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“THE GULF CHANNEL MARKER®”¹

Issue 4 August 20, 2003²

Focus on: “TAA/ The Trade Adjustment Assistance Program”

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The Gulf Channel Marker, a bi-weekly “mini-newsletter” of the Gulf of Alaska Coastal Communities Coalition (GOAC3) is designed to help³ keep our members posted on immediate fisheries-related issues facing Gulf of Alaska coastal communities. *The Gulf Channel Marker* is available only to GOAC3 members and is distributed by e-mail and by fax or mail to those members who request it. This publication is in MS Word. All newsletters will be archived but the format will vary. We encourage you to print out *The Gulf Channel Marker* and keep copies in a three-ring binder. Past issues of *The Gulf Channel Marker* are available on request.

Your questions or suggestions for issues and linkages are always welcome. See “Web Links” at the end of this document for further information. Please note that all links are subject to change.

I ALERTS TAKE ACTION

- Federal Register web address for announcement commentary for Marine Protected Areas and Inventory of Marine Managed Areas July 23, 2003. **Comments due by September 22, 2003.** <http://www.fakr.noaa.gov/notice/fr43495.pdf>
- **Groundfish PSEIS:** the revised DRAFT Groundfish Programmatic Supplemental Environmental Impact Statement (PSEIS) is available from NOAA in hard-copy (7,000 pages!) or CD. Contact them by **August 15th** to let them know what format you prefer. **Public comments on the revised draft will be accepted until October 15, 2003.** Public comments will only be accepted in writing, submitted by mail and delivered before the deadline or by e-mail or oral statements at one of the public hearings. Public hearing information can be found at the web site.. <http://www.fakr.noaa.gov/sustainablefisheries/seis/news11.pdf>

¹ Copyright pending

² Edited by Gale K. Vick, GOAC3 Executive Director

³ Please note – there are a lot of concurrent issues in fisheries –check many information sources.

- **NOAA Fisheries Seeks Comment on Zero Mortality Rate Goal for Marine Mammals** NOAA Fisheries has published an advance notice of proposed rulemaking related to the Zero Mortality Rate Goal (ZMRG) contained in the Marine Mammal Protection Act. The Act states that commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate. **The deadline for comments is September 8, 2003.** For additional information call Tom Eagle at (301) 713-2322.

II IMPORTANT DATES⁴

MARK YOUR CALENDAR

- **North Pacific Fishery Management Council:** Check the NPFMC for their 2003-05 meeting schedule and for committee meetings, etc. Next scheduled begins October 6th in Anchorage.
- **Alaska Board of Fisheries** – Check the BOF web site for their 2003-04 calendar
- **National Marine Fisheries Service national conference-** November 13-15, 2003 Washington, DC. First fisheries-management conference co-sponsored by the eight regional fishery management councils. For more information check the NPFMC web site.
- **National Fishery Law Symposium:** The 21st Annual National Fishery Law Symposium will be held this year on 23-24 October at the Washington State Convention & Trade Center, 800 Convention Place, in Seattle. Sponsored by the University of Washington's School of Law. For more information, contact: Kathy Kline at the University of Washington (kkline@u.washington.edu) or the Symposium Co-Chairs, Eldon Greenberg (egreenberg@gsblaw.com) or Bud Walsh (budwalsh@dwt.com).
- **Gulf of Alaska Coastal Communities Coalition (GOAC3):** Our annual meeting is in October See our web site at www.goac3.org for this and many other important fisheries dates.

III IMPORTANT TO KNOW

- **Revised reporting requirements set for Alaska's IFQ halibut fishery:** NMFS issued a final rule to implement Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64). This action will revise certain recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries and the Western Alaska Community Development Quota (CDQ) Program for the Pacific halibut fishery. This action is necessary to improve IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer

⁴ For other current calendar items, check our web site @ www.goac3.org

the program; and to improve the clarity and consistency of IFQ Program regulations. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to sablefish and to further the goals and objectives of the groundfish Fishery Management Plans (FMPs). This regulation becomes effective on August 28, 2003.

- **Groundfish in the North Gulf:** See North Pacific Fishery Management Council web site for current information on Council action on groundfish. The Council decided at its June Kodiak meeting not to consider individual quotas for Gulf of Alaska bottom-fish harvesters and processors. The concept of assigning shares of fish harvests to individual processing companies is particularly controversial in the seafood industry. Instead, the Council will consider replacing the current race for fish with cooperatives, where groups of fishermen and processors can pool their efforts. The Council will also consider “status quo” as a third management option. The Council hopes to make a final decision on Gulf fisheries management by this time next year.⁵

IV **TRADE ADJUSTMENT ASSISTANCE PROGRAM (TAA)**

WHAT IS TRADE ADJUSTMENT ASSISTANCE?

