FY and all verifications and documentation must be completed within 30 days after the end of the FY.

To be eligible for reimbursement, the transportation costs must have been incurred in the FY for which the application period applies. Further, there has been no appropriated funding for the RTCP Program in 2008 or 2009 and therefore costs in those years are not eligible for reimbursement; only costs incurred in FY 2010 are eligible for FY 2010 payments under the current appropriation. However, the rule is designed to allow for the administration of future appropriations should there be any.

Government entities (State and local governments and their political subdivisions and related agencies) are not eligible for the RTCF Program. These eligibility restrictions are consistent with other CCC and FSA programs authorized by the 2008 Farm Bill.

Any person who is not a U.S. citizen or legal resident alien of the United States is ineligible to receive any type of loan or payment under Title I of the 2008 Farm Bill, with respect to any commodity produced on a farm that is owned or operated by such person, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm. RTCF is in Title I of the 2008 Farm Bill, so the eligibility restrictions on foreign persons apply. There is a certain anomaly here applying the foreign person rule in light of the independent status of Micronesia, the Marshall Islands, and Palau, but this result is mandated by the terms of the statute and in any event the foreign person definition allows for payments, as indicated, to a foreign person if the specified conditions noted above are met. For all areas, however, the rule takes care to require that the farmers or ranchers be persons producing product for the market in substantial quantities and that the claim for compensation can only be made for that part of the person's or entity's production that is commercial in nature.

Only the producer incurring transportation costs may be eligible for RTCF. In no case will the same transportation cost provide payment eligibility for both the buyer and seller of an agricultural commodity or input. To avoid duplication of benefits, any input transportation costs paid to a producer under other Federal government programs, such as, but not limited to, cost share programs or grants, will not be eligible costs under the RTCF Program.

The 2008 Farm Bill specifies that to be eligible for the RTCF Program, geographically disadvantaged farmers or ranchers must demonstrate that they transported commodities or inputs over a distance of more than 30 miles. As specified in this rule, producers in geographically disadvantaged areas will not have to demonstrate the precise distance that commodities or inputs were transported to be eligible for RTCF. It is reasonable to assume that even if an agricultural producer on a remote island sells to the local market, or buys inputs locally, the price will reflect transportation costs of more than 30 miles that occurred at some point during production. For example, a

locally produced commodity will typically require inputs such as fertilizer or machinery that were transported more than 30 miles. Therefore, any producer in these areas may be eligible for payment, and the payment rate will be based on FSA's estimation of the typical transportation costs for that type of commodity or input to or from that area. As described below, producers will be required to provide supporting documentation of actual costs to receive more than FSA's estimated payment rate.

Payment Amount Calculation

The 2008 Farm Bill specifies that the transportation reimbursement payment rates for geographically disadvantaged farmers and ranchers be based on the cost of living allowances (COLAs) for Federal employees in those areas. Those allowances currently range from 14 percent to 25 percent of base pay, and 5 U.S.C. 5941 specifies that they cannot exceed 25 percent. The COLAs reflect the difference in cost of living between those areas and the cost of living in Washington, DC, and are expressed as a rate by which the cost of living exceeds the cost of living in Washington.

FSA payment rates for this program will be calculated as the estimated or actual transportation costs times the relevant COLA for that area. So, for example, if the qualifying expense was \$3,000 and the applicable COLA is 25 percent, then the payable benefits under this program would be \$750. The estimated transportation cost will be a fixed rate or set rate established by FSA for eligible commodities and inputs. These rates will be on a per unit (bushel, pound, etc.) basis. The fixed rate is an estimated transportation cost for that item established by FSA based on the best available data on typical shipping rates for that item associated with the applicable area. The FSA set rate is an estimated transportation cost for an item, such as bags of fertilizer or equipment parts, where the transportation cost is not available, typically because it is included in the price for that item. If the producer can document actual transportation costs, the payment rate will be the COLA percentage times the actual cost. If there is an FSA fixed or set rate, the documentation of actual costs may be used to justify a rate other than the FSA fixed or set rate. In other words, the initial payment calculation will be done one of three ways:

1. If the commodity or input transported is on the FSA fixed rate list, the payment will be the COLA percentage times the FSA fixed

transportation rate times the number of units.

