

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AJ30

#### Prevailing Rate Systems; Change in the Survey Cycle for the Pennington, South Dakota, Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to change the timing of local wage surveys in the Pennington, South Dakota, nonappropriated fund Federal Wage System wage area. The change will help balance the workload for the Department of Defense and improve the amount and quality of data it collects during local annual wage surveys in the Pennington wage area.

**DATES:** Effective Date: April 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Chenty I. Carpenter at (202) 606-8359; by FAX at (202) 606-4264; or by email at [cicarp@opm.gov](mailto:cicarp@opm.gov).

**SUPPLEMENTARY INFORMATION:** On December 19, 2000, the Office of Personnel Management (OPM) published a proposed rule to change the timing of local wage surveys in the Pennington, South Dakota, nonappropriated (NAF) Federal Wage System (FWS) wage area (65 FR 79320). The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

The Department of Defense (DOD), the lead agency for the Pennington, SD, wage area, requested that the survey schedule be changed so that full-sale surveys could be conducted in June of even-numbered fiscal years. DOD conducted a full-scale survey in January 2002 and will conduct another full-scale

survey in June 2002. The change from January to June will help avoid problems associated with conducting local wage surveys during inclement weather in western South Dakota and will improve wage survey participation and data yield. In addition, the new survey cycle will allow DOD to achieve a better balance in its wage survey workload.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Pennington NAF wage area from January of even-numbered fiscal years to June of even-numbered fiscal years.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects 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.

U.S. 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.

#### Appendix A to Subpart B of Part 532—[Amended]

2. Appendix B to subpart B is amended by revising under the State of South Dakota the listing of beginning month of survey from “January” to “June” for the Pennington NAF wage area.

[FR Doc. 02-7022 Filed 3-22-02; 8:45 am]

**BILLING CODE 6325-39-P**

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 25

RIN 0503-AA20

#### Rural Empowerment Zones and Enterprise Communities

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the policies and procedures pertaining to 20 rural enterprise communities designated by the Secretary of the U.S. Department of Agriculture (USDA) (Secretary) as authorized by the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Agriculture Appropriations Act 1999) (Round IIS). This rule also contains the policies and procedures for implementing the grant program authorized by section 766 of the Agriculture Appropriations Act 1999 (USDA EZ/EC grants). Additionally, this rule clarifies post-designation procedures that rural empowerment zones and enterprise communities must follow to maintain their standing. Finally, this final rule amends the regulation to reflect that two new rural empowerment zones were authorized by the Community Renewal Tax Relief Act of 2000 (Round III).

**EFFECTIVE DATE:** April 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Norman Reed, (202) 690-0719, Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 266, 300 7th Street, SW., Washington, DC 20024-3203, telephone 1-800-645-4712, or by sending an Internet e-mail message to “[info@www.ezec.gov](mailto:info@www.ezec.gov)”. For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA’s TARGET Center at (202) 720-2600 (Voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Classification

This rule has been reviewed by the Office of Management and Budget (OMB) under E.O. 12866 and has been determined to be a significant regulatory action.

### Programs Affected

The Catalog of Federal Domestic Assistance Program affected by this action is 10.772, Empowerment Zone Program.

### Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of the Department of Agriculture.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The information collection requirements contained in 7 CFR part 25 are comprised of one-time application requirements (Application burden) and ongoing reporting requirements (Reporting burden).

The Application burden paperwork package approved under control no. 0570-0026 was approved by OMB in the context of the Round II application effort. The overall burden is a function of the hours assumed for each applicant multiplied by an estimated number of applicants. Comments on these application requirements were invited April 16, 1998 [63 FR 19108] at the time the Interim Final Rule for 7 CFR part 25 was published. No comments were received. After the expiration of the application deadline, the application burden no longer existed and USDA requested that the burden level under this control number be amended accordingly and this was approved by OMB. Subsequently, Congress authorized another competitive round for designations (Round III). USDA submitted a request to OMB to conform the burden level under this control number to reflect another round of application effort. The Application Form is the same as earlier approved under this burden level as well as the hour burden per applicant for Round III. The only difference between the burden levels estimated for Rounds II and III consists of a different assumed number of applicants. The burden level per applicant was the same. USDA's earlier estimate of 60 applicants for Round III is very close to the 55 valid applications we actually received. Now that the deadline for Round III is passed, there is no ongoing Application Burden. Accordingly, the submission was withdrawn and remains as previously approved by OMB. USDA will seek to amend the Application Burden only in

the event legislation is passed which authorizes additional designations.