TAA, Trade Adjustment Assistance, is designed to help workers hurt by foreign trade agreements. The Trade Adjustment Assistance (TAA) program provides training and job search/relocation assistance to individuals who lose their manufacturing jobs due to foreign imports. Participants in this program may also receive Trade Readjustment Allowances (TRA), paid on a weekly basis to individuals who exhaust their unemployment benefits while receiving training. As a result of the North American Free Trade Agreement (NAFTA) of December 1993, Congress added NAFTA-Transitional Adjustment Assistance to the TAA program. This initiative serves U.S. workers adversely affected by imports from either Mexico or Canada or by a production shift to these countries.

The TAA-Farmers program was reauthorized through 2007 in the Trade Act of 2002, which was signed into law August 6 of last year. However, wild-stock fishermen and aquaculture workers were not included in the list of eligible groups. Alaska’s Senator Lisa Murkowski, along with a group of other Senators, have been working hard to get eligibility language back in for fishermen.

In a press release of August 20, 2003, Sen. Murkowski’s office had the following information for Alaskan fishermen:

⁵ Laine Welch, Fish Report, *Anchorage Daily News*, June 21, 2003

“MURKOWSKI ANNOUNCES DETAILS ON HOW FISHERMEN CAN APPLY FOR FISHERMEN'S ASSISTANCE PROGRAM BENEFITS”⁶

ANCHORAGE - After conversations Tuesday with Bush Administration officials, Alaska Sen. Lisa Murkowski today released additional details on a new U.S. Department of Agriculture (USDA) program to provide financial assistance for Alaska salmon fishermen harmed by imports of farm-raised salmon.

"People need to understand this is now going to be a two-step process," said Murkowski. "The first and most immediately urgent step is to certify Alaska salmon fishermen as eligible for aid. That can most efficiently be done if a single non-government group, such as the United Fishermen of Alaska (UFA), submits a petition on behalf of all Alaska salmon fishermen. That needs to be done before the Aug. 31 deadline.

"If that is done on time and the petition is approved, as I expect it will, the second step will be for individuals to apply for actual grant aid. Individual fishermen will have more time to apply, beginning after certification of the petition occurs, which should be approximately October 1. Fishermen will then have a full 90 days to complete their applications. Given that many fishermen are currently still fishing, this process will be the most fair for all Alaska salmon fishermen," said Murkowski.

The new program, announced last week by Senator Murkowski, will allow salmon fishermen negatively affected by imports of farmed salmon to receive both technical assistance and financial grants under the Trade Adjustment Assistance for Farmers program authorized by last year's Trade Promotion Act. Senator Murkowski last week announced that her negotiations with the Administration succeeded in adding Alaska's fishermen to that program.

Details of the new program were formally published today in the Federal Register. Additional information is now available on the USDA's Foreign Agricultural Service (FAS) web site, at <http://www.fas.usda.gov/>, which will include forms both for the initial certification process and later for individuals to use to apply for the grant aid.

"If fishermen are to receive grants from money set aside for the current fiscal year (FY03), it's critical for the industry to submit an initial petition requesting certification for the salmon fishery in the next few days, so that the Secretary can make a decision before the fiscal year ends on Sept. 30th. That's why I'm encouraging a single group, such as UFA, to petition on everyone's

⁶ For Immediate Release: Sen. Lisa Murkowski's office, Contact: Kristin Pugh, Press Sec.; Chuck Kleeschulte August 20, 2003 907/271-3735; (202) 224-9301; 224-9306; H 301/283-4149 Below is the press release. It can also be found on the Senator's website at www.murkowski.senate.gov, click on press room. Applications will be available from Sen. Murkowski's office. A single umbrella petition is being filed on behalf of all Alaskan fishermen. (See UFA press release.) Once that is approved by USDA, the individual fishermen will have 90 days to complete the application (FAS229) that can be found on the USDA website <http://www.fas.usda.gov/>. Individual organizations may file their own petition -- if they wish -- but the more petitions filed the more the process will get bogged down. Individual fishermen should only file the application, not the petition.

behalf. I understand UFA is considering doing so," said the Senator. "Multiple petitions might simply slow down the approval process."