2. In no case may the producer be paid any amount greater than the amount actually paid by the producer, but the producer can be paid higher than the fixed or set amount if the actual amount paid is a reasonable amount and is established by proper documentation.

3. If the commodity or input is not on the FSA fixed rate list, and the producer cannot document actual transportation costs, the FSA State office for that area will set a rate. The payment will be the COLA times the set rate times the number of units.

A producer who paid a combined transportation and other handling services fee for an assortment of items can use the FSA fixed rate list to report transportation costs for each type of item. Sources that FSA will use to determine the fixed transportation rates may include, but are not limited to, fares and rates posted by the Public Utilities Commission, transportation rates posted by shipping companies, surveys of plant nurseries, surveys of farm suppliers, National Agricultural Statistics Service (NASS) data, surveys from producers, State and National studies that examine increased costs in each applicable area, and comparison of average fuel prices within a particular area.

The FSA set rate method will benefit farmers and ranchers who do business with companies that do not break out specific transportation costs but rather include the transportation cost in the price charged for the service or product. For example, if a producer buys fertilizer in bags at a local store and has a receipt for that input, but the store does not provide information on what percentage of the cost was transportation, FSA will provide a set rate to that producer for that input.

The actual costs method will benefit farmers and ranchers who can document actual costs. FSA will accept and pro-rate documented actual transportation costs that were for both eligible and ineligible commodities and inputs. For example, FSA will pro-rate a transportation cost for agricultural commodities, equipment parts, and general supplies, where the general supplies are not eligible.

The fixed and set rates will be determined by the State office. The State offices for the eligible areas are Alaska, Hawaii, Florida, and Puerto Rico. Final approval of the fixed and set rates will be made by the Deputy Administrator to ensure rates are established in a fair and equitable manner. FSA will post the fixed and set rates at the State and county offices for the applicable areas.

The payment amount for a producer is the sum of the initial calculated payment amounts (applicable transportation rate times units times the COLA) for each input or commodity. The payment amount for a producer can reflect a combination of fixed, set, and actual cost rates. A producer can provide supporting documentation for one commodity's actual cost of transportation and report a fixed or set rate for another commodity or input.

The sum of the initial calculated payments for a producer will be the actual payment amount for that producer, subject to an \$8,000 cap per producer per FY, if applications exceed available funding, less a reserve. The administration of this program is made discretionary by the terms of the statute (the 2008 Farm Bill) and the statute does not specify the manner in which limited funds should be distributed. The \$8,000 "cap" adopted here is not statutory but is being implemented so that the payments are not skewed in favor of large producers to the effective exclusion of small producers in a manner that is inconsistent with the general nature of farm programs and in particular past farm programs, such as various dairy programs, operating under capped amounts. If applications exceed available funding, all payments will be recalculated using a factor set by FSA to ensure that the payments do not exceed the available funding, less the reserve. For example, if applications are received for twice the available funding, payments will be half the initially calculated amount. The individual payments can only be calculated after total payment amounts have been determined from all eligible program applicants. If funds are adequate for all payment amounts, all eligible producers will be paid at the full calculated payment amount.

The 2010 Agriculture Appropriations Bill provides \$2.6 million for payments to geographically disadvantaged farmers and ranchers. We anticipate that the applications received will exceed the available funding, and that therefore reimbursement rates will be recalculated downward. Until all the applications are received, we do not know the extent to which rates will be recalculated.

AGI Limits

A farmer or rancher must meet the AGI limitations in 7 CFR part 1400 to be eligible for RTCP Program benefits. Any geographically disadvantaged farmer or rancher who had annual average adjusted gross nonfarm income in excess of \$500,000 for calendar years 2006 through 2008 is not eligible for

RTCP Program benefits in FY 2010. The 2008 Farm Bill does not specifically require the application of the AGI limits to the RTCP Program.

Application Process

Producers must apply for RTCP payments during the application period announced by the Deputy Administrator. The application period will be announced through an FSA notice, press releases, and on the FSA Web site. The application period for FY 2010 will begin within 45 days after this rule is published, and end on September 10, 2010.

