

Bradford  
Carbon  
Lycoming (Excluding Allenwood Federal  
Prison Camp)  
Pike  
Sullivan  
Susquehanna  
Wayne  
Wyoming

\* \* \* \* \*

[FR Doc. 02-19460 Filed 7-31-02; 8:45 am]

BILLING CODE 6325-39-P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AJ63

#### Prevailing Rate Systems; Change in Federal Wage System Survey Job

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Proposed rule with request for  
comments.

**SUMMARY:** The Office of Personnel Management is issuing a proposed rule that would permit the Department of Defense to survey the Maintenance Mechanic job on an optional basis rather than having to seek OPM's permission when it wants to add that job to appropriated fund wage surveys. Currently, OPM's regulations contain required and optional survey jobs. If a particular job does not appear on either list, but is needed for a survey, an agency must request OPM's written approval. The Federal Prevailing Rate Advisory Committee (FPRAC) established a Survey Job Work Group to review wage survey job descriptions in general, and it recommended making the Maintenance Mechanic job an optional job. The FPRAC agreed with the Work Group's recommendation, which will save time and facilitate the survey process.

**DATES:** Comments must be received on or before September 3, 2002.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of 1 Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200, or FAX: (202) 606-4264.

**FOR FURTHER INFORMATION CONTACT:** Chenty I. Carpenter, (202) 606-2848, FAX: (202) 606-0824, or e-mail [cicarpen@opm.gov](mailto:cicarpen@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-

management committee responsible for advising the Office of Personnel Management (OPM) on matters concerning the pay of Federal Wage System (FWS) employees, established a Survey Job Work Group (SJWG) to review the survey job descriptions used by Federal agencies during FWS local wage surveys to determine prevailing rates of pay for FWS employees. The SJWG reviewed many FWS jobs and found that the Maintenance Mechanic survey job description should be changed, to better reflect the industry standard wording for the job. The SJWG also decided that it would be beneficial to add the Maintenance Mechanic survey job to the list of optional survey jobs. The SJWG recommended these changes to FPRAC because adding the Maintenance Mechanic survey job to the list of optional jobs would allow the Department of Defense (DOD) the opportunity to survey the job at its discretion, without having to ask OPM for prior approval. This change would allow DOD more planning time when conducting surveys, and the changed job description, when surveyed, may provide DOD with more job matches. FPRAC agreed with the Work Group's recommendations.

#### Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it would affect only Federal agencies and employees.

#### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Kay Coles James,**  
*Director.*

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

### PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

#### § 532.217 [Amended]

2. In § 532.217, paragraph (c) is amended by adding the job "Maintenance Mechanic" and grade "10" after Television Station Mechanic.

[FR Doc. 02-19463 Filed 7-31-02; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 701

RIN 0560-AG26

#### Emergency Conservation Program

**AGENCY:** Farm Service Agency, USDA

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the regulations for the Agricultural Conservation Program (ACP), the Forestry Incentives Program (FIP) and the regulations for the Emergency Conservation Program (ECP). Existing ACP contracts would continue, however, to be subject to the previously published regulations. The ECP revisions are those needed to reflect the reorganization of this part. In addition, the ECP regulation is proposed to be updated regarding current policies.

**DATES:** Comments must be received on or before September 30, 2002 to be assured of consideration.

**ADDRESSES:** Comments should be directed to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, S.W., Washington, DC 20250-0513, telephone 202-720-6221; facsimile (202) 720-4619; or e-mail at [ecprule@wdc.usda.gov](mailto:ecprule@wdc.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Robert Stephenson, (202) 720-6221.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

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

#### Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Agricultural Conservation Program (ACP)—10.063; Emergency Conservation Program (ECP)—10.054, and Forestry Incentives Program (FIP)—10.064.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

### Environmental Evaluation

It has been determined by an environmental evaluation that this action may have the potential to significantly impact on the quality of the human environment. Therefore, FSA has prepared an Environmental Impact Statement (EIS). A copy of the draft EIS will be available for public comment and a notice of its availability for comment will be published in the **Federal Register**.

### Executive Order 12372

This program 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).

### 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.

### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule are not retroactive and preempt State laws to the extent they are not consistent with the provisions of this proposed rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

### Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule and because the rule does not contain any unfunded mandates.

### Paperwork Reduction Act

*Title:* 7 CFR 701, Conservation and Environmental Programs.

*OMB Control Number:* 0560-0082.

*Expiration Date:* March 31, 2002.

*Type of Request:* Request for extension of previously approved information collection.

*Abstract:* USDA will collect information from owners, operators, and other agricultural producers who voluntarily request cost-share assistance under the, FIP and ECP. Cost-share assistance is provided to perform practices on forest lands, and to rehabilitate farmlands damaged by natural disaster and carrying out emergency water conservation measures during periods of severe drought. The information is collected under Office of Management and Budget (OMB) Control Number 0560-0082.

*Estimate of Burden:* The estimated average public reporting burden for information collection requirements for this regulation is estimated to average 15 minutes per respondent.

*Respondents:* Owners, operators, and other eligible agricultural producers on eligible farmland.

*Estimated Number of Respondents:* 250,000.

*Estimated Number of Responses per respondent:* 1.