"Assuming the Secretary agrees that salmon fishermen generally are eligible, and that decision is made by Sept. 30, individual fishermen would then have up to 90 days to apply - as individuals - for assistance. Individual checks could then be issued as soon as January, 2004. If an industry petition is not filed in time for approval before September 30, it would be considered only for FY04 funding, and checks could not be issued before mid-2004," she said.

Because the program will continue beyond the current fiscal year, she said it makes sense for the salmon fishing industry to try to get certified both for FY03 and FY04. A separate petition will be required for FY04 funds, but can be filed by the industry any time before Dec. 31 for the aid for next year. Approval of the FY04 petition would allow additional funds to be distributed beginning approximately June 15 of next year, said Murkowski.

Under the program details, as unveiled this morning, Alaska salmon fishermen will be entitled to a per-pound adjustment equal to one-half the difference between (a) the national average price for the most recent marketing year (2002) and (b) 80 percent of the national average price for the preceding five years. Awards are capped, however, at a maximum of \$10,000.

For example, if the average price last year was \$0.50, and the five-year average was \$1.00, someone who harvested 50,000 pounds last year would receive aid of 15 cents per pound, or \$7,500. This is * of the \$0.30 difference between the \$0.50 average price and \$0.80 (80% of the five-year average price).

Murkowski also noted that if requests for assistance from both farmers and fishermen exceed the total available funding for the program of \$90 million a year, then grants will be prorated so that every applicant receives a fair amount. The exact amount of the checks for 2003 will not be known until early in 2004, after the application deadline closes.

Murkowski, who has been working for several months to include Alaska's fishermen in the TAA program originally designated only for farmers, said the program is an important step toward getting fishermen help to offset lost revenue because of declining salmon prices caused by competition from foreign pen-reared salmon.

"Alaska fishermen are farmers. Rather than grow crops in fields, they harvest our seafood crops from the seas. They clearly deserve the same aid that farmers receive when they face lower commodity prices because of foreign competition. I have been asking for such assistance for months. By this decision the Administration has understood and accepted our arguments and will treat Alaska's family fishermen the same way as family farmers," said Murkowski.

The following is a press release from the United Fishermen of Alaska (UFA)

Press Release 2003-03 FOR IMMEDIATE RELEASE
CONTACT: Mark Vinsel, Executive Administrator
August 20, 2003

UFA to Petition for USDA Trade Adjustment Assistance for AK Salmon Fishermen

United Fishermen of Alaska (UFA) announced today that they intend to file a petition with the U.S. Department of Agriculture to qualify all Alaska Salmon Fishermen for Trade Adjustment Assistance (TAA) through the USDA's Trade Assistance for Farmers program.

The petition, due August 31 to be eligible for FY 2003 funds, is the first step in the process. If the petition is certified, the second step would be for individual fishermen to apply for funds as part of the certified group. If the group is certified, Alaska salmon fishermen who can verify an overall net fishing income decline in 2002 from 2001 may be eligible, and would have three months from the date of acceptance to apply for FY 2003 assistance funds. Payments would be made beginning in January 2004.

The opportunity to petition has been granted by the USDA in response to the work of Senator Lisa Murkowski, and a concerted effort by UFA, United Salmon Association, individual Alaska fishermen and Alaska fishing organizations in a letter campaign in July. Of the 76 letters received commenting on the proposed rule, 47 respondents supported extending TAA coverage to fishermen of Alaska wild salmon, who face stiff competition from foreign farm-raised salmon.

"This opportunity for Alaska Fishermen to even be considered in USDA Trade Assistance through the Farm Bill is a milestone for Alaska fishermen that have suffered from increased imports similarly to America's farmers. This is one small step in the long road that UFA and United Salmon Association have been working on for a long time." Said UFA Marketing Committee Chairman and United Salmon Association president Bruce Schactler.

For additional information contact Mark Vinsel, United Fishermen of Alaska Executive Administrator at (907) 586-2820.

