

SUBCHAPTER D—SPECIAL PROGRAMS

PART 750—SOIL BANK

EDITORIAL NOTE: Part 750 (formerly part 485 of title 6), published at 21 FR 6289, Aug. 22, 1956, and redesignated at 26 FR 5788, June 29, 1961, is no longer carried in the Code of Federal Regulations. This deletion does not relieve any person of any obligation or liability incurred under these regulations, nor deprive any person of any rights received or accrued under the provisions of this part. For FEDERAL REGISTER citations affecting this part, see the "List of CFR Sections Affected, 1949–1963, 1964–1972, and 1973–1985," published in seven separate volumes.

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.

SOURCE: 75 FR 34340, June 17, 2010, unless otherwise noted.

§ 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 non-foreign 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

§ 755.5

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

7 CFR Ch. VII (1-1-13 Edition)

(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.

Farm Service Agency, USDA

§ 755.12

§ 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

§ 755.13

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.

7 CFR Ch. VII (1–1–13 Edition)

(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.

PART 759—DISASTER DESIGNATIONS AND NOTIFICATIONS

Sec.

759.1 Administration.

759.2 Purpose.

759.3 Abbreviations and definitions.

759.5 Secretarial disaster area determination and notification process.

759.6 EM to be made available.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1961 and 1989.

SOURCE 77 FR 41254, July 13, 2012, unless otherwise noted.

§ 759.1 Administration.

(a) This part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented.

(c) The Administrator will take any action required by the regulations of this part that the Administrator determines has not already been taken. The Administrator will also:

(1) Correct or require correction of any action taken that is not in accordance with the regulations of this part; or

(2) Require withholding taking any action that is not in accordance with this part.

(d) No provision or delegation in these regulations will preclude the Administrator or a designee or other such person, from determining any question arising under this part, or from reversing or modifying any determination made under this part.

(e) Absent a delegation to the contrary, this part will be administered by the Deputy Administrator for Farm