*Estimated Total Annual Burden Hours on Respondents:* 187,667.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Robert Stephenson, Director, Conservation and Environmental Programs Division, FSA, USDA, STOP 0513, 1400 Independence Ave. SW, Washington, DC 20250-0513. Comments will be summarized and included in the request for OMB approval of the information collection. All comments will become a matter of public record.

### Background

For many years, regulations in 7 CFR part 701 contained regulations for three

conservation programs administered by the Farm Service Agency (FSA) of the Department of Agriculture (USDA): (1) The Agricultural Conservation Program (ACP) which was authorized by the Soil Conservation and Domestic Allotment Act of 1935, 16 U.S.C. 590a *et seq.*; (2) the Forestry Incentives Program (FIP) authorized by the Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2101 *et seq.*; and (3) the Emergency Conservation Program (ECP) authorized by the Agricultural Credit Act of 1978, 16 U.S.C. 2201 *et seq.*

Under the ACP, certain cost-share agreements, some of which were long-term agreements, were executed between the Government and private individuals to accomplish certain conservation measures in situations in which, unlike with the ECP, there need not be a natural disaster involved. Among other things, ACP agreements provided financing, in the form of cost-shares, for animal waste management projects. However, the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act), Public Law 104-127, repealed the ACP authority and accordingly, except for certain interim measures, the making of further ACP agreements. Rather, the 1996 Act, which became law on April 4, 1996, authorized, by amendment to the Food Security Act of 1985 (16 U.S.C. 3839aa *et seq.*) (1985 Act), the Environmental Quality Incentives Program (EQIP). That program is administered within USDA by the Commodity Credit Corporation through the Natural Resources Conservation Service (NRCS) under rules at 7 CFR part 1466.

In addition, the 1996 Act, as an amendment to the 1985 Act, authorized an interim EQIP program as a transition from ACP to EQIP. For the transition period, which ended September 30, 1996, the 1996 Act provided that technical assistance, cost-share payments, and incentive payments could continue to be made in certain cases using new agreements utilizing the terms and conditions of the ACP. The transition period is now over and, because of the replacement of the ACP by EQIP, there will be no new ACP agreements. For that reason, it is proposed that the ACP regulations be removed from 7 CFR part 701 with a provision specifying (as would be implicit in any event) that the existing rules in 7 CFR part 701, as previously published, would continue to govern existing ACP agreements, including those executed during the interim EQIP period.

This rule, further, would remove the FIP regulations because that program was reassigned from FSA to NRCS

under provisions of the Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6912. The NRCS is considering the development of changes to the existing regulations for the implementation of the FIP. Until such time as those changes are promulgated, the NRCS will continue to administer the FIP pursuant to the regulations relating to FIP in 7 CFR part 701 as they are in effect immediately prior to the effective date of any rule issued following this notice.

This rule would, in addition, modify and reorganize the remaining regulations in 7 CFR part 701, for the ECP, which are continuing, and which allow for payments of cost-shares in emergency situations to deal with extraordinary damage that might not otherwise be corrected because of the extent of the damage and the expense involved. More specifically, as is set out in the proposed rule, the ECP is designed to provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought. The authorizing legislation for the ECP specifies, in Section 401 of the Agricultural Credit Act of 1978, Pub. L. 95-334, as amended (the 1978 Act), that for the loss to qualify, the natural disaster must create new conservation problems which, if not treated, would: (1) Impair or endanger the land; (2) materially affect the productive capacity of the land; (3) represent unusual damage which, except for wind erosion, is not of the type to recur frequently in the same area; and (4) be determined to be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance. Section 402 of the 1978 Act also allows for payments, during a drought, for emergency water conservation or water enhancing measures. Further, Section 403 authorizes the purchase of easements and other measures to safeguard life and property from flood, drought, and the products of erosion on any watershed whenever a fire, flood, or other natural occurrence is causing or has caused a sudden impairment of that watershed.

#### Program Changes

This rule, if adopted, would revise 7 CFR part 701 to remove the FIP and ACP regulations. Also, the ECP regulations would be clarified and expanded to reflect current policy. For

example, provisions will be added to 7 CFR part 701, consistent with FSA's practice since 1990, specifying that in certain instances ECP funding can be made available for certain drought measures dealing with confined livestock. This proposed regulation provides assistance to confined livestock operations only in times of severe drought. FSA has considered expanding the ECP to allow for cost-share assistance for confined livestock operations for natural disasters other than drought. Assistance for confined livestock operations cannot be for replacing or repairing buildings but could be used to help with cleanup efforts on those buildings. USDA will finalize ECP policy concerning confined livestock operations after reviewing comments to the proposed regulation.

Other technical and clarifying changes have been made and provisions have been added regarding schemes and devices and debt avoidance to assure that the ECP is operated in a manner that is most beneficial for farmers and the public. In addition, provisions have been added to assure that special consideration may be given to limited resource producers in order that the most beneficial use of limited ECP funds may be obtained.

