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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

RIN: 0560–AG55

Skip Row and Strip Crops

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations to revise the provisions governing how densely a producer's acreage must be planted in order for the full acre to be considered planted for program purposes in the Non-insured Crop Disaster Assistance Program and other programs. Under the revised rule the amount of a field considered planted will be limited to certain specified widths beyond the actual planted rows, which will allow for a more uniform determination of acreage.

EFFECTIVE DATE: November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel McGlynn (202) 720–3463.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other provisions of the law to publish a notice of final rule making regarding the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule does not contain any new information collection requirements.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Final Rule

For purposes of the operation of several programs, including the Non-Insured Crop Disaster Assistance Program (NAP), operated under rules set out at 7 CFR part 1437, it is necessary and important to determine how much of a field can be considered planted to a particular crop, and that determination can raise issues of how densely the field must be planted in order for the full acreage to be considered planted. Such determinations for NAP and other programs administered by FSA and the Commodity Credit Corporation are made using standards that are set out in regulations found at 7 CFR part 718. In particular, 7 CFR 718.107 addresses this issue. For example, persons filing for NAP benefits will indicate that they had a loss on a certain number of acres. That loss, in numbers of acres, will be multiplied by a yield per acre to arrive at a gross estimate of the amount of loss. This means, accordingly, that the number of acres considered committed to the crop can be critical in determining the amount of payments that the farmers can receive. In recent years, several situations have arisen in which farmers have reported unusual planting patterns that raise a question of whether the pattern reflected a desire to increase benefits rather than simply a desire to farm in the most productive manner possible for the market for the crop. These situations have prompted a review of the rule. That review has indicated that an overhaul of the measurement regulation is in order. Such an overhaul is undertaken in this rule, which provides that acreage planted to a crop will only be considered to be the rows of the crop itself and a set amount (as defined in the rule) on either side of the actual planted rows (including those rows which might be the last rows before a row is skipped and the first row after the skip). In the past, under the terms of the pre-existing regulation, it could occur that the full area of the skip might be considered to be planted even though the space was far greater than that which would normally occur between rows. It is believed that this revised rule will be fairer and will give a more accurate measure of the amount of the field that should be considered planted to a crop, assuming an intended full production of the crop.

The rules in 7 CFR part 718 were revised in response to the Agricultural Market Transition Act of 1996, Pub. L. No. 104–127, which, among other things, in section 196, re-instituted NAP within the CCC as it is now constituted. Originally, NAP was administered by the Federal Crop Insurance Program and the Risk Management Agency. After the 1996 Act, new rules were finalized for NAP (61 FR 69005, December 31, 1996) and also for the generic regulations in 7

CFR part 718 (61 FR 37552, July 18, 1996), which cover a number of issues common to a number of programs, including NAP. Section 161 of the 1996 Act provides for an exemption from the normal provisions of rule-making for implementing decisions made pursuant to that Act, and this exemption applies in this instance as well because this rule is part of the overall implementation of the 1996 Act and the administration of NAP. The rule has been designed to accommodate normal planting practices and to be flexible where needed to handle the special needs of special crops or special conditions in special areas.

Also, to provide for a transition from the old rules that would not occur in the middle of a crop year, the amended regulation in § 718.107 provides that the new provisions will apply only to the 2003 and subsequent crops.

List of Subjects in 7 CFR Part 718

Determination of Acreage and Compliance, Reconstitution of Farms, Allotments, Quotas, and Acreages.

For reasons set out in the preamble, 7 CFR part 718 is revised as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority citation for 7 CFR part 718 continues to read as follows:

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b and 714c; and 21 U.S.C. 889.

2. Revise § 718.107 to read as follows:

§ 718.107 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire acreage of the field or subdivision may be considered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of: a 40-inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of: actual spacing between those rows, or the normal spacing in the field. For example, if the crop is planted in single wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted to the extent it is determined that the acreage is more sparsely planted than would be normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator for Farm Programs has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in the case of tobacco, or where other circumstances are presented which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

Signed at Washington, DC, on November 27, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–30702 Filed 11–29–02; 1:54 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FVO2–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Change in the Minimum Maturity Requirements for Fresh Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule increasing the minimum maturity requirements for fresh grapefruit under the marketing order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this change for Florida grapefruit.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Post Office Box 1035, Moab, Utah 84532; telephone: (435) 259–7988, Fax: (435) 259–4945; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which