

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 650

RIN 0578-AA41

[Docket No. NRCS-IFR-08001]

### Regulations for Complying With the National Environmental Policy Act

**AGENCY:** Natural Resources Conservation Service (NRCS), USDA.

**ACTION:** Interim final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS or Agency) is amending its National Environmental Policy Act (NEPA) compliance regulations by clarifying the appropriate use of a program environmental assessment (EA) and by aligning its NEPA public involvement process with that of the Council on Environmental Quality's (CEQ) regulations that implement the NEPA. Both changes would better align the Agency regulations with the CEQ NEPA regulations and provide for the efficient and timely environmental review of NRCS actions, particularly those actions where Congress has directed NRCS action within short time periods of 60–90 days.

**DATES:** *Effective date:* This rule is effective June 25, 2008.

*Comment date:* Submit comments on or before July 25, 2008.

**ADDRESSES:** You may send comments (identified by Docket Number NRCS-IFR-08001) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Ecological Sciences Division, Natural Resources Conservation Service, Compliance with NEPA Comments, P.O.

Box 2890, Room 6158–S, Washington, DC 20013.

- *Fax:* 1–202–720–2646.

- *Hand Delivery:* Room 6158–S of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, NRCS, P.O. Box 2890, Room 6158–S, Washington, DC 20013; telephone (202) 720–4925; submit e-mail to: [matt.harrington@wdc.usda.gov](mailto:matt.harrington@wdc.usda.gov), *Attention:* Compliance with NEPA comments.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The NRCS invites interested persons to submit written comments, data(s), or views. The most helpful comments reference a specific portion of the revisions, explain the reason for any recommended further changes, and include supporting data. We ask that you send us two copies of written comments.

We will file all comments we receive in the docket, as well as a report summarizing each substantive public comment with NRCS personnel concerning this interim final rulemaking. The docket, including any personal information you provide, is made available for public inspection.

We will consider all comments we receive on or before the closing date for comments when we review the final rule's implementation and determine whether further action on these sections is necessary. We will consider comments filed late if it is possible to do so without incurring expense or delay.

##### Availability of Rulemaking Documents

You can get an electronic copy of the full Compliance with NEPA rule using the Internet through the NRCS homepage, at <http://www.nrcs.usda.gov>, and by selecting "Programs," then "National Environmental Policy Act (NEPA) Documents."

## Background

### Synopsis of the Rule

The rule will better align the NRCS' NEPA regulations with that of the CEQ's regulations that implement the NEPA. The rule amends 7 CFR 650.5(c) Figure 1 by inserting "Program EA" to the flow chart on NRCS decision-making and the rule adds a section to 7 CFR 650.8(a), which discusses the criteria for determining the need for a program EA. The rule also makes changes to 7 CFR 650.12 so that 650.12 better conforms to CEQ's similar regulations.

First, the rule amends 7 CFR 650.5(c) Figure 1 by inserting "Program EA" to the flow chart on NRCS decision-making and by adding a section to 7 CFR 650.8 discussing the criteria for determining the need for a program EA. Previously, Agency regulations did not address NRCS' ability to tier to Program EAs or clarify when it is appropriate to use a program environmental assessment. The change to Figure 1 explicitly confirms the State and field offices' ability to tier site specific environmental reviews and decision-making to either a Program EA or Program EIS. The change to section 650.8 clearly states when it is appropriate to use an environmental assessment. This change aligns NRCS' NEPA regulations with 40 CFR 1507.3(b)(2), which states that Agency NEPA regulations should identify specific criteria for and those classes of action which normally require EA but not EIS. For rulemaking actions under the Farm Bill, the Agency has prepared program EAs in the past because the limited significance of the actions did not warrant the preparation of an EIS. Therefore, this rule change provides for the efficient and timely environmental review of NRCS actions.

Second, NRCS is changing the current requirement of publication of the notice of availability for every EA/FNSI in the **Federal Register**. CEQ regulations require public involvement in preparing any EA/Finding of No Significant Impact (FNSI) and require a 30 day review period of the EA/FNSI only in the following limited circumstances: (a) The action is, or closely similar to, one which normally requires the preparation of an EIS, as defined by NRCS NEPA implementing regulations at 7 CFR 650.7, or (b) the nature of the action is one without precedent. The revised

interim final rule in 7 CFR 650.12 will change NRCS regulations to mirror CEQ's regulations. This will provide the Agency with the flexibility for all program actions to determine the most appropriate method of public involvement in preparing the EA/FNSI and the most appropriate method for publication of the notice of the availability of the EA/FNSI. As noted by CEQ regulations implementing NEPA (40 CFR 1506.6), actions primarily of local concern may be published in local newspapers and use other means to reach the interested and affected members of the public.