In a change from current practice, this rule also would change how the maximum cost-share level is computed. Under the current regulations, the maximum rate of cost-share is calculated according to a sliding scale, with a higher cost-share percentage being allowed for the first part of the costs of the practice up to a certain limit, and a lower percentage being allowed for additional costs (if there are any). To eliminate confusion, without compromising the achievement of the program's goal, this rule would provide, instead, for a standard maximum percentage to be used for all costs associated with the practice for which the cost-share is to be received. This change would make the program easier to administer without significant additional costs. Payments however, will continue to be limited by a number of other criteria and by the provision that in no case may the reimbursement exceed \$200,000 per "person" per disaster using the customary USDA standards of determining who is a separate "person" for payment limitation purposes. In this rule, the local county FSA committee would be allowed to permit reimbursements of up to 75 percent for all reimbursable costs, subject to the same per "person" limitations that now exist in the regulations. In addition, we are considering providing certain additional

allowances for limited resource producers. The Farm Security and Rural Investment Act of 2002 permits reimbursements of up to 90 percent for limited resource producers for certain other programs. FSA is interested in receiving comment on providing similar ECP reimbursements of up to 90 percent, or any other percentage, for limited resource producers.

The 75 percent rate, like the sliding rate contained in current regulations, goes to determining the maximum total amount that can be paid to all participants, together, that are involved with all practices applied for that particular disaster. By contrast the \$200,000 limit is, and would remain under this rule, a separate and distinct limit which would limit how much an individual "person", as defined in customary USDA rules, could receive for a particular disaster. Thus, for example, for a \$500,000 practice, the cost-share, at 75 percent, would work out to be \$375,000; one "person" operation could receive only \$200,000 as a cost-share because of the \$200,000 per "person" limit, whereas, on the other hand, a two "person" operation with two equal partners could receive the full \$375,000 (\$187,500 per "person"). If the 75 percent limit had produced a \$175,000 maximum then a one "person" operation could receive the full amount (\$175,000) because the \$200,000 limit would not be reached.

The per "person" limitations have been, to date, in appropriations bills rather than in the basic program statute found at 16 U.S.C. 2201 *et seq.* Here, the proposed rule would adopt such a limit utilizing the discretion afforded under the ECP statute which by its terms provides for a discretionary program. The limit will allow for a better distribution of program funds to farmers in need.

#### List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs-agriculture, Grant programs-natural resources, Reporting and record keeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR part 701 is proposed to be revised to read as follows:

#### **PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART**

Sec.  
701.1 Administration.  
701.2 Definitions.

- 701.3 General description.
- 701.4 Program Implementation.
- 701.5 Producer eligibility.
- 701.6 Land eligibility.
- 701.7 Qualifying minimum cost of restoration and waiver.
- 701.8 Prohibition on duplicate payments.
- 701.9–701.19 [Reserved]
- 701.20 Eligible ECP practices.
- 701.21 Onsite inspections.
- 701.22–701.30 [Reserved]
- 701.31 Filing requests.
- 701.32 Starting practices before cost-share request is filed.
- 701.33 Practice approval.
- 701.34 Approving requests.
- 701.35 Practices involving the establishment or improvement of vegetative cover.
- 701.36–701.39 [Reserved]
- 701.40 Completion of practices; agreements.
- 701.41 Time of filing payment application.
- 701.42–701.49 [Reserved]
- 701.50 Eligibility to file for payment of cost-share assistance.
- 701.51 Eligible costs.
- 701.52–701.59 [Reserved]
- 701.60 Division of cost-share assistance.
- 701.61 Payments for uncompleted practices.
- 701.62 Maximum potential cost-share for practices.
- 701.63 Practices carried out with aid from ineligible persons.
- 701.64 Maximum payment limitation.
- 701.65 Limits on county committee and State committee approval authority.
- 701.66–701.69 [Reserved]
- 701.70 Maintenance and proper use of practice.
- 701.71 Failure to meet minimum requirements or failure to fully comply with program provisions.
- 701.72–701.79 [Reserved]
- 701.80 Not an entitlement program.
- 701.81 Death, incompetency, or disappearance.
- 701.82 Appeals.
- 701.83 Performance based on advice or action of USDA employee.
- 701.84 Compliance with regulatory measures.
- 701.85 Schemes and devices and claims avoidances.
- 701.86 Loss of control of property during the practice lifespan.
- 701.87 Cost-share assistance not subject to claims.
- 701.88 Assignments.
- 701.89 [Reserved]
- 701.90 Environmental considerations.
- 701.91 Information collection requirements.
- 701.92 Agricultural Conservation Program (ACP) contracts.
- 701.93 Forestry Incentives Program (FIP) contracts.

**Authority:** Pub. L. 95–334, 92 Stat. 420, 16 U.S.C. 2201 *et seq.*

#### § 701.1 Administration.

(a) Subject to the availability of funds, except as otherwise specified, the regulations in this part will be administered under the general supervision of the Administrator, Farm

Service Agency (FSA), through the Deputy Administrator. Locally, the regulations in this part will be administered by the State and county FSA committees (“State committees” and “county committees,” respectively). This part shall apply only to the Emergency Conservation Program (ECP) provided for in 16 U.S.C. 2201–2205, *et seq.*

(b) State and county committees, and State and county executive directors do not have the authority to modify or waive any of the provisions of this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which the county committee has not taken, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No delegation in this part to a State or county committee shall preclude the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or from modifying non-statutory deadlines or other non-statutory requirements provided for in this part, when to do so would serve the purposes of the program or accomplish greater fairness in the operation of the program, as determined by the Deputy Administrator.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) FSA may consult with the Natural Resources Conservation Service (NRCS), Forest Service (FS), Cooperative State Research, Education, and Extension Service (CSREES), or others, for such assistance as is determined by FSA to be necessary to implement the ECP. FSA, however, is responsible for the technical aspects of ECP but may, as determined appropriate by the Deputy Administrator, enter into a Memorandum of Agreement with another party for the provision of technical assistance. No more than 10 percent of the amount of ECP funds obligated within a county may be utilized for technical assistance unless the Deputy Administrator approves otherwise.