The Reporting burden paperwork package approved by OMB under control no. 0570-0027 covers the ongoing reporting requirements imposed by 7 CFR part 25 for empowerment zones and enterprise communities designated to date. USDA submitted a request to amend the Reporting paperwork burden to reflect the incrementally higher aggregate reporting burden associated with the designation of two empowerment zones pursuant to Round III and was approved by OMB. The individual reporting requirements imposed on Round III designees are the same as for all designees, and unchanged from those published and for which comments were invited April 27, 2000 [65 FR 24656] at the time the most recent proposed rule for amending 7 CFR part 25 was published. No comments were received.

### Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

### Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement

is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

### Executive Order 13132, Federalism

The policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of state and local governments to solve pressing economic, social, and physical problems in their communities.

### Background

The Secretary of Agriculture published on April 16, 1998 [63 FR 19108], an interim final rule with request for comments and a notice inviting applications for 5 additional rural empowerment zone designations as authorized by title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105-34,

approved August 5, 1997) (Round II). These Round II empowerment zones were designated on December 24, 1998.

These 5 new rural empowerment zones were in addition to the 3 rural empowerment zones and 30 enterprise communities designated on December 21, 1994 by the Secretary of Agriculture pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Round I).

On December 21, 2000, the Community Renewal Tax Relief Act was signed into law (Pub. L. 106-554), authorizing the designation of two more rural empowerment zones (Round III), bringing the total authorized rural empowerment zones to ten. The eligibility criteria for Round III are exactly the same as for Round II empowerment zones.

The legislation which authorized Round I empowerment zones also authorized 30 rural enterprise communities. On October 21, 1998, the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 was signed into law, authorizing an additional 20 rural enterprise communities (Round IIS), bringing the total authorized to 50.

The proposed rule pertaining to Round IIS also amended 7 CFR part 25 in other ways that affected all rural empowerment zones and rural enterprise communities. Most notably it implemented a newly authorized direct grant program for Round II and IIS designees. It also amended the ongoing reporting and administrative requirements for all designated communities.

The Community Renewal Tax Relief Act of 2000 authorizing Round III was signed into law subsequent to publication of the proposed rule. It increased the number of designations the Secretary of Agriculture may make, it extends designation periods and increases certain tax code benefits which attach to the designations. It expressly provides that the eligibility requirements for Round III empowerment zones are to be the same as for Round II, with no change.

In addition to the changes for which comments were invited in the published proposed rule, this Final Rule conforms 7 CFR part 25 to reflect the provisions of the Community Renewal Tax Relief Act of 2000. These conforming changes are technical in nature such the Secretary has determined it appropriate that they be incorporated in this final rulemaking without subjecting them to the notice and comment process.

### Discussion of Comments

Eleven comments were received in response to the published proposed rulemaking. Ten were from representatives of empowerment zones or enterprise communities (EZ/ECs); one was from a Rural Development State Director. Of the ten, five were from the same community and the other five represented different communities.

Ten of the eleven comments received were opposed to the proposed requirement that not less than 55% of the membership of the board of directors of the lead entity be determined by broad-based election. One respondent raised concerns about the requirements associated with the National Environmental Protection Act (NEPA). One respondent requested that EZ/EC program funds be considered eligible match funding for other federal programs. The use of EZ/EC funds as matching funds for other federal programs is currently prohibited. See 7 CFR 3019.23(a)(5) and OMB Circular A-110 issued by the Office of Management and Budget.