FOR ADDITIONAL INFORMATION:

Link to Federal Register - Trade Adjustment Assistance for Farmers

<http://www.fas.usda.gov/info/fr/2003/082003taa.htm>

Alaska Department of Labor – TAA web site

<http://www.jobs.state.ak.us/taa/>

Trade Assistance for Firms

<http://www.taacenters.org/>

U.S. DOL/ TAA web site

http://wdsc.doleta.gov/trade_act/

U.S. DOL regulatory links for TAA

http://www.dol.gov/dol/allcfr/ETA/Title_20/Part_617/toc.htm

CFDA (Catalog of Federal Domestic Assistance) TAA information

<http://www.cfda.gov/public/viewprog.asp?progid=172>

Texas Work Force web links for TAA - a good site for info links

<http://www.twc.state.tx.us/svcs/taa/taahp.html>

The Heritage Foundation editorial on TAA as “flawed”

<http://www.heritage.org/Research/Labor/HL714.cfm>

WHAT IS THE AUTHORITY? FEDERAL REGISTER – FINAL RULE⁷

[Federal Register: August 20, 2003 (Volume 68, Number 161)]

[Rules and Regulations] [Pages 50048-50053] From the Federal Register Online via GPO Access [wais.access.gpo.gov]

DEPARTMENT OF AGRICULTURE Foreign Agricultural Service

7 CFR Part 1580 / RIN 0551-AA66

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service.

ACTION: Final rule.

SUMMARY: This final rule implements the Trade Act of 1974, as amended by the Trade Act of 2002 to establish a new program, Trade Adjustment Assistance (TAA) for Farmers. Under this program, the Department of Agriculture provides technical assistance and cash benefits to eligible producers of raw agricultural commodities when the Administrator, Foreign Agricultural Service (FAS), determines that increased imports have contributed importantly to a specific price decline over five preceding marketing years. The rule establishes the procedure by which producers of raw agricultural commodities can petition for certification of eligibility and apply for technical assistance and adjustment payments.

EFFECTIVE DATE: August 20, 2003.

ADDRESSES: U.S. Department of Agriculture, Foreign Agricultural Service, Import Policies and Programs Division, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250-1021.

FOR FURTHER INFORMATION CONTACT: Richard Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, by email at trade.adjustment@fas.usda.gov, telephone at 202-720-2916, or fax at 202-720-0876.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This rule will not have a significant economic impact on a substantial number of

⁷ This is the “final rule” as currently published. Note the previous information that United Fishermen of Alaska is currently petitioning for ALL Alaskan fishermen to qualify.

small farm operations. Participation in the program is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program's benefits should improve cash flow and liquidity for farmers participating in the program.

Executive Order 12988 This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act : The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (P. L. 104-4): These Executive Orders and Public Law 104-4 require consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630 : This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

BACKGROUND:

The Trade Act of 2002 (P.L. 107-210) amended the Trade Act of 1974 (19 U.S.C. 2551, et seq.) to add a new chapter 6, which establishes a program of trade adjustment assistance for farmers, providing both technical assistance and cash benefits to producers. The statute authorizes an appropriation of not more than \$90 million for each fiscal year 2003 through 2007 to carry out the program.

Under this rule, a group of agricultural commodity producers may petition the Administrator of the Foreign Agricultural Service (FAS) for trade adjustment assistance from mid-August through the end of January. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the Federal Register that it has been received. The Economic Research Service (ERS) will then conduct a market study to verify the decline in producer prices, and to assess possible causes, taking due account of any special factors which may have affected prices of the articles concerned, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the FAS Administrator, who will then determine whether or not the group is eligible for trade adjustment assistance. If the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and that increases

in imports of that commodity contributed importantly to the decline in price, the Administrator will certify the group as eligible for trade adjustment assistance.

Upon certification, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as they apply, they are eligible to receive at no cost a technical assistance package specifically tailored to their needs by the Extension Service. Depending on the commodity and the region, the Extension Service package may include technical publications in print or on-line, group seminars and presentations, and one-on-one meetings. Producers, who receive the technical assistance and also satisfy personal and farm income limits, are eligible for TAA payments. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA claims during the fiscal year, payments will be prorated and issued after June 15, the last possible date for producers to file a TAA application.

Producers may receive adjustment assistance in subsequent years. The Administrator will review and re-certify a petition for a subsequent qualifying year if prices remain at or below the same 80 percent threshold as the initial year of adjustment assistance, and if imports continue to increase and contribute importantly to the decline in prices.