#### § 701.2 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

*Agricultural producer* means an owner, operator, or tenant of a farm or ranch used to produce, for food or fiber, crops (including but not limited to, grain or row crops; seed crops; vegetables or fruits; hay forage or pasture; orchards or vineyards; flowers or bulbs; or field grown ornamentals) or livestock (including but not limited to, dairy or beef cattle; poultry; swine; sheep or goats; fish or other animals raised by aquaculture; other livestock or fowl), for commercial production, as determined by the Deputy Administrator. Producers of animals raised for recreational uses only are not considered agricultural producers.

*Annual agricultural production* means production of crops for food or fiber in a commercial operation which occurs on an annual basis under normal conditions, as determined by the Deputy Administrator.

*Applicant* means a person who has submitted to FSA a request to participate in the ECP.

*Cost-share payment* means the payment made by FSA to assist a program participant under this part in establishing the practices required to address qualifying damage suffered in connection with a qualifying disaster.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or designee.

*Farmland* means land devoted to agricultural production, including land used for aquacultural purposes, as determined by the Deputy Administrator.

*Program year* means the applicable Federal fiscal year.

#### § 701.3 General description.

(a) Under the ECP, FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and to carry out emergency water conservation measures during periods of severe drought. The natural disaster must have created new conservation problems which, if not treated, would:

- (1) Impair or endanger the land;
- (2) Materially affect the productive capacity of the land;
- (3) Represent unusual damage that, except for wind erosion, is not the type likely to recur frequently in the same area; and

(4) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance.

(b) The objective of the ECP is to make, consistent with this part and the authorizing legislation, cost-share assistance available to eligible participants on eligible land for certain practices to rehabilitate farmland damaged by floods, hurricanes, wind erosion, or other natural disasters, and for the installation of water conservation measures during periods of severe drought.

(c) Payments may also be made under this part, in addition, for:

(1) Emergency water conservation or water enhancement measures (including measures to assist confined livestock) during periods of severe drought; and

(2) Floodplain easements for runoff and other emergency measures, as determined by the Deputy Administrator, to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural occurrence is causing or has caused, a sudden impairment of the watershed.

(d) In addition to other requirements as may apply, payments under this part are subject to the availability of funds and to any limitations that may otherwise be provided for by Congress in laws appropriating such funds.

(e) Total cost-share payments, from all sources, shall not exceed the cost of the practice to the applicant, as determined by the Deputy Administrator.

#### **§ 701.4 Program implementation.**

Subject to the availability of funds and as determined by the Deputy Administrator, the county committee may implement the ECP and accept ECP applications according to this part when new conservation problems resulting from a natural disaster have been created on farmland as provided in § 701.3(a), provided that the approval of the Deputy Administrator shall be needed to carry out emergency water conservation and water enhancement measures during periods of severe drought and for authorization of other special practices as referenced in § 701.3(c)

#### **§ 701.5 Producer eligibility.**

(a) In order to be eligible to participate in the ECP under § 701.3(a) and (c)(1), a person must be an agricultural producer with an interest in the land, as determined by the Deputy Administrator, affected by the natural disaster and must be liable for the

expense which is the subject of the cost-share. Under § 701.3(c)(2) the payee must be a landowner or/and user in the area where the qualifying event has occurred and must be a party who will incur the expense which is the subject of the cost-share.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible to participate in the ECP.

#### **§ 701.6 Land eligibility.**

(a) In order for a producer to be eligible for ECP benefits under § 701.3(a) the land which is the subject of the cost-share must, as determined by the Deputy Administrator:

(1) Have new conservation problems caused as a result of a natural disaster that, if not treated, would:

(i) Impair or endanger the land;

(ii) Materially affect the productive capacity of the land;

(iii) Represent unusual damage that, except for wind erosion, is not of the type likely to recur frequently in the same area; and

(iv) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance;

(2) Be physically located in a county in which the ECP has been implemented; and

(3) Be one of the following:

(i) Expected to have annual agricultural production, as determined by the Deputy Administrator; or

(ii) A field windbreak or a farmstead shelterbelt on which the ECP practice to be implemented involves removing debris that interferes with normal farming operations on the farm and correcting damage caused by the disaster; or

(iii) A farm access road on which debris interfering with the normal farming operation needs to be removed.

(b) Land meeting the qualifying requirements of paragraph (a) of this section that is protected by a levee or dike shall be eligible to be the subject of a cost-share only if, as determined by the Deputy Administrator, such levee or dike was effectively and properly functioning prior to the disaster.

