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§ 319.37–7 [Amended]

■ 3. In § 319.37–7, paragraph (a)(3), the table is amended by removing the entry for ''*Fraxinus* spp. (ash)''.

Done in Washington, DC, this 17th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–22194 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–34–P

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: Affirmation of interim final rule as final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS or Agency) published an Interim Final Rule on June 25, 2008, 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 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. The Council on Environmental Quality, in accordance with their regulations, reviewed and approved the proposed changes on June 11, 2008. The comment period on the interim final rule closed on July 25, 2008. No comments were received on the interim final rule. Accordingly, NRCS is issuing this final rule to indicate that no comments were received and to announce that the interim rule is final without change.

DATES: Effective September 23, 2008, the interim final rule published on June 25, 2008 (73 FR 35883) is confirmed as final.

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,* Attention: Compliance with NEPA comments.

SUPPLEMENTARY INFORMATION:

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 Final Rule

The rule better aligns the NRCS' NEPA regulations with that of the CEQ's regulations that implement NEPA. The final rule amends 7 CFR 650.5(c) Figure 1 by inserting ''Program EA'' to the flow chart on NRCS decisionmaking 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 decisionmaking 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 decisionmaking 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 those classes of action which normally require an EA and those that require an 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 changes made in the NRCS final rule at 7 CFR 650.12 mirror that of CEQ's regulations. This change provides 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 final rule also allows 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 timeframe 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 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 final rule is issued in accordance with the E.O. 12866. It has been determined that this final rule is not significant and, therefore, it has not been reviewed by 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 final rulemaking with respect to the subject matter of this rule.

Environmental Analysis

The 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 final rule 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 final rule on State, local, and tribal governments and the private sector. This final rule 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule, (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 final rule; 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 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 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 final rule does not have Federalism implications.

Energy Effects

This 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 final rule does not constitute a significant energy action as defined in E.O. 13211.

For the reasons stated in the preamble, under the authority at 42 U.S.C. 4321 *et seq.*; Executive Order 11514 (Rev.); 7 CFR 2.62, the Natural Resources Conservation Service confirms the interim rule amending 7 CFR part 650 which published at 73 FR 35883 on June 25, 2008, is adopted as final without change.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service.

[FR Doc. E8–22090 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. AMS–FV–08–0052; FV08–922–1 FR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2008–09 and subsequent fiscal periods from $1.50 to $2.00 per ton for Washington apricots. The Committee is responsible for local administration of the marketing order regulating the handling of apricots grown in designated counties in Washington. Assessments upon handlers of apricots are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins April 1 and ends March 31. The assessment rate remains in effect indefinitely unless modified, suspended or terminated.

DATES: *Effective Date:* September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. 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: *Robert.Curry@usda.gov* or *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, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR 922), as amended, regulating the handling of apricots grown in designated counties in Washington, 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, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 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