To ensure all producers are provided an opportunity to submit actual reimbursable costs and potentially qualify for a payment other than at a fixed or set rate, applicants will also have until 30 days after the end of the FY to provide supporting documentation of actual costs to the FSA County Office.

During the application period, and the period for submitting supporting documentation, RTCP applicants may apply or submit their supporting documentation in person at FSA county offices during regular business hours. Applications and supporting documentation may also be submitted to FSA by mail or FAX. Program applications may be obtained in person, by mail, and facsimile from farmers' and ranchers' designated FSA county office or via the Internet at <http://www.fsa.usda.gov/pricesupport>.

Any applications received after the application period closes will not be eligible for payment. A specific application period with a cutoff date is needed because FSA will need to know the total reimbursements requested from all producers to calculate the total payment amounts. A limited amount of funds will be held in reserve for appeals and corrections.

The period for submitting supporting documentation for previously submitted applications is not an extension to the application period. If supporting documentation is submitted, but there was no application filed during the application period, any such documentation will not be considered and will not provide eligibility.

Applications for FY 2010 are due September 10, 2010. Supporting documentation for FY 2010 is due October 30, 2010. FSA plans to calculate payment rates and disburse payments for FY 2010 by November 30, 2010.

Miscellaneous Requirements

Producers must have been in compliance with the regulations in 7 CFR part 12, "Highly Erodible Land and

Wetland Conservation," during the year for which the person is requesting benefits. If it is determined after a payment is issued for the RTCP Program that a violation occurred, then repayment of the benefit plus interest will be required.

Information provided on applications and supporting documentation will be subject to verification by FSA. False certifications by producers carry strict penalties and FSA will verify applications with random compliance spot-checks. Producers determined to have, knowingly or inadvertently, made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund all payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies.

If a producer in the RTCP Program who has a disputed claim succeeds through the appeal processes in 7 CFR parts 11 or 780 in obtaining a determination that additional payments are due to that producer, the producer will be paid only to the extent that funding under the RTCP Program remains available.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that these regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are issued as final.

Executive Order 12866

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866 and, therefore, OMB not reviewed this rule.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

FSA has determined that the participation in this program is solely intended to offset a portion of the costs of transporting agricultural inputs and products over long distances and does

not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance 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 FSA regulations for compliance with NEPA (7 CFR part 799) no environment assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial action may be brought regarding provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not have tribal implications that preempt tribal law.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally

requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. In addition, FSA was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601 of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other Information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

List of Subjects in 7 CFR Part 755

Agricultural commodities, Reporting and recordkeeping requirements, Rural areas, Transportation.

■ For the reasons discussed above, the USDA Farm Service Agency adds 7 CFR part 755 to read as follows:

PART 755—REIMBURSEMENT TRANSPORTATION COST PAYMENT PROGRAM FOR GEOGRAPHICALLY DISADVANTAGED FARMERS AND RANCHERS

Sec.

- 755.1 Administration.
- 755.2 Definitions.
- 755.3 Time and method of application.
- 755.4 Eligibility.
- 755.5 Proof of eligible reimbursement costs incurred.
- 755.6 Availability of funds.
- 755.7 Transportation rates.
- 755.8 Calculation of individual payments.
- 755.9 Misrepresentation and scheme or device.
- 755.10 Death, incompetence, or disappearance.
- 755.11 Maintaining records.
- 755.12 Refunds; joint and several liability.
- 755.13 Miscellaneous provisions and appeals.

Authority: 7 U.S.C. 8792.

§ 755.1 Administration.

(a) This part establishes the terms and conditions under which the Reimbursement Transportation Cost Payment (RTCP) Program for

geographically disadvantaged farmers and ranchers will be administered.

(b) The RTCP Program will be administered under the general supervision of the FSA Administrator, or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(c) FSA State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part, except as provided in paragraph (e) of this section.

(d) The FSA State committee will take any action required by the provisions of this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require an FSA county committee to correct any action taken by the county committee that is not in compliance with the provisions of this part.

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the provisions of this part.

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

(f) The Deputy Administrator for Farm Programs, FSA, may waive or modify program requirements of this part in cases where failure to meet requirements does not adversely affect the operation of the program and where the requirement is not statutorily mandated.