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be considered ineligible to be the subject of a cost-share of the kind referenced in § 701.3(a), if, as determined by the Deputy Administrator, such land is:

(1) Owned or controlled by the United States;

(2) Owned or controlled by States, including State agencies or other political subdivisions of a State;

(3) Protected by a levee or dike that was not effectively and properly functioning prior to the disaster, or is protected, or intended to be protected, by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards, as determined by the Deputy Administrator;

(4) Adjacent to water impoundment reservoirs that are subject to inundation when the reservoir is filled to capacity;

(5) Land on which levees or dikes are located;

(6) Subject to frequent damage or susceptible to severe damage according to paragraph (d) of this section;

(7) Subject to flowage or flood easements and inundation when water is released in normal operations;

(8) Between any levee or dike and a stream, river, or body of water, including land between two or more levees or dikes;

(9) Located in an old or new channel of a stream, creek, river or other similar body of water, except that land located within or on the banks of an irrigation canal may be approved by the Deputy Administrator if the canal is not a channel subject to flooding;

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, as determined by the Deputy Administrator, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees for timber production, including, but not limited to, the production of Christmas trees.

(d) For purposes of making determinations of the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (c)(6) of this section, the Deputy Administrator will base such determinations on consideration of all factors deemed relevant, which may include, but need not be limited to, the location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations information may be obtained and used from the Federal Emergency Management Agency (FEMA) or any other Federal, State (including State agencies or political subdivisions), or

other entity or individual providing, for example, flood susceptibility for the land, soil surveys, aerial photographs, or flood plain data.

(e) For ECP payments under § 701.3(c), the provisions of paragraphs (a) through (d) of this section shall be applied as determined applicable and appropriate by the Deputy Administrator consistent with the overall goals of the program.

#### **§ 701.7 Qualifying minimum cost of restoration and waiver.**

(a) In order to qualify for assistance under § 701.3(a), farmland must have suffered significant eligible damage that is so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use, as provided in § 701.6(a)(1). A qualifying minimum level of the cost of restoration may be established as determined by the Deputy Administrator. The Deputy Administrator may allow:

(1) A State Committee to establish a higher minimum qualifying level of the cost of restoration; and

(2) Waivers to the qualifying minimum level of the cost of restoration on a case-by-case basis where appropriate.

(b) An agricultural producer may, pursuant to paragraph (a)(2) of this section, request a waiver of the qualifying minimum level of the cost of restoration. A waiver request shall contain sufficient documentation, as determined necessary by the Deputy Administrator, to demonstrate that Federal assistance, with the waiver, is required to accomplish the goals of the program.

(c) For payments under § 701.3(c), the standards in paragraphs (a) and (b) of this section shall be applied as determined appropriate by the Deputy Administrator and subject to such other limitations as may also be determined appropriate.

#### **§ 701.8 Prohibition on duplicate payments.**

(a) Participants are not eligible to receive funding under the ECP for land on which the participant has or will receive funding under:

(1) The Wetland Reserve Program (WRP) provided for in 7 CFR part 1467;

(2) The Emergency Wetland Reserve Program (EWRP) provided for in 7 CFR part 623;

(3) The Emergency Watershed Protection Program (EWP) provided for in 7 CFR part 624;

(4) Any FSA or CCC emergency loan program or other government program to cover the same or similar expenses so as to create duplicate payments, or, in

effect, a higher rate of cost-share than is allowed under this part;

(5) Any other program, function, or activity as designated by the Deputy Administrator.

(b) Participants who are determined to have received any funds, payments, or other benefits covered by the limitation in paragraph (a) of this section shall be required to refund ECP payments as determined by the Deputy Administrator.

#### **§§ 701.9–701.19 [Reserved]**

#### **§ 701.20 Eligible ECP practices.**

(a) With respect to relief under § 701.3(a), cost-share assistance may be offered for emergency conservation practices only to replace or restore farmland, fences, or conservation structures to a condition similar to that existing before the natural disaster. No relief under any provision of this part shall be offered or allowed for the solution of conservation problems existing before the disaster.

(b) The practice or practices made available when the ECP is implemented shall be only those practices authorized by the Deputy Administrator for which cost-share assistance is essential to permit accomplishment of the program goals.

(c) In order that the program may be operated in the most cost-effective manner possible, practice specifications, as determined by the Deputy Administrator, shall represent the minimum levels of performance needed to address the ECP need. Any costs above these minimum levels shall be considered ineligible costs for purposes of cost share calculations.

#### **§ 701.21 Onsite inspections.**

As determined by the Deputy Administrator, an onsite inspection must be made prior to approval of any request for ECP assistance.

#### **§§ 701.22–701.30 [Reserved]**

#### **§ 701.31 Filing requests.**

(a) The Deputy Administrator shall provide for an enrollment period for filing ECP cost-share requests.

(b) Enrollment periods shall be at least 30 calendar days in length but not more than 60 calendar days in length, unless otherwise approved by the Deputy Administrator.

(c) Late-filed requests may be accepted, as determined by the Deputy Administrator.

#### **§ 701.32 Starting practices before cost-share request is filed.**

(a) Except as provided in paragraph (b) and (c) of this section, costs will not

be shared for practices or components of practices that are started before a request for cost-share under this part is filed with the applicable county FSA office.