Discussion of Comments

The Foreign Agricultural Service received 76 comments on the proposed rule. The comments focused on the following areas:

- **Inclusion of Aquaculture in the Program**
 - **The inclusion of aquaculture under TAA generated by far the most public comments, all of which were favorable. In fact, 47 respondents supported extending TAA coverage to fishermen of wild Alaska salmon, who face stiff competition from imported farm-raised salmon. Five more respondents proposed covering all fishermen. The rule covers aquaculture, which is defined to include products propagated and raised in controlled environments for the purpose of human consumption, and it covers fishermen whose catch is adversely affected by imported aquaculture products. FAS decided that inclusion of all fishermen under TAA for Farmers would be incompatible with section 143 of the Trade Act of 2002, which directs the Secretary of Commerce to conduct a study and report to Congress regarding whether a trade adjustment assistance program is appropriate and feasible for fishermen.**

- **The Definition of Like or Directly Competitive Articles**
 - Ten respondents favored a less restrictive definition that would recognize imports of some processed and semi-processed articles as directly competitive with the agricultural commodities they produced. The final rule leaves the definition of articles like or directly competitive unchanged. Petitioners, who believe that the definition in the rule is too limiting, may request a public hearing to present evidence supporting their case under Sec. 1580.202. The rule allows the Administrator to evaluate the information provided in the hearing and other

information submitted in writing and to amend the terms of the original petition, if warranted.

➤ Impacted Areas

- Five respondents supported this provision in the proposed rule allowing producers from impacted areas to file petitions; none opposed. They saw this option as potentially useful to regional producers who might be adversely affected by import competition, while producers nationally might be less affected.

➤ Certification of a Decline in Net Farm Income

- Three respondents expressed concern that producers managing diversified farms might not qualify for adjustment assistance payments due to higher earnings from sales of other commodities. The purpose of TAA is to assist producers to adjust to imports by providing technical assistance to all and cash payments to those facing economic hardship. The final rule leaves unchanged the requirement that producers certify to a decline in net farm income, as reported on Internal Revenue Service Schedule F (Form 1040) and Form 4835, in order to receive a cash payment. However, the final rule does exclude TAA payments from being considered part of net farm income in subsequent qualifying years. Otherwise, TAA payments might be the cause for excluding producers from receiving the full benefits of the program.

➤ Window for Receiving Petitions

- Two respondents questioned the use of a window for filing petitions. TAA is intended to provide rapid relief to producers. However, funding is limited to \$90 million per fiscal year, which must be prorated among all eligible producers whenever claims exceed this amount, a very real possibility. Waiting until the close of the fiscal year to prorate is inconsistent with providing rapid relief. The rule therefore seeks middle ground between the intent of the legislation, on the one hand, and the requirement to prorate payments, on the other, by creating a window for filing petitions. The window concentrates the approval of petitions within the first half of the fiscal year. Closing the filing period at the end of January means that all petitions will be determined by mid-March and all applications for TAA benefits will be received by mid-June. The first prorated payments can be made shortly thereafter coincident with the issuance of any final counter-cyclical payments also made to the producer by the Commodity Credit Corporation. Because the total of TAA benefits and counter-cyclical payments are limited to \$65,000 in each fiscal year, issuing TAA benefits at this time will facilitate the application of this payment limitation.

➤ Classes of Agricultural Commodities

- One respondent raised the point that the rule does not address classes of goods within a commodity as discussed in section 292(c) of the Trade Act of 1974. The rationale for mentioning classes of commodities the Trade Act is to permit producers to take full advantage of the program by allowing them to define their crop more narrowly than might otherwise be permitted. To that end, the rule requires producers to identify their commodity by its Harmonized Tariff Schedule of the United States (HTS) number. This not only facilitates the unambiguous

collection of official import data for the commodity, but it also accommodates the major commodity classes, which are often separately identified in the HTS.

List of Subjects in 7 CFR Part 1580: Agricultural commodity imports; reporting and record keeping requirements; and trade adjustment assistance.

Final Rule: Accordingly, the regulations chapter XV at title 7 of the Code of Federal Regulations are amended by adding a new part 1580, to read as follows:

PART 1580--TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.

1580.101 General statement.

1580.102 Definitions.

1580.201 Petitions for trade adjustment assistance.

1580.202 Hearings, petition reviews, and amendments.

1580.203 Determination of eligibility and certification by the Administrator.

1580.301 Application for trade adjustment assistance.

1580.302 Technical assistance and services.

1580.303 Adjustment assistance payments.

1580.401 Subsequent qualifying year eligibility.

1580.501 Administration.

1580.502 Maintenance of records, audits and compliance.

1580.503 Debarment and suspension.

1580.504 Fraud and recovery of overpayments.

1580.505 Appeals.

1580.601 Implementation.

1580.602 Paperwork Reduction Act assigned number.

Authority: 19 U.S.C. 2401.