§ 755.2 Definitions.

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

Actual transportation rate means the transportation rate that reflects the actual transportation costs incurred and can be determined by supporting documentation.

Agricultural commodity means any agricultural commodity (including horticulture, aquaculture, and floriculture), food, feed, fiber, livestock (including elk, reindeer, bison, horses, or deer), or insects, and any product thereof.

Agricultural operation means a parcel or parcels of land; or body of water applicable to aquaculture, whether contiguous or noncontiguous, constituting a cohesive management

unit for agricultural purposes. An agricultural operation will be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon, it will be regarded to be in the county in which the major portion of the land or applicable body of water is located.

Application period means the period established by the Deputy Administrator for geographically disadvantaged farmers and ranchers to apply for program benefits.

County office or FSA county office means the FSA offices responsible for administering FSA programs in a specific area, sometimes encompassing more than one county, in a State.

Department or USDA means the U.S. Department of Agriculture.

Eligible reimbursement amount means the reported costs incurred to transport an agricultural commodity or input used to produce an agricultural commodity in an insular area, Alaska, or Hawaii, over a distance of more than 30 miles. The amount is calculated by multiplying the number of units of the reported transportation amount times the applicable transportation fixed, set, or actual rate times the applicable FY allowance (COLA).

Farm Service Agency or FSA means the Farm Service Agency of the USDA.

Fiscal year or FY means the year beginning October 1 and ending the following September 30. The fiscal year will be designated for this part by year reference to the calendar year in which it ends. For example, FY 2010 is from October 1, 2009, through September 30, 2010 (inclusive).

Fixed transportation rate means the per unit transportation rate determined by FSA to reflect the transportation cost applicable to an agricultural commodity or input used to produce an agricultural commodity in a particular region.

FY allowance (COLA) means the nonforeign area cost of living allowance or post differential, as applicable, for that FY set by Office of Personnel Management for Federal employees stationed in Alaska, Hawaii, and other insular areas, as authorized by 5 U.S.C. 5941 and E.O. 10000 and specified in 5 CFR part 591, subpart B, appendices A and B.

Geographically disadvantaged farmer or rancher means a farmer or rancher in an insular area, Alaska, or Hawaii.

Input transportation costs means those transportation costs of inputs used to produce an agricultural commodity including, but not limited to, air freight, ocean freight, and land freight of chemicals, feed, fertilizer, fuel, seeds, plants, supplies, equipment parts, and other inputs as determined by FSA.

Insular area means the Commonwealth of Puerto Rico; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; the Federated States of Micronesia; the Republic of the Marshall Islands; the Republic of Palau; and the Virgin Islands of the United States.

Payment amount means the amount due a producer that is the sum of all eligible reimbursement amounts, as calculated by FSA subject to the availability of funds, and subject to an \$8,000 cap per producer per FY.

Producer means any geographically disadvantaged farmer or rancher who is an individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in § 1400.3 of this title, who is, or whose members are, a citizen of or legal resident alien in the United States, and who, as determined by the Secretary, shares in the risk of producing an agricultural commodity in substantial commercial quantities, and who is entitled to a share of the agricultural commodity from the agricultural operation.

Reported transportation amount means the reported number of units (such as pounds, bushels, pieces, or parts) applicable to an agricultural commodity or input used to produce an agricultural commodity, which is used in calculating the eligible reimbursement amount.

Set transportation rate means the transportation rate established by FSA for a commodity or input for which there is not a fixed transportation rate or supporting documentation of the actual transportation rate.

United States means the 50 States of the United States of America, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any other territory or possession of the United States.

Verifiable records means evidence that is used to substantiate the amount of eligible reimbursements by geographically disadvantaged farmers and ranchers in an agricultural operation that can be verified by FSA through an independent source.

§ 755.3 Time and method of application.

(a) To be eligible for payment, producers must obtain and submit a completed application for payment and meet other eligibility requirements specified in this part. Producers may obtain an application in person, by mail, or by facsimile from any county FSA office. In addition, producers may

download a copy of the application at <http://www.sc.egov.usda.gov>.

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county where the agricultural operation is located, but, in any case, must be received by the FSA county office by the close of business on the last day of the application period established by the Deputy Administrator.