Objections to the board composition requirement were varied. One respondent argued that USDA's approval of the strategic plan at the time of designation included the proposed corporate organization of the lead entity, this approval was incorporated into the Memorandum of Agreement, and this agreement cannot be changed absent mutual consent.

Another respondent expressed concern that imposing a 55% elected board is excessive control on the part of USDA and counter to the empowerment principle that community-based decisions should be supported. One specifically argued that the boards should be comprised of "movers and shakers" rather than run by committee. Yet another stated that elections are not necessary because representative boards are being appointed now.

The regulatory amendment requiring 55% elected representation on the board of the lead entity was developed as a direct result of program reviews done for the first round of designated communities. In several of the most needy communities, the board members did not reflect the racial or economic diversity present in the community. Their decisions often did not reflect the principles of the EZ/EC program, or the best interest of the low-income residents. Rather, funding decisions and community management had reverted to traditional, less representative, power structures.

Designations are granted contingent upon final USDA approval of the

applicant's strategic plan and the signing of a Memorandum of Agreement (MOA). The MOA documents the relationship and respective responsibilities of USDA and the designated community. It is not contractually binding and so states in the text of the document.

Public support for the policies of the lead entity is critical for the success of the strategic plan. USDA recognizes that appointed boards might be necessary in the start-up phase of an EZ/EC, but has learned from experience that it is possible to conduct board elections at the required public meetings at little or no additional cost to the community. Some appointments may yet be necessary to address special needs representation, such as youth or low-income representation, or to enjoy the benefit of legal, engineering, or other specific expertise on the board. USDA has observed that "movers and shakers" are capable of being elected to the board of lead entities.

Two respondents cited election-related problems that are specific to tribal entities. One questioned USDA's authority to override decisions made by tribal governments to appoint boards. In the case of areas covering a group of distinct tribes, with separate governance structures, disbursed populations, historical animosities and uneven minority distribution within the populace, achieving a representative board is possible through appointments, but less likely via elections.

USDA acknowledges the tribal governance issues, and has incorporated an exception for tribal entities if there is compelling evidence that the objectives intended by the election requirement cannot be realized except through an appointment process.

One respondent requested requirements for environmental assessments or environmental impact statements be waived for some projects, citing redundant environmental requirements imposed by state and other Federal partners. It was suggested that USDA accept the determinations made pursuant to environmental reviews conducted by others for purposes of EZ/EC program requirements.

USDA cannot waive the requirements of NEPA. The EZ/EC program has three options as far as NEPA is concerned. USDA could prepare yet another stand alone environmental regulation specific to the EZ/EC program, or use one of the two environmental regulations in effect within the Rural Development mission area at USDA. The final rule adopts the environmental review processes in effect for the Rural Utilities Service

(RUS) at 7 CFR part 1794. The environmental regulation that applies to other Rural Development agencies is referred to only for purposes of determining what level of environmental review is required for a given project. Once that threshold is determined, the notice and other provisions for environmental assessments, environmental impact statements, etc., contained in the RUS regulation are to be followed. The RUS regulation was chosen because it affords the greatest flexibility in implementing NEPA—most specifically with respect to whom can prepare the review document.

As is the case with most federal environmental regulations implementing NEPA, an agency head can adopt as its own a determination made by another federal agency, provided the review has met federal requirements. NEPA expressly contemplates that where multiple federal agencies are involved, efforts are to be made to avoid redundancy and determine a “lead agency”. Unless expressly authorized by law, NEPA requires an agency head to evaluate the environmental consequences of the federal action taken by that agency. It has happened that a non-federal entity was authorized by law to make federal NEPA determinations, but it is not so authorized for the EZ/EC program.

#### List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

In accordance with the reasons set out in the preamble, 7 CFR part 25 is amended as follows:

### PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. The authority citation for part 25 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 26 U.S.C. 1391; Sec. 766, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

#### Subpart A—General Provision

##### § 25.1 [Amended]

2. Amend § 25.1 by revising paragraph (a) to read as follows:

##### § 25.1 Applicability and scope.

(a) Applicability. This part contains policies and procedures applicable to rural empowerment zones and enterprise communities, authorized

under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Round I), the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277) (Round IIS), and the Community Renewal Tax Relief Act of 2000 (Public Law 106–554) (Round III).