(b) Costs may be shared for non-drought ECP practices or components of practices that are started before a request is filed with the county FSA office, as determined by the Deputy Administrator, only if:

(1) Approved on a case-by-case basis;

(2) It is determined that the disaster, which is the basis of a claim for cost-share assistance, created a situation that required the producer to take immediate action to prevent further losses; and,

(3) The request for assistance was filed within a reasonable amount of time after the start of the enrollment period, as determined by the Deputy Administrator.

(c) Costs may be shared for drought ECP practices or components of practices that are started before a request is filed with the county FSA office, as determined by the Deputy Administrator only if the provisions in paragraphs (b)(1), (2) and (3) of this section are met and the practice was started after ECP drought designation was requested by the applicable County office.

#### **§ 701.33 Practice approval.**

(a) All requests shall be prioritized before approval. Prioritization shall be based on such factors as are deemed appropriate by the Deputy Administrator.

(b) The factors that may be taken into account in setting priorities under paragraph (a) of this section may include, but are not limited to:

(1) Type and degree of damage;

(2) Type of practices needed to

address the problem;

(3) Availability of funds;

(4) Availability of technical

assistance;

(5) Environmental concerns;

(6) Safety factors; or

(7) Welfare of eligible livestock.

#### **§ 701.34 Approving requests.**

Requests for cost-share assistance may be approved, as determined by the Deputy Administrator, only if:

(a) Funds are available;

(b) An onsite inspection has been performed; and

(c) The requested practice has been determined to be eligible for cost-share assistance.

#### **§ 701.35 Practices involving the establishment or improvement of vegetative cover.**

Cost-share assistance may be provided for permanent vegetative cover,

including re-establishment of the cover where needed, only in conjunction with eligible structures or installations where such assistance is needed to prevent erosion and/or siltation, as determined by the Deputy Administrator, or if needed to accomplish some other ECP purpose in accord with the provisions of this part.

**§§ 701.36–701.39 [Reserved]**

**§ 701.40 Completion of practices; agreements.**

Payment of cost-share assistance for the practices as authorized in this part is conditioned upon the performance of the practice in compliance with all applicable specifications and program provisions, as determined by the Deputy Administrator. Participants will be required to sign an ECP agreement in which they acknowledge their ECP obligations.

**§ 701.41 Time of filing payment application.**

After completion of the approved practice, the participant must certify completion and request payment in a manner as determined by the Deputy Administrator. Participants shall submit to FSA at the local county office the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions. The time limits for submission of such information shall be as determined by the Deputy Administrator. Such time limits shall be designed to afford a full and fair opportunity to those eligible to submit the information within the period prescribed. Exceptions to the time limits may be made in cases where a failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the participant.

**§§ 701.42–701.49 [Reserved]**

**§ 701.50 Eligibility to file for payment of cost-share assistance.**

Any eligible participant as defined in § 701.5 who bore a part of the cost of an approved practice, may file an application for cost-share payment.

**§ 701.51 Eligible costs.**

(a) Subject to paragraphs (b) and (c) of this section and other limitations provided for in this part, cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice, as determined by the Deputy Administrator, up to the maximum amounts allowed in § 701.62 and § 701.63.

(b) As determined by the Deputy Administrator:

(1) Eligible costs for use of personal equipment shall be limited to costs incurred which are beyond costs that are part or could be part of the normal farming operation of the farm or ranch.

(2) Eligible costs for personal labor shall be limited to personal labor not normally required in the operation of the farm or ranch.

(3) Allowable eligible costs for the use of eligible personal equipment and labor must be less than that charged by commercial contractors who are regularly employed in such pursuits.

(4) Eligible costs shall not exceed that needed to achieve the minimum level of performance necessary to resolve the need that creates the application for cost-share assistance. Any costs above those levels shall not be considered to be eligible costs for purposes of calculations made under this part.

(c) Any costs above the practice specifications as provided in § 701.20(c) shall be considered ineligible costs for purposes of cost-share calculations made under this part.

(d) Eligible costs for purposes of computing the gross amount on which the cost-share eligibility may be computed will not include any costs that were reimbursed by a third party such as, but not limited to, those costs that have been or will be reimbursed through an insurance indemnity payment.

**§§ 701.52–701.59 [Reserved]**

**§ 701.60 Division of cost-share assistance.**

(a) For purposes of qualifying for cost-share assistance under this part, the cost shall be credited to the eligible participant who personally performed the practice or who paid to have the practice performed by a third party. In the case where a payment or credit has been made by one eligible participant to another potentially eligible participant, the provisions of paragraph (c) of this section shall apply.

(b) If more than one eligible participant contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those eligible participants in the proportion they contributed to the performance of the practice, as determined by the Deputy Administrator. In making this determination, the Deputy Administrator may consider the value of the labor, equipment, or material contributed by each participant and any other factors deemed relevant toward performance.

(c) The allowance by an eligible participant of a credit to another eligible

participant in the form of an adjustment in rent, or as an exchange of cash or other consideration, shall not be considered as a contribution to the performance of any practice by the party making the credit available, unless the county committee is satisfied that such credit is directly related to the cost of the practice. In the event that an applicant was fully reimbursed through an adjustment of rent, an exchange of cash, or other consideration, the applicant shall not be considered as having contributed to the practice performance.