Sec. 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance for Farmers program. Under these provisions, producers of agricultural commodities may petition the Department of Agriculture for eligibility to apply for trade adjustment assistance based on criteria set forth in the Trade Act of 1974, as amended by the Trade Act of 2002 (19 U.S.C. 2251, et seq.). If the Administrator determines that the national average price for a commodity is less than 80 percent of the preceding 5-year average and that an increase in imports has contributed importantly to the decline in commodity prices, the producers may apply for technical assistance and cash benefits under the program.

Sec. 1580.102 Definitions.

As used in the part, the following terms mean:

Adjusted gross income means income as defined in 7 CFR 1400.601.

Administrator means the Administrator of the Foreign Agricultural Service (FAS).

Agricultural commodity means any commodity in its raw or natural state found in chapters 1, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the Harmonized Tariff Schedule of the United States (HTS), and chapter 3 of the HTS with respect to aquaculture products.

Aquaculture means the propagation and rearing of aquatic organisms in a controlled aquatic environment for the purpose of human consumption.

Articles like or directly competitive generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A "like" product means substantially identical in inherent or intrinsic characteristics, and the term "directly competitive" means those articles which are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefore.

Authorized representative means an association of agricultural commodity producers.

Certification date means the date on which the Administrator announces in the Federal Register or by Department news release, whichever comes first, a certification of eligibility to apply for adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator of the Farm Service Agency (FSA).

Extension Service means the Cooperative State Research, Education, and Extension Service of the U.S. Department of Agriculture.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

- (1) Great grandparent;
- (2) Grandparent;
- (3) Parent;
- (4) Child, including legally adopted children;
- (5) Great grandchildren;
- (6) Sibling of the family member in the farming operation; and
- (7) Spouse of a person listed in paragraphs (1) through (6) of this definition.

Farm Service Agency (FSA) means the Farm Service Agency of the U.S. Department of Agriculture.

Filing date means the date that a notice of petition is published in the Federal Register.

Group of producers means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year as defined by National Agriculture Statistic Service (NASS), or a specific period as proposed by the petitioners and certified by the Administrator.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the Administrator.

Net farm income means net farm profit or loss reported on Internal Revenue Service Schedule F (Form 1040) and Form 4835 for the year that most closely corresponds with the marketing year under consideration.

Net fishing income means net profit or loss, excluding payments under this part, reported on Internal Revenue Service Schedules C or C- EZ (Form 1040) for individuals or taxable income, excluding payments under this part, reported on Form 1120 for corporations during the tax year that most closely corresponds with the marketing year under consideration.

Person means an individual, partnership, joint stock owner, corporation, association, trust, estate, or any other legal entity as defined in 7 CFR 1400.3.

Pre-adjustment year means the tax year previous to that associated with the most recent marketing year in the initial producer petition.

Producer means a person who is either an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or a qualified fisherman.

Qualified fisherman means a person whose catch competes in the marketplace with like or directly competitive aquaculture products and report net fishing income to the Internal Revenue Service on Schedules C or C-EZ (Form 1040).

Raw or natural state means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching or fumigating.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Sec. 1580.201 Petitions for trade adjustment assistance.

(a) A group of agricultural commodity producers or qualified fishermen in the United States or their authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator, and submitted to FAS from August 15 through January 31. Petitions received after January 31 will be returned to the sender. If January 31 falls on a weekend, the petition will be accepted the next business day.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and email address (if available) of each producer in the group, or their authorized representative. A petition filed by a group shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petitioners shall indicate if they are filing on behalf of all producers in the United States, or if they are filing solely on behalf of all producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area, or the authorized representative must have members residing in each State within the impacted area.

(4) The beginning and ending dates for the marketing year during which domestic prices were affected by imports. A petition may be filed for only the most recent marketing year for which national average prices are available.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Price data supporting the petition.

(i) If the petition is filed on behalf of all producers of the agricultural commodity in the United States, the Administrator shall use national average prices compiled by the National Agricultural Statistics Service (NASS), whenever possible. If NASS has not compiled price data for the commodity, the petitioners shall provide national average prices for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide national average prices for the impacted area for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(iii) The Administrator may request petitioners to provide records to support their national average price data.

(d) Once the petition is received, the Administrator shall determine if it meets the requirements of Sec. 1580.201(c), and if so, publish notice in the Federal Register that a petition has been filed and that an investigation has begun. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the price series being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioners. If the petition does not meet the requirements of Sec. 1580.201(c), the Administrator shall notify as soon as possible the contact person for the group or the authorized representative of the deficiencies.

Sec. 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person(s) found by the Administrator to have a substantial interest in the proceedings, submits not later than 10 days after the filing date a request in writing for a hearing, the Administrator shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner, or any other person(s) having an interest in the proceedings takes issue with any of the information published in the Federal Register concerning the petition, they may submit to the Administrator their comments in writing or electronically for consideration by the Administrator not later than 10 days after the filing date.

(c) A producer residing outside the impacted area identified in a petition may file to become a party to the petition by fulfilling the requirements of Sec. 1580.201(c) within 10 days of the filing date. The Administrator may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator shall publish in the Federal Register as soon as possible any changes to the original notice resulting from any actions taken under this section.

Sec. 1580.203 Determination of eligibility and certification by the Administrator.

(a) As soon as practicable after the filing date, but in any event not later than 40 days after that date, the Administrator shall determine whether the petitioners satisfy the following conditions for adjustment assistance.

(1) The national average price for the agricultural commodity for the marketing year under review is equal to or less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year, and

(2) Increases in imports of articles like or directly competitive with the agricultural commodity contributed importantly to the decline in price described in paragraph (a)(1) of this section.

(b) If the Administrator determines that the above conditions have been satisfied, the producers covered by the petition shall be certified as eligible for adjustment assistance.

(c) Upon making a determination, whether affirmative or negative, the Administrator shall promptly publish in the Federal Register a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, internet web site notices, and use of broadcast and print media.

(e) Whenever a group of agricultural producers is certified as eligible for assistance, the Administrator shall use the occasion to notify and inform other producers about the Trade Adjustment Assistance Program and how they may petition for adjustment assistance.

Sec. 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility may apply for adjustment assistance. Producers may request advice from FSA regarding the preparation and submission of their applications.

(b) An eligible producer may submit an application for adjustment assistance by submitting to FSA a designated application form at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) When submitting an application, the producer shall provide documentation to support the amount of production reported to FSA for the most recent marketing year.

(d) Upon submitting their application, producers shall be immediately eligible to request trade adjustment technical assistance from the Extension Service at no cost.

(e) Producers able to furnish their applications with all the following certifications shall be eligible for adjustment assistance payments:

(1) Certification that technical assistance from the Extension Service under Sec. 1580.302 has been received.

(2) Certification that cash benefits have not been received under any of the provisions of the Trade Act of 1974, as amended, other than those permitted under this part.

(3) Certification that adjustment assistance payments have not exceeded the \$10,000 limitation for the Federal fiscal year.

(4) Certification that net farm or fishing income for the most recent tax year was less than that during the producer's pre-adjustment year.

(5) Certification that their average adjusted gross income, as determined in accordance with 7 CFR 1400.601, for the 3 preceding tax years does not exceed \$2,500,000.

(6) To comply with certifications in (e)(4) and (e)(5) of this section, an applicant shall provide either--

(i) Supporting documentation from a certified public accountant or attorney, or

(ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency.

(f) Persons legally authorized to execute program documents for estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

Sec. 1580.302 Technical assistance and services.

(a) Any producer of an agricultural commodity covered by a certification of eligibility may apply for and receive information and technical assistance from the Extension Service that will assist in adjusting to import competition and be at no cost to the producer.

(b) To qualify for technical assistance, producers shall apply under Sec. 1580.301.

(c) Producers shall have an opportunity to meet at least once with an Extension Service employee within 180 days of petition certification to receive information regarding the feasibility and desirability of substituting one or more alternative commodities for the adversely affected agricultural commodity and to receive technical assistance that will improve the competitiveness of the production and marketing of the adversely affected agricultural commodity by the producer, including yield and marketing of the adversely affected agricultural commodity by the producer, including yield and marketing improvements. The Extension Service shall provide to producers written confirmation of all technical assistance meetings. Producers shall also have access to technical information provided in writing and electronically.

(d) Producers shall also be provided information concerning procedures for applying for and receiving other Federal assistance and services available to workers facing economic distress.

(e) Producers shall be entitled to employment services and training benefits under trade adjustment assistance for workers managed by the U.S. Department of Labor.

Sec. 1580.303 Adjustment assistance payments.

(a) Applicants shall satisfy by September 30 all conditions of Sec. 1580.301 to qualify for adjustment assistance payments.

(b) The FSA office shall issue a payment to a producer that is equal to the product of the amount of the agricultural commodity produced in the most recent marketing year multiplied by one-half the difference between--

(1) An amount equal to 80 percent of the average of the national average prices of the agricultural commodity covered by the petition for the 5 marketing years preceding the most recent marketing year, and

(2) The national average price of the agricultural commodity for the most recent marketing year.