(c) All producers who incurred transportation costs for eligible reimbursements and who share in the risk of an agricultural operation must certify to the information on the application before the application will be considered complete. FSA may require the producer to provide documentation to support all verifiable records.

(d) Each producer requesting payment under this part must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Federal Government may be punishable by imprisonment, fines and other penalties or sanctions.

(e) To ensure all producers are provided an opportunity to submit actual costs for reimbursement at the actual cost rate, applicants will have 30 days after the end of the FY to provide supporting documentation of actual transportation costs to the FSA County Office. The actual costs documented in supporting documentation will override previously reported costs of eligible reimbursable costs at the fixed or set rate made during the application period.

(f) If verifiable records are not provided to FSA, the producer will be ineligible for payment.

(g) If supporting documentation is provided within 30 days after the end of the FY, but an application was not submitted to the applicable FSA County Office before the end of the application period, the producer is not eligible for payment.

(h) Producers who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or

received by FSA, any application received after the close of business on such date will not be eligible for benefits under this program.

§ 755.4 Eligibility.

(a) To be eligible to receive payments under this part, a geographically disadvantaged farmer or rancher must:

(1) Be a producer of an eligible agricultural commodity in substantial commercial quantities;

(2) Incur transportation costs for the transportation of the agricultural commodity or input used to produce the agricultural commodity;

(3) Submit an accurate and complete application for payment as specified in § 755.3; and

(4) Be in compliance with the wetland and highly erodible conservation requirements in part 12 of this title and meet the adjusted gross income and pay limit eligibility requirements in part 1400 of this title, as applicable, except that the \$8,000 cap provided for in this rule is a per producer cap, not a per person cap. For example, a partnership of four individuals would be considered one producer, not four persons, for the purposes of this cap and thus the partnership could only generate a single \$8,000 payment under this program if the cap holds because of full subscription of the program.

(b) Individual producers in an agricultural operation that is an entity are only eligible for a payment based on their share of the operation. A producer is not eligible for payment based on the share of production of any other producer.

(c) Multiple producers, such as the buyer and seller of a commodity (for example, a producer of hay and a livestock operation that buys the hay), are not eligible for payments for the same eligible transportation cost. Unless the multiple producers agree otherwise, only the last buyer will be eligible for the payment.

(d) A person or entity determined to be a "foreign person" under part 1400 of this title is not eligible to receive benefits under this part, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm.

(e) State and local governments and their political subdivisions and related agencies are not eligible for RTCP payments.

§ 755.5 Proof of eligible reimbursement costs incurred.

(a) To be eligible for reimbursement based on FSA fixed or set rates as specified in § 755.7, the requirements

specified in paragraphs (b) and (c) of this section must be met at the time of the application. To be eligible for reimbursement of actual costs, the requirements of paragraph (d) must also be met, within 30 days after the end of the applicable fiscal year.

(b) Eligible verifiable records to support eligible reimbursement costs include, but are not limited to:

(1) Invoices;

(2) Account statements;

(3) Contractual Agreements; or

(4) Bill of Lading.

(c) Verifiable records must show:

(1) Name of producer(s);

(2) Commodity and unit of measure;

(3) Type of input(s) associated with transportation costs;

(4) Date(s) of service;

(5) Name of person or entity providing the service, as applicable; and;

(6) Retail sales receipts with verifiable records handwritten as applicable.

(d) To be eligible for reimbursement based on actual costs, the producer must provide supporting documentation that documents the specific costs incurred for transportation of each commodity or input. Such documentation must:

(1) Show transportation costs for each specific commodity or input, and

(2) Show the units of measure for each commodity or input, such that FSA can determine the transportation cost per unit.

§ 755.6 Availability of funds.

(a) Payments under this part are subject to the availability of funds.

(b) A reserve will be created to handle appeals and errors.

§ 755.7 Transportation rates.

(a) Payments may be based on fixed, set, or actual transportation rates. Fixed and set transportation rates will be established by FSA, based on available data for transportation costs for that commodity or input in the applicable State or insular region.

(b) Fixed transportation rates will establish per unit transportation costs for each eligible commodity or input used to produce the eligible commodity.