The rule will also allow the Agency to implement an action upon issuing the notice of availability of the EA/FNSI or at a specified time period after issuance of the notice based on the public involvement provided. For Agency actions with statutorily short rulemaking timeframes or for emergency actions, the ability to tailor public involvement and review allows the Agency to implement the action upon issuance of the notice of availability or a shorter time frame thereafter while still meeting the requirements of NEPA as well as its intent. This enables the Agency to prepare adequate NEPA analyses and to proceed with timely implementation for these important actions.

### Regulatory Certifications

#### *Executive Order 12866*

The NRCS reviewed this interim final rule under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993 (E.O. 12866), as amended by E.O. 13422 on Regulatory Planning and Review. This interim final is issued in accordance with the E.O. 12866. It has been determined that this interim final is not significant and, therefore, it has not been reviewed by the OMB.

#### *Regulatory Flexibility Act*

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any

other provision of law to publish a notice of interim final rulemaking with respect to the subject matter of this rule.

#### *Environmental Analysis*

The interim final rule amends the procedures for implementing the National Environmental Policy Act (NEPA) at 7 CFR part 650 and would not directly impact the environment. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular action. The CEQ set forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR 1505.1 and 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000).

#### *Paperwork Reduction Act*

There are no requirements for information collection associated with this interim final that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), NRCS has assessed the effects of this interim final on State, local, and Tribal governments and the private sector. This interim final does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### *Civil Justice Reform*

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this interim final, (1) all State and local

laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this interim final; and (3) before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

#### *Federalism*

NRCS has considered this interim final rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), "Federalism." The Agency has made an assessment that the interim final rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this interim final rule does not have Federalism implications.

#### *Energy Effects*

This interim final rule has been reviewed under Executive Order 13211 issued May 18, 2001 (E.O. 13211), "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." NRCS has determined that this interim final does not constitute a significant energy action as defined in E.O. 13211.

■ For the reasons stated in the preamble, the Natural Resources Conservation Service amends 7 CFR 650 as follows:

### **PART 650—COMPLIANCE WITH NEPA**

■ 1. The authority citation for part 650 is amended to read as follows:

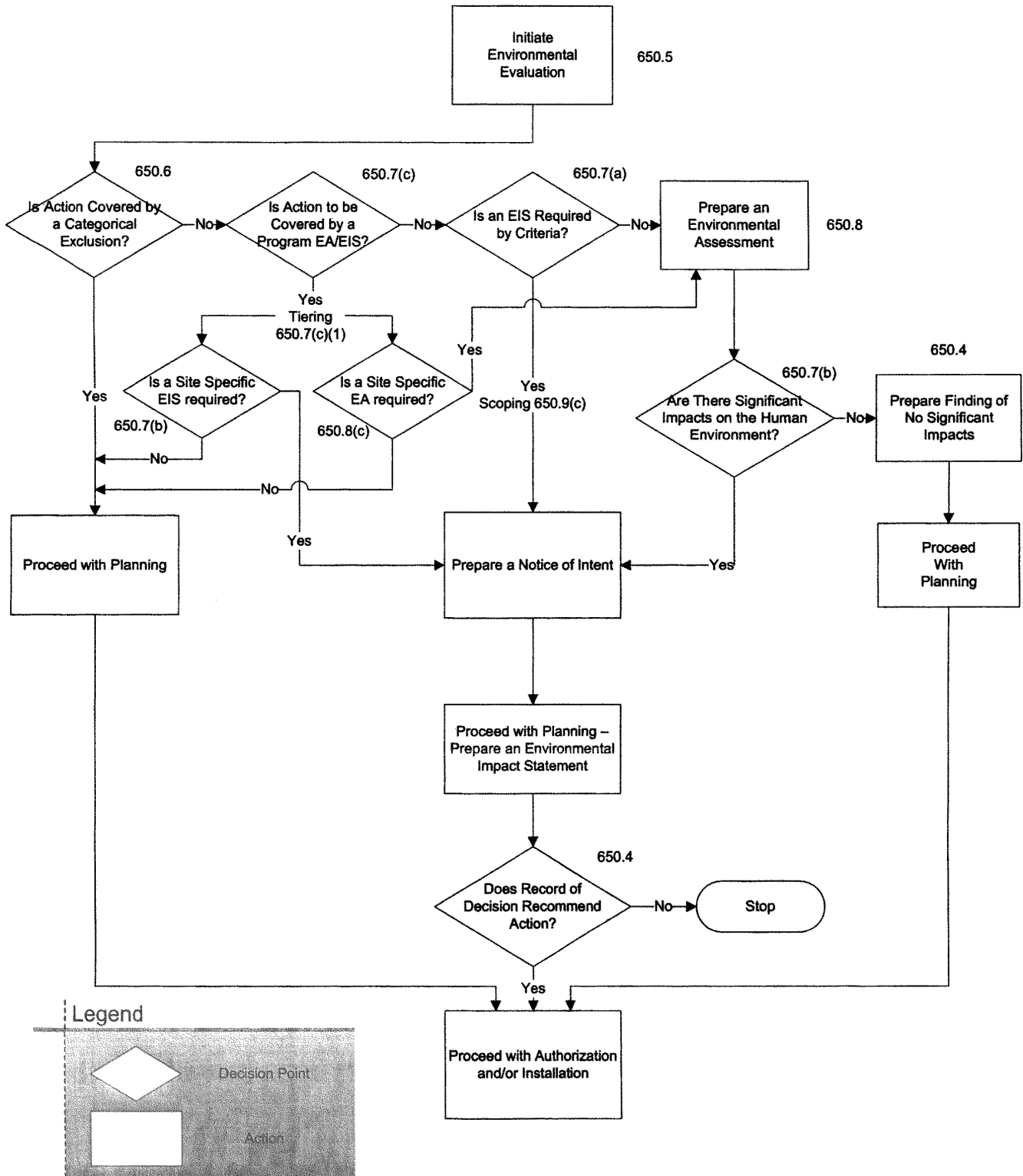
**Authority:** 42 U.S.C. 4321 *et seq.*; Executive Order 11514 (Rev.); 7 CFR 2.62, unless otherwise noted.