##### § 25.3 [Amended]

3. Amend § 25.3 by revising the definitions of “brownfield” (and placing it in correct alphabetical order), “designation”, “designation date” and by adding in alphabetical order definitions for “designation period”, “funding official”, “Office of Community Development”, “Round IIS”, “Round III”, “state director” and “USDA EZ/EC grant program” to read as follows:

##### § 25.3 Definitions.

*Brownfield* means a “qualified contaminated site” meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

*Designation* means the process by which the Secretary designates rural areas as empowerment zones or enterprise communities pursuant to eligibility criteria established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*).

*Designation date* means December 21, 1994, in the case of Round I designations, and December 24, 1998, in the case of Round II and Round IIS designations.

*Designation period* means, in the case of empowerment zones, the lesser of such time as has elapsed from the designation date to December 31, 2009 or from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e) and, in the case of enterprise communities, the lesser of ten years or such time as has elapsed from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e).

*Funding official* means the state director in the state where the designated rural area is located, or if the designated rural area is located in more than one state, the state where the

headquarters office of the lead managing entity is located.

*Office of Community Development or OCD* means the office of the Deputy Administrator, Community Development, as identified in 7 CFR 2003.26(b)(4).

*Round IIS* identifies designations of rural enterprise communities pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

*Round III* identifies designations of empowerment zones pursuant to section 111 of the Community Renewal Tax Relief Act of 2000 (Public Law 106–554).

*State director* means the state director for the Rural Development mission area within USDA, as identified in 7 CFR 2003.10.

*USDA EZ/EC grant program* means the grant program authorized by section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

##### § 25.4 [Amended]

4. Amend § 25.4 by revising paragraphs (a) and (b)(2) and adding paragraphs (b)(3), (b)(4) and (b)(5) to read as follows:

##### § 25.4 Secretarial review and designation.

(a) *Designation*. The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural empowerment zones and enterprise communities as are made shall be from the applications submitted in response to the notice inviting applications or other applicable notice published in the **Federal Register**. The Secretary may elect to designate as champion communities those nominated areas which are not designated as either a rural empowerment zone or enterprise community and whose applications meet the criteria contained in § 25.301.

(2) *Round II*. The Secretary may, prior to January 1, 1999, designate up to five rural empowerment zones in addition to those designated in Round I.

(3) *Round IIS*. The Secretary may designate up to 20 rural enterprise communities in addition to those designated in Round I.

(4) *Round III*. The Secretary may, prior to January 1, 2002, designate up to two rural empowerment zones in addition to those designated in Round I and Round II.

(5) *Champion communities*. The number of champion communities is limited to the number of applicants which are not designated empowerment zones or enterprise communities.

\* \* \* \* \*

**Subpart B—Area Requirements**

**§ 25.103 [Amended]**

5. Amend § 25.103 by revising the introductory text of paragraphs (b)(2) and (b)(3) to read as follows:

**§ 25.103 Area size and boundary requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) For purposes of applying paragraph (a)(1) of this section to Round II, Round IIS and Round III designations: \* \* \*

(3) For purposes of applying paragraph (a)(2) of this section to Round II, Round IIS and Round III designations, the following shall not be treated as violating the continuous boundary requirement nor the limit on the number of noncontiguous parcels:

\* \* \* \* \*

**§ 25.104 [Amended]**

6. Amend § 25.104 as follows:

a. Amend the heading of paragraphs (a)(2) and (b)(2) by adding “, Round IIS and Round III”.

b. Revise the introductory text of paragraphs (a), (b) and (c), and revise paragraph (c)(2) to read as follows:

**§ 25.104 Poverty rate.**

(a) *General*. Eligibility of an area on the basis of poverty shall be established in accordance with the following poverty rate criteria specific to Round I, Round II, Round IIS and Round III nominated areas:

\* \* \* \* \*

(a) *Special rules*. The following special rules apply to the determination of poverty rate for Round I, Round II, Round IIS and Round III nominated areas:

\* \* \* \* \*

(c) *General rules*. The following general rules apply to the determination of poverty rate for Round I, Round II, Round IIS and Round III nominated areas.

\* \* \* \* \*

(2) *Noncontiguous parcels*. Each such parcel (excluding, in the case of Round II, Round IIS and Round III, up to three noncontiguous developable sites not

exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria contained in this section.

\* \* \* \* \*

**Subpart C—Nomination Procedure**

**§ 25.202 [Amended]**

7. Amend § 25.202 by revising paragraph (b)(7) to read as follows:

**§ 25.202 Strategic plan.**

\* \* \* \* \*

(b) \* \* \*

(7) Include such other information as required by USDA in the notice inviting applications or other applicable notice.

\* \* \* \* \*

**§ 25.203 [Amended]**

8. Revise § 25.203 to read as follows:

**§ 25.203 Submission of applications.**

*General*. A separate application for designation as an empowerment zone or enterprise community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the notice inviting applications or other applicable notice as published in the **Federal Register** and must contain complete and accurate information.

**Subpart D—Designation Process**

**§ 25.300 [Amended]**

9. Amend § 25.300 by revising paragraphs (a) and (b) to read as follows:

**§ 25.300 USDA action and review of nominations for designation.**

(a) *Establishment of submission procedures*. USDA will establish a time period and procedure for the submission of applications for designation as empowerment zones or enterprise communities, including submission deadlines and addresses, in a notice inviting applications or other applicable notice, to be published in the **Federal Register**.

(b) *Acceptance for processing*. USDA will accept for processing those applications as empowerment zones and enterprise communities which USDA determines have met the criteria required under this part. USDA will notify the states and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the notice inviting applications or other applicable notice published in the **Federal Register**. The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the

certifications and written assurances required by § 25.200(b).

\* \* \* \* \*

**Subpart E—Post-Designation Requirements**

**§ 25.404 [Amended]**

10. Amend § 25.404 as follows:

a. Redesignate paragraph (a) as (c) and paragraph (b) as (d).

b. Add new paragraphs (a) and (b) to read as follows:

**§ 25.404 Validation of designation.**

(a) *Maintaining the principles of the program*. The empowerment zone, enterprise community or champion community (the designated community) must maintain a process for ensuring ongoing broad-based participation by community residents consistent with the approved application and planning process outlined in the strategic plan.

(1) *Continuous improvement*. The designated community must maintain a process for evaluating and learning from its experiences. It must detail the methods by which the community will assess its own performance in implementing its benchmarks, the process it will use for reviewing goals and benchmarks and revising its strategic plan.

(2) *Participation*. The designated community must develop as part of its strategic plan a written plan for assuring continuous broad-based community participation in the implementation of the strategic plan and the means by which the strategic plan is implemented, including board membership in the lead entity and other key partnership entities.

(b) *Administration of the strategic plan*. The strategic plan must be administered in a manner consistent with the principles of the program contained in § 25.202(a).

(1) *Lead entity*. The lead entity must have legal status and authority to receive and administer funds pursuant to Federal, state and other government or nonprofit programs.

(2) *Capacity*. The lead entity must have the capacity to implement the strategic plan, as demonstrated by audited financial statements as of the most recent fiscal year or other documentation that may be requested by USDA.

(3) *Board membership*. The membership of the board must be representative of the entire socio-economic spectrum in the designated community including business, social service agencies, health and education entities, low income and minority residents. Board membership may be

determined by either broad-based election or by appointment to meet this diversity requirement; however, not more than 45 percent of board members may be selected by appointment. Elections of community residents to the board may be done by any locally acceptable process; however, at least one board member from each of the designated community's census tracts must be elected and representative of the low income residents in their census tract. The Deputy Administrator, Office of Community Development, may waive the 45 percent maximum appointment limit only for Tribal Governmental Organizations where the Deputy Administrator determines, in writing, that a more representative board would be obtained through the appointment process.