**§ 701.61 Payments for uncompleted practices.**

Cost-share assistance approved under these programs shall not be considered earned until all components of the approved practice are completed, as determined by the Deputy Administrator. Cost-share assistance for completed components of an approved practice may be paid only on the condition that the eligible participant will complete the remaining components of the practice within the time prescribed, unless they are prevented from doing so because of reasons beyond their control, as determined by the Deputy Administrator.

**§ 701.62 Maximum potential cost-share for practices.**

(a) Subject to § 701.66 and other applicable restrictions, as determined by the Deputy Administrator, FSA shall not pay more than 75 percent of the maximum allowable cost as defined in paragraph (b) of this section subject to a maximum limitation of \$200,000 per person as defined in § 701.65.

(b) The maximum allowable cost prior to the application of the 100 percent factor is an amount that is equal to the lesser of:

(1) the average cost for performing the practice in the county; or  
(2) the actual cost to perform the practice.

(c) Notwithstanding paragraphs (a) and (b) of this section, in no case shall the ECP payment exceed 50 percent of the agricultural market value of the affected land, as determined by the Deputy Administrator.

**§ 701.63 Practices carried out with aid from ineligible persons.**

Financial assistance that is made available, or that will be made available, to a participant from a third party who is ineligible to receive ECP cost-share assistance, including assistance from a State or Federal agency other than ECP cost-share assistance made available under this part, shall be deducted from



the participant's total costs incurred for the practice for purposes of determining the eligible reimbursable costs under this part, as determined by the Deputy Administrator. If unusual conditions exist, the Deputy Administrator may waive deduction of such contributions.

#### **§ 701.64 Maximum payment limitation.**

In addition to other limits as may apply, a participant is limited to a maximum cost share of \$200,000 per "person" per disaster. The regulations at part 1400 of this title shall be applicable in making "person" determinations as they apply to payment limitations under this part.

#### **§ 701.65 Limits on county committee and State committee approval authority.**

Regardless of the amount payable to the participant, the Deputy Administrator may limit the authority of the county and State committees to approve cost-share payments in excess of specified amounts.

#### **§§ 701.66–701.69 [Reserved]**

#### **§ 701.70 Maintenance and proper use of practices.**

(a) Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Some practices have an established lifespan or minimum period of time during which they are expected to function as a conservation practice with proper maintenance. Cost-share assistance shall not be authorized for normal upkeep or maintenance of any practice except where such relief is approved by the Deputy Administrator.

(b) If, as determined by the Deputy Administrator, a practice has not been properly maintained for the established lifespan, the participant receiving the cost-share assistance may be required to refund all or any part of such cost-share assistance, as determined appropriate by the Deputy Administrator.

#### **§ 701.71 Failure to meet minimum requirements or failure to fully comply with program provisions.**

(a) Costs may be shared for performance actually rendered even though the minimum requirements for a practice have not been satisfied, if it is determined by the Deputy Administrator that a reasonable effort was made to satisfy the minimum requirements and that the practice as performed will adequately address the need for the practice.

(b) The Deputy Administrator may, within statutory limits and utilizing the standards that are provided for certain price support matters in part 718 of this chapter, authorize relief when a

participant acting in good faith has failed to fully comply with the program provisions and where it is determined by the Deputy Administrator that waiving non-statutory requirements would serve the purposes of this part.

#### **§ 701.72–701.79 [Reserved]**

#### **§ 701.80 Not an entitlement program.**

The provisions in this part shall not be read to create an entitlement in any person to any ECP cost-share or claim or any particular notice or form or procedure. Matters committed to the discretion of the Deputy Administrator shall be considered in all cases to be permissive powers and no person shall, under any circumstances, be considered to be entitled to an exercise of such power in their favor.

#### **§ 701.81 Death, incompetency, or disappearance.**

In case of death, incompetency, or disappearance of any participant, any cost-shares payment due shall be paid to the successor, determined in accordance with provisions of the regulations in part 707 of this chapter.

#### **§ 701.82 Appeals.**

Any participant may obtain reconsideration and review of determinations affecting participation in these programs, in accordance with parts 11 and 780 of this chapter.

#### **§ 701.83 Performance based on advice or action of USDA employee.**

Cases involving performance rendered in good faith in reliance upon action or advice of an authorized representative of USDA shall be considered in accordance with standards provided for price support in part 718 of this chapter and in accordance with the provisions of § 701.71.

#### **§ 701.84 Compliance with regulatory measures.**

Participants who perform practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The participant(s) with whom the cost of the practice is shared shall be wholly responsible for any actions taken with respect to the project and shall in addition be responsible for returning and refunding any ECP cost-shares made where the purpose of the project cannot be accomplished because of the participant's lack of clearances or other problems. The participant shall also be responsible for reimbursing the United States and its instrumentalities for any losses sustained as a result of

any project and for indemnifying the United States and its instrumentalities for any claims made against the United States and its instrumentalities with respect to the project and for the costs incurred by the United States and its instrumentalities with respect to such claims. Nothing in this section, however, shall be read or understood as establishing, or tending to establish, that any such claims against the United States, its instrumentalities or agents is permissible or proper.