(c) The maximum amount of payments under this part that a person may receive during the Federal fiscal year shall not exceed \$10,000.

(d) The total amount of payments made under this part to a person during any fiscal year when considered with the total amount of counter-cyclical payments made in accordance with part 1412 of this title for a corresponding crop year shall not exceed \$65,000 per fiscal year, as determined by the Administrator.

(e) Any person who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(f) In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

(g) If the Administrator, FAS, determines in September that program funds may be insufficient to meet the requirements for adjustment assistance payments under this part during the coming fiscal year, FSA may delay making adjustment payments in order to prorate amounts owed producers.

(h) FSA shall not make adjustment assistance payments to producers who have not met at least once with an Extension Service employee to receive technical assistance.

Sec. 1580.401 Subsequent qualifying year eligibility.

(a) Prior to the anniversary of a certification date,

(1) groups and authorized representatives that provided national average prices to justify their initial certifications shall provide the Administrator national average prices for the most recent marketing year, and

(2) the Administrator shall determine whether or not--

(i) The national average price for the agricultural commodity produced by the group for the most recent marketing year is equal to or less than 80 percent of the average of national average prices for the 5 marketing years used to make the first certification under Sec.1580.203(a)(1), and

(ii) Further increases in imports are contributing importantly to the decline in price.

(b) The Administrator shall promptly publish in the Federal Register the determination with supporting justification statement.

(c) In the case of a re-certification, FSA shall notify producers that they may be eligible to receive trade adjustment assistance for a subsequent qualifying year.

(d) To qualify for assistance in subsequent qualifying years, producers shall-- (1) Submit an application pursuant to Sec. 1580.301, and (2) Contact the Extension Service for technical adjustment assistance. (e) The amount of an adjustment assistance payment during a qualifying year shall be determined in the same manner as in the originating year, except that the average national price shall be determined by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

(f) An eligible producer who did not apply for adjustment assistance in the initial year may apply pursuant to Sec. 1580.301.

Sec. 1580.501 Administration.

(a) The application process will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reversing any action that is not in accordance with this part.

(d) No delegation in this part to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Administrator, FAS, may, by timely and appropriate public notification, modify non-statutory opening dates and deadlines for submitting petitions.

(f) The Deputy Administrator may, in consultation with the Administrator, FAS, authorize the State and county committees to waive or modify non-statutory application deadlines or other program requirements in cases where lateness or failure to meet such other requirements by applicants does not adversely affect the operation of the program.

Sec. 1580.502 Maintenance of records, audits and compliance.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by FSA. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of FSA, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service with 30 days of the filing.

(d) If requested in writing by the United States Department of Agriculture or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in Sec. 1580.301(c), within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable by the county committee. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

Sec. 1580.503 Debarment and suspension.

The Government-wide Debarment and Suspension (Nonprocurement) regulations and Government Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017-- subparts A through E, apply to this part.

Sec. 1580.504 Fraud and recovery of overpayments.

(a) If the Administrator, FSA, or a court of competent jurisdiction, determines that any person has received any payment under this program to which the person was not entitled, such person will be liable to repay such amount to the Administrator, FSA. The Administrator, FSA, may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the person; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a), the Administrator, FSA, shall recover the overpayment by deductions from any sums payable to such person.

(c) If the Administrator, FSA, or a court of competent jurisdiction, determines that a person:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact, and, as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this program to which the person was not entitled, such person shall, in addition to any other penalty provided by law, be ineligible for any further payment under this program.

(d) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination and an opportunity for a fair hearing has been given to the person concerned, and the determination has become final.

(e) Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payments authorized to be furnished under this program shall be fined not more than \$10,000 or imprisoned for not more than 1 year, or both.

Sec. 1580.505 Appeals.

Any person may obtain reconsideration and review of determinations made with respect to applications for program benefits under this part in accordance with appeal regulations of the 7 CFR part 780.

Sec. 1580.601 Implementation.

Trade adjustment assistance is available for the most recent marketing year for which prices were available on February 3, 2003.

Sec. 1580.602 Paperwork Reduction Act assigned number.

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to maximum extent possible. The information collection requirements contained in these regulations (7 CFR part 1580) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number 0551-0040.

Dated: August 15, 2003.

A. Ellen Terpstra, Administrator, Foreign Agricultural Service.