#### **§ 650.5 [Amended]**

■ 2. Section 650.5, following paragraph (c), Figure 1 is revised.

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# NEPA in NRCS Planning



■ 3. Section 650.8 paragraph (b) is revised, and paragraphs (c) and (d) are added as follows:

**§ 650.8 When to prepare an environmental assessment (EA).**

\* \* \* \* \*

(b) Other actions that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.

(c) Criteria for determining the need for a program EA:

(1) A program EA is to be prepared when NRCS has determined, based on the environmental evaluation, that a program EIS is not required and the program and actions to implement the program are not categorically excluded; and

(2) A program EA may also be prepared to aid in NRCS decision-making and to aid in compliance with NEPA.

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an action that is included in a program EA or EIS.

■ 4. Section 650.12 paragraph (c) heading text is revised; the (c)(1) designation is removed; paragraphs (c)(2) and (c)(3) are removed; paragraph (d) is revised; and new paragraph (e) is added to read as follows:

**§ 650.12 NRCS Decisionmaking.**

\* \* \* \* \*

(c) *Environmental Impact Statement (EIS) and Record of decision* \* \* \*

(d) *Environmental Assessments and Finding of No Significant Impact (FNSI)*

(1) EA's. If the EA indicates that the proposed action is not a major Federal action significantly affecting the quality of the human environment, the RFO is to prepare a finding of no significant impact (FNSI).

(2) *Availability of the FNSI (40 CFR 1501.4(e)(2))*. In accordance with CEQ regulations at 40 CFR 1501.4(e)(2), NRCS shall make the EA/FNSI available for public review for thirty days in the following instances: The proposed action is, or closely similar to, one which normally requires the preparation of an EIS as defined by NRCS NEPA implementing regulations at § 650.7, or the nature of the action is one without precedent. When availability for public review for thirty days is not required, NRCS will involve the public in the preparation of the EA/FNSI and make the EA/FNSI available for public review in accordance with CEQ regulations at 40 CFR 1501.4(b) and 1506.6.

(e) *Changes in actions*. When it appears that a project or other action needs to be changed, the RFO will

perform an environmental evaluation of the authorized action to determine whether a supplemental NEPA analysis is necessary before making a change.

Dated: June 11, 2008.

**Arlen Lancaster,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. E8-14122 Filed 6-24-08; 8:45 am]

**BILLING CODE 3410-16-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 956**

[Docket No. AMS-FV-07-0157; FV08-956-1 FR]

**Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Walla Walla Sweet Onion Marketing Committee (Committee) for the 2008 and subsequent fiscal periods from \$0.21 to \$0.22 per 50-pound bag or equivalent of Walla Walla sweet onions handled. The Committee locally administers the marketing order which regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. Assessments upon Walla Walla sweet onion handlers are used by the Committee to fund the reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* June 26, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; *Telephone:* (503) 326-2724, *Fax:* (503) 326-7440, or *E-mail:* [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, 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 Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate, as proposed herein, will be applicable to all assessable Walla Walla sweet onions beginning on January 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2008 and subsequent fiscal periods from \$0.21 to \$0.22 per 50-pound bag or equivalent of Walla Walla sweet onions handled.

The Walla Walla sweet onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from