#### **§ 701.85 Schemes and devices and claims avoidances.**

(a) If the Deputy Administrator determines that a participant has taken any action that is designed to defeat, or has the effect of defeating, the purposes of this program, the participant shall be required to refund all or part of any of the program payments otherwise due or paid to that participant or related person for that particular disaster. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice, and providing false or misleading information related to practices, costs, or arrangements between entities or individuals which would have an effect on "person" determinations made under this part.

(b) All or any part of cost-share assistance that otherwise would be due any participant may be withheld, or required to be refunded, if the participant has adopted, or participated in, any scheme or device designed to evade the maximum cost-share limitation that applies to the ECP or to evade any other requirement or provision of the program or this part.

(c) If the Deputy Administrator determines that any participant has employed any scheme or device to deprive any other person of cost-share assistance, or has engaged in any actions to receive payments under this part which also were designed to avoid claims of the United States or its instrumentalities or agents against that party or related parties, or third parties, the participant shall be required to refund all or part of any of those program payments otherwise due or paid to that participant during the program year or for the project.

(d) For purposes of this section, a scheme or device can include, but is not limited to, instances of coercion, fraud, or misrepresentation regarding the claim for ECP assistance and the facts and circumstances surrounding such claim.

(e) If the Deputy Administrator determines that any participant has knowingly supplied false information or filed a false claim, that participant shall



be considered ineligible for cost-share assistance of any kind for any project related to the disaster for which the false information was filed for the remaining program year and for any such longer period as the Deputy Administrator deems to be appropriate. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out, a false billing, or a billing for practices which do not meet the required specifications.

**§ 701.86 Loss of control of the property during the practice lifespan.**

If, during the practice lifespan, there is voluntary loss of control of the land by the participant receiving the cost-share assistance and the person acquiring control of such land elects not to become a successor-in-interest to the agreement and the practice is not maintained, then each participant who received cost-share assistance for the practice may be jointly and severally liable for refunding any ECP cost-share assistance that has been received with respect to the practice, as determined by the Deputy Administrator. The practice lifespan for purposes of this section shall include any maintenance period that is essential to the success of the practice.

**§ 701.87 Cost-share assistance not subject to claims.**

Any cost-share assistance or portion thereof due any participant under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against any crop or property, or proceeds thereof, except liens and other claims of the United States or its instrumentalities. The regulations governing offsets and withholdings at part 792 and 1403 of this title shall be applicable to this program, and the provisions most favorable to a collection of the debt shall control.

**§ 701.88 Assignments.**

Any participant who may be entitled to any cost-share assistance under this program may assign the right thereto, in whole or in part, according to the regulations governing the assignment of payments at part 1404 of this title.

**§ 701.89 [Reserved]**

**§ 701.90 Environmental considerations.**

The provisions at part 799 of this chapter shall apply as applicable.

**§ 701.91 Information collection requirements.**

Information collection requirements contained in this part [are in the process

of being reapproved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and] have been assigned OMB Number 0560-0082.

**§ 701.92 Agricultural Conservation Program (ACP) contracts.**

Contracts for the ACP which are, or were, administered under this part or similar contracts executed in connection with the Interim Environmental Quality Incentives Program, operated under provisions of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127, shall, unless the Deputy Administrator determines otherwise, be administered under, and be subject to, the regulations for ACP contracts and the ACP program that were contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 1998, and under the terms of the agreements that were entered into with participants.

**§ 701.93 Forestry Incentives Program (FIP) contracts.**

The regulations governing the FIP as of July 31, 2002, and contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 2002, shall continue to be applicable to FIP contracts in effect as of that date.

Signed at Washington, DC, on July 25, 2002.

**James R. Little,**

*Administrator, Farm Service Agency.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1001**

**[Docket Nos. AO-14-A70; DA-02-01]**

**Milk in the Northeast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider proposals that would amend certain pooling and related provisions of the Northeast order. Proposals include establishing marketwide service payments to offset the costs of balancing the market's Class I needs and modifying the pooling standards of the order. Pooling proposals include establishing year-round shipping

standards for supply plant pool qualification, adding a "touch-base" provision that would establish a standard that at least two-days' milk production of a dairy farmer be physically received at a pool plant in order to be eligible for diversion, establishing limits on the amount of milk that a pool plant may divert, eliminating the "split plant" provision, and revising certain reporting and payment date provisions. Testimony will be taken to determine if any of the proposals should be handled on an emergency basis.

**DATES:** The hearing will convene at 8:30 a.m. on Tuesday, September 10, 2002.

**ADDRESSES:** The hearing will be held at the Embassy Suites Hotel Alexandria, 1900 Diagonal Road, Alexandria, VA 22314 Telephone: 703-236-5900.

Persons requiring a sign language interpreter or other special accommodations should contact Erik F. Rasmussen, Market Administrator, at 617-542-8966; e-mail: [maboston@fedmilk1.com](mailto:maboston@fedmilk1.com) prior to the hearing.

**FOR FURTHER INFORMATION CONTACT:** Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202)690-1366, e-mail [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Embassy Suites Hotel Alexandria, beginning at 8:30 a.m., on September 10, 2002, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Northeast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the order.

Evidence also will be taken to determine whether emergency