(4) *Partnerships.* The relationship between the designated community's lead entity board and local governments and other major regional and community organizations operating in the same geographic area is critical to the community's success in implementing its strategic plan. Every effort should be made to identify and maintain relationships with local partners. Documentation including, but not limited to, minutes of meetings, benchmark activity reports and annual reports of the lead entity must reflect the contributions of local partnership entities.

(5) *Public information.* The designated community must have written procedures in place describing the means by which citizens of the community and partnership organizations will be kept informed of the community's activities and progress in implementing the strategic plan, consistent with the principal objective of community based partnerships pursuant to § 25.202(a)(2). These procedures must be kept current and compliance with them documented on an ongoing basis.

\* \* \* \* \*

11. Subpart G of part 25, consisting of §§ 25.600 through 25.999 is added to read as follows:

#### Subpart G—Round II and Round IIS Grants

Sec.	
25.600	Purpose.
25.601	Delegation of authority.
25.602	Eligible recipients.
25.603	Grant approval and obligation of funds.
25.604	Disbursement of grant funds.
25.605	Grant program reporting requirements.
25.606	Financial management and records.

25.607 Suspension or termination of grant funds.

25.608–25.619 [Reserved]

25.620 Eligible grant purposes.

25.621 Ineligible grant purposes.

25.622 Other considerations.

25.623 Programmatic changes.

25.624–25.999 [Reserved]

#### § 25.600 Purpose.

This subpart outlines USDA policies and authorizations and contains procedures for the USDA EZ/EC grant program.

#### § 25.601 Delegation of authority.

(a) *Program administration.* The Deputy Administrator, Office of Community Development, shall be responsible for the overall development of policy and administration of the USDA EZ/EC grant program.

(b) *Funding official.* Unless otherwise provided, the state director is responsible for implementing the authorities in this subpart, consistent with the guidance issued by the Office of Community Development. Except for grant approval and environmental determination authorities, state directors may re-delegate their duties to qualified staff members.

(c) *Environmental review determinations.* The funding official is responsible for making environmental review determinations.

(d) *Authority to issue regulations.* The Under Secretary, Rural Development, may promulgate regulations under this part.

#### § 25.602 Eligible recipients.

(a) *General.* The grants made under this subpart shall be made to the lead managing entities on behalf of the Round II rural empowerment zones and Round IIS rural enterprise communities, respectively, in accordance with an approved strategic plan. Such grants shall be available to successor entities approved in writing by USDA.

(b) *Exception.* The funding official, with the approval of the Office of Community Development, may elect to award all or part of the available grant funds to an alternate grantee.

(c) *Subrecipients.* The grantee shall relay funds to subrecipients, as provided in the approved strategic plan, as soon as practicable.

#### § 25.603 Grant approval and obligation of funds.

Grants may be made at such time as the nominated area has been designated and such other prerequisites as USDA shall determine have been met, including but not limited to:

(a) The empowerment zone or enterprise community has entered into

a memorandum of agreement satisfactory to USDA;

(b) The empowerment zone or enterprise community has conformed its strategic plan to be consistent with the level of federal grant aid available and such conforming amendments (if any) have met with the approval of the Office of Community Development and the funding official;

(c) Completion of the environmental review process, including all appropriate public notices;

(d) The proposed grantee has agreed, in form and substance satisfactory to the Office of Community Development, to any funding conditions imposed by USDA;

(e) The grantee has submitted a request for obligation of funds, in form and substance satisfactory to the Office of Community Development, inclusive of the following certification:

“The grantee certifies that it and all direct or substantial subrecipients are in compliance and will continue to comply with all applicable laws, regulations, executive orders and other generally applicable requirements, including those contained in 7 CFR parts 25, 3015, 3016, 3017, 3018, 3019 and 3052 and any agreement to meet funding conditions, in effect at the time of the grant or as subsequently amended.”

#### § 25.604 Disbursement of grant funds.

(a) The funding official will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

(b) A “request for advance or reimbursement,” in form and substance satisfactory to USDA, must be completed by the grantee on behalf of itself and all applicable subrecipients and submitted to the funding official.

(c) Requests for advance or reimbursement must identify:

(1) The amount requested for each benchmark activity;

(2) The cumulative amount advanced to date (not inclusive of the current amount requested) for each benchmark activity;

(3) The total USDA EZ/EC grant obligated for each benchmark activity;

(4) The total approved budget for the applicable project or program (inclusive of non USDA EZ/EC grant program sources);

(5) An estimated percentage of completion or progress made in accomplishing the benchmark goal associated with each benchmark activity;

(6) Certification that the lead managing entity and the subrecipients (where applicable) are in compliance

with all applicable laws and regulatory requirements; and

(7) Such other information as the funding official may require.

(d) Requests for advance or reimbursement may include only activities or projects which are identified in an approved strategic plan.

**§ 25.605 Grant program reporting requirements.**

Grantees may incorporate grant reporting requirements in the reports submitted pursuant to § 25.400, or submit them separately. In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

**§ 25.606 Financial management and records.**

(a) In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

(b) Grantees must retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least 3 years after the end of the designation period, except that the records shall be retained beyond the 3 year period if audit findings have not been resolved or if directed by the United States. Records may be retained and submitted in electronic form if allowed by Generally Accepted Government Accounting Principles.

**§ 25.607 Suspension or termination of grant funds.**

(a) Grants under this subpart may be suspended or terminated by the funding official, in all or in part, in accordance with this subpart and the applicable provisions of 7 CFR parts 3015, 3016 and 3019, as applicable.

(b) The funding official may elect to suspend or terminate the entirety of a grant, or funding of a particular benchmark activity, but nevertheless fund the remainder of a request for advance or reimbursement, where the funding official has determined:

(1) That grantee or subrecipient of the grant funds has demonstrated

insufficient progress toward achieving the related benchmark goal or in any other way failed to comply with the strategic plan;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis;

(3) The strategic plan calls for a revised use of the grant funds; or

(4) Such other cause as the funding official identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

**§§ 25.608–25.619 [Reserved]**

**§ 25.620 Eligible grant purposes.**

Eligible grant purposes are:

(a) Services directed at the goals of—

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(b) Projects and activities identified in the strategic plan for the area; and

(c) Activities that benefit residents of the area for which the grant is made.

**§ 25.621 Ineligible grant purposes.**

Grant funds may not be used:

(a) As a source of local matching funds required for other federal grants;

(b) To fund political activities;

(c) To duplicate current services or replace or substitute for financial support provided from other sources. If the current service is inadequate, however, grant funds may be used to augment financial support or service levels beyond what is currently provided;

(d) To pay costs of preparing the application package for designation under this program;

(e) To pay costs of a project which were incurred prior to the execution date of the applicable memorandum of agreement;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) To assist in the relocation of businesses;

(i) To support or promote gambling; or

(j) For political lobbying.

**§ 25.622 Other considerations.**

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and 7 CFR part 1901, subpart E.

(b) *Environmental review.* All grants made under this subpart are subject to the environmental requirements in effect for the water and environmental programs of the Rural Utilities Service at 7 CFR part 1794. The threshold levels of environmental review, for projects funded by the USDA EZ/EC grant program (or EZ/EC SSBG funds where the Secretary is authorized to execute the responsibilities under the National Environmental Policy Act of 1969), which projects, by their nature, would qualify for assistance under any program administered by the Rural Housing Service or Rural Business Service within USDA, shall be determined in accordance with 7 CFR part 1940, subpart G as follows:

(1) Projects meeting the descriptions found at 7 CFR 1940.310(b), (c), (d) and (e) shall be considered categorically excluded (without an environmental report) for purposes of 7 CFR 1794.21.

(2) Projects meeting the descriptions found at 7 CFR 1940.311 shall be considered categorically excluded (with an environmental report) for purposes of 7 CFR 1794.22.

(3) Projects meeting the description found at 7 CFR 1940.312 shall require the preparation of an environmental assessment (EA) for purposes of 7 CFR 1794.23.

(4) Projects which would normally require the preparation of an environmental impact statement (EIS) for purposes of 7 CFR 1940.313 shall require an EIS for purposes of 7 CFR 1794.25.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, “Uniform Federal Assistance Regulations”;

(2) 7 CFR part 3016, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”;

(3) 7 CFR part 3017, “Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)”;

(4) 7 CFR part 3018, “New Restrictions on Lobbying”;

(5) 7 CFR part 3019, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and

(6) 7 CFR part 3052, "Audits of States, Local Governments, and Non-Profit Organizations."

#### § 25.623 Programmatic changes.

Prior approval from USDA is required for all changes to the scope or objectives of an approved strategic plan or benchmark activity. Failure to obtain prior approval of changes to the strategic plan or benchmarks, including changes to the scope of work or a project budget may result in suspension, termination, and recovery of USDA EZ/EC grant funds.

#### §§ 25.624–25.999 [Reserved]

Dated: March 18, 2002.

**Ann M. Veneman,**

Secretary.

[FR Doc. 02–7023 Filed 3–22–02; 8:45 am]

BILLING CODE 3410–01–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 01–054–2]

#### Phytophthora Ramorum; Quarantine and Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and notice of public hearings; correction.

**SUMMARY:** In an interim rule published in the **Federal Register** and effective on February 14, 2002, we amended the domestic quarantine regulations by quarantining 10 counties in the State of California and a portion of 1 county in the State of Oregon because of the presence of *Phytophthora ramorum* and by regulating the interstate movement of regulated and restricted articles from the quarantined area. The interim rule contained errors in the Supplementary Information section and in the rule portion. This document corrects those errors.

**EFFECTIVE DATE:** February 14, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:** In an interim rule published in the **Federal Register** on February 14, 2002 (67 FR 6827–6837, Docket No. 01–054–1), we amended the domestic quarantine regulations in 7 CFR part 301 by adding a subpart, "Phytophthora Ramorum"

(§§ 301.92 through 301.92–10, referred to below as the regulations). The regulations quarantine portions of the States of California and Oregon because of *Phytophthora ramorum* and restrict the interstate movement of regulated and restricted articles from quarantined areas.

*P. ramorum* is a harmful fungus that has been found in several hosts, including manzanita (*Arctostaphylos manzanita*). In the Supplementary Information section and the rule portion of the interim rule, we incorrectly listed all species of *Arctostaphylos* as regulated and restricted articles by identifying manzanita as *Arctostaphylos* spp. Therefore, in order for the regulations to accurately identify this specific host, we are correcting the errors in the rule portion of the interim rule by replacing *Arctostaphylos* spp. with *Arctostaphylos manzanita*.

In FR Doc. 02–3721, published on February 14, 2002 (67 FR 6827–6837), make the following corrections:

#### PART 301—[CORRECTED]

1. On page 6835, in the first column, in § 301.92–2, in paragraphs (a)(1) and (b)(1), correct "(*Arctostaphylos* spp.)," to read "(*Arctostaphylos manzanita*),".

2. On page 6837, in the first column, in § 301.92–10, in paragraph (b), correct "(*Arctostaphylos* spp.)," to read "(*Arctostaphylos manzanita*),".

Done in Washington, DC, this 19th day of March, 2002.

**W. Ron DeHaven,**

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–7110 Filed 3–22–02; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV02–989–3 FIR]

#### Raisins Produced From Grapes Grown in California; Extension of Redemption Date for Unsold 2001 Diversion Certificates

**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 that extended the deadline for raisin handlers to redeem diversion certificates issued under the 2001 raisin diversion program (RDP). The deadline

is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action gave producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP.

**EFFECTIVE DATE:** Effective April 24, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; 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) 720–5698.

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) 720–5698, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule continues in effect an interim final rule that extended the deadline for handlers to redeem diversion certificates issued under the 2001 RDP for Natural (sun-dried) Seedless (NS) raisins. The deadline was extended from December 17, 2001, to January 18, 2002, and applied only to certificates unsold by producers to handlers as of December 18, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.