(c) Set transportation rates will be established for those transportation costs that are not on the FSA list of fixed rates and for which an actual rate cannot be documented. The set transportation rate will be set by FSA, based on available data of transportation costs for similar commodities and inputs.

(d) Actual transportation rates will be determined based on supporting documentation.

§ 755.8 Calculation of individual payments.

(a) Transportation cost for each commodity or input will be calculated

by multiplying the number of reported eligible units (the reported transportation amount) times the fixed, set, or actual transportation rate, as applicable.

(b) Eligible reimbursement amounts will be calculated by multiplying the result of paragraph (a) of this section times the appropriate FY COLA percentage, as provided in this part.

(c) If transported inputs are used for both eligible and ineligible commodities, the eligible reimbursable costs will be determined on a revenue share of eligible commodities times input cost, as determined by FSA, and transportation may be allowed only for those commodities which were produced for the commercial market.

(d) The total payment amount for a producer is the sum of all eligible reimbursable amounts determined in paragraph (b) of this section for all commodities and inputs used to produce the eligible commodities listed on the application.

(e) Payment amounts are subject to \$8,000 cap per FY per producer as defined in this part, not per "person" or "legal entity" as those terms might be defined in part 1400 of this title.

(f) In the event that approval of all calculated payment amounts would result in expenditures in excess of the amount available, FSA will recalculate the payment amounts in a manner that FSA determines to be fair and reasonable.

§ 755.9 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a producer will be ineligible to receive payments under this part if the producer is determined by FSA to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any payment to any producer engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Any producer engaged in acts prohibited by this section and receiving payment under this part will be jointly and severally liable with other producers involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 755.10 Death, incompetence, or disappearance.

(a) In the case of the death, incompetency, or disappearance of a person or the dissolution of an entity that is eligible to receive a payment in accordance with this part, such alternate person or persons specified in part 707 of this chapter may receive such payment, as determined appropriate by FSA.

(b) Payments may be made to an otherwise eligible producer who is now deceased or to a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority over the deceased producer's estate or a dissolved entity must be provided.

(c) If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must be identified in the application for payment.

§ 755.11 Maintaining records.

Persons applying for payment under this part must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment to the producer under this part.

§ 755.12 Refunds; joint and several liability.

(a) Any producer that receives excess payment, payment as the result of erroneous information provided by any person, or payment resulting from a failure to comply with any requirement or condition for payment under this part, must refund the amount of that payment to FSA.

(b) Any refund required will be due from the date of the disbursement by the agency with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this title.

(c) Each producer that has an interest in the agricultural operation will be jointly and severally liable for any refund and related charges found to be due to FSA.

(d) Interest will be applicable to any refunds to FSA required in accordance with parts 792 and 1403 of this title except as otherwise specified in this part. Such interest will be charged at the rate that the U.S. Department of the Treasury charges FSA for funds, and will accrue from the date FSA made the

payment to the date the refund is repaid.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous payment was not due to any action of the person or entity, or was beyond the control of the person or entity committing the violation. Any waiver is at the discretion of FSA alone.

§ 755.13 Miscellaneous provisions and appeals.

(a) *Offset.* FSA may offset or withhold any amount due to FSA from any benefit provided under this part in accordance with the provisions of part 1403 of this title.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this title.

(c) *Other interests.* Payments or any portion thereof due 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 eligible reimbursable costs thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of part 1404 of this title.

(e) *Violations regarding controlled substances.* The provisions of § 718.6 of this chapter, which generally limit program payment eligibility for persons who have engaged in certain offenses with respect to controlled substances, will apply to this part.

(f) *Appeals.* The appeal regulations specified in parts 11 and 780 of this chapter apply to determinations made under this part.

Signed in Washington, DC on June 9, 2010.

Jonathan W. Koppess,

Administrator, Farm Service Agency.

[FR Doc. 2010-14427 Filed 6-16-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 925 and 944**

[Doc. No. AMS-FV-09-0085; FV10-925-1 FIR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that relaxed the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The interim rule relaxed the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for grapes packed in consumer packages holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters of at least five berries each. This action continues the relaxation that was prescribed on a one-year test basis in 2009 and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs.

DATES: Effective June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Jerry.Simmons@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>; or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited