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

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 2008–09 and subsequent fiscal periods from $1.50 to $2.00 per ton for Washington apricots handled.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of $1.50 per ton of apricots handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2008, and unanimously recommended 2008–09 expenditures of $7,093. In comparison, last year's budgeted expenditures were $6,743. In addition, the Committee recommended that the $1.50 per ton assessment rate approved for the 2007–08 and subsequent fiscal periods be increased by $0.50 to $2.00 per ton of apricots handled. The Washington apricot production area experienced freezing weather in April this year that was predicted to have a significant impact on apricot production. As a result, the Committee estimated a total fresh crop of only 3,650 tons for this season—significantly less than the 6,620 tons of fresh apricots reported to the Committee by industry handlers last season. Due to this anticipated shortfall, the Committee recommended that the assessment rate be increased by $0.50 to help ensure that budgeted expenses are adequately covered.

The major expenditures recommended by the Committee for the 2008–09 fiscal period include $4,800 for the management fee, $1,000 for Committee travel, $100 for compliance, and $1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2007–08 fiscal period included $4,800 for the management fee, $1,000 for travel, $500 for the annual financial audit, $100 for compliance, and $343 for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The assessment rate recommended by the Committee was derived by dividing the anticipated expenses of $7,093 by the projected 2008 3,650 ton apricot production. Applying the $2.00 per ton assessment rate to this crop estimate should provide $7,300 in assessment income. Although the 3,650 ton crop estimate reflects the Committee's best current assessment of the damage the late-season freezing temperatures may have had on production this season, Committee members expressed some concern that production could potentially end up even shorter. Because of the crop estimate uncertainty, the Committee felt that the $2.00 per ton assessment rate is warranted even though the projected fiscal year-end reserve balance at this time is $8,173. Although this amount is slightly higher than the recommended budget, the reserve would still be within the order's limit of approximately one fiscal period's operational expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2008–09 budget has been reviewed and approved by USDA. Subsequent fiscal period budgets will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 300 apricot producers within the regulated production area and approximately 22 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

The Washington Agricultural Statistics Service has prepared a report showing that the total 7,000 ton apricot utilization sold for an average of $1,120 per ton in 2007 with a total farm-gate value of approximately $7,827,000. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2007 can thus be estimated at approximately $26,090. In addition, based on information from the Committee and USDA's Market News Service, 2007 f.o.b. prices ranged from $18.00 to $20.00 per 24-pound loose-pack container, and from $20.00 to $22.00 for 2-layer tray-pack containers. Approximately 40 percent of the 2007 6,620 ton fresh pack-out was packed in 24-pound loose-pack containers while the remainder was packed in 2-layer tray-pack containers (weighing an average of about 20 pounds each). On the high end, this would have grossed the 22 apricot handlers approximately $13,151,700 in f.o.b. receipts for the 2007 crop—leaving average receipts for

each handler well below the SBA's $6,500,000 threshold for small businesses. Therefore, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from $1.50 to $2.00 per ton for apricots handled under the order's authority. The Committee also unanimously recommended 2008–09 expenditures of $7,093. With a 2008–09 Washington apricot crop estimate of 3,650 tons, the Committee anticipates assessment income of about $7,300. Due to the sharply smaller crop expected this season, the Committee recommended the assessment rate increase to help ensure that budgeted expenses are adequately covered.

Although there continues to be uncertainty this season regarding production totals due to the mid-spring freezing weather, income derived from handler assessments should adequately cover budgeted expenses. Because of the crop estimate uncertainty, the Committee felt the $2.00 per ton assessment rate is warranted even though the projected fiscal year-end reserve balance at this time is $8,173. Although this amount is slightly higher than the recommended budget, the reserve would still be within the order's limit of approximately one fiscal period's operational expenses.

The major expenditures recommended by the Committee for the 2008–09 fiscal period include $4,800 for the management fee, $1,000 for Committee travel, $100 for compliance, and $1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2007–08 fiscal period included $4,800 for the management fee, $1,000 for travel, $500 for the annual financial audit, $100 for compliance, and $343 for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The Committee discussed alternatives to this increase in the assessment rate. Leaving the assessment rate at $1.50 per ton was discussed, but not seriously considered since such a rate would not have earned adequate income and would have thus significantly depleted the Committee's reserves. Although a rate of assessment somewhat less than the recommended $2.00 per ton rate would have potentially covered the recommended expenses, the Committee chose the higher rate due to the uncertainty the members felt regarding the 3,650 ton crop estimate. The mid-April freeze experienced in the growing regions this year left doubt in some members minds that the final pack-out this season will even reach the 3,650 ton estimate.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2008–09 season could average about $1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2008–09 fiscal period as a percentage of total producer revenue is 0.2 percent for Washington apricots.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order.

In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Additionally, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 18, 2008 (73 FR 48156). Committee staff made copies of the proposed rule available to Committee members, handlers and other interested persons. The proposed rule was also made available through the Internet by USDA and the Office of the Federal Register. A 15 day comment period ending September 2, 2008, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared police of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2008–09 fiscal period began on April 1, 2008, and the order requires that the assessment rate for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Washington apricot harvest and shipping season is currently under way; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2008, an assessment rate of $2.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: September 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–22146 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

RIN 3150–AI45

[NRC–2008–0412]

Adjustment of Civil Penalties for Inflation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) it can assess under statutes within the jurisdiction of the NRC. These changes were mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The NRC is amending its regulations to adjust the maximum CMP for a violation of the Atomic Energy Act of 1954, as amended, (AEA) or any regulation or order issued under the AEA from $130,000 to $140,000 per violation per day. Further, the provisions concerning program fraud civil penalties are being amended by adjusting the maximum CMP under the Program Fraud Civil Remedies Act from $6,000 to $7,000 for each false claim or statement.

DATES: This rule is effective on October 23, 2008.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0412]. Address questions about NRC dockets to Carol Gallagher 301–415–5905; e-mail *Carol.Gallagher@nrc.gov*.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Maxwell C. Smith, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1246, e-mail: *maxwell.smith@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the head of each agency adjust by regulations the CMPs within the jurisdiction of the agency for inflation at least once every four years. The NRC's last adjustment to the CMPs within its jurisdiction became effective on November 26, 2004. (October 26, 2004; 69 FR 62393).

The inflation adjustment is to be determined by increasing the maximum CMPs by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June in the last calendar year in which the amount of the penalty was last adjusted. Applying this formula results in a 9.8 percent increase to the maximum CMPs for violations of the AEA. During the 2004 inflation adjustment, the CMPs for violations of the Program Fraud Civil Remedies Act remained unchanged. Therefore, for this update the percentage change to CMPs for violations of the Program Fraud Civil Remedies Act is the change in the CPI from June 2000 (the date it was last adjusted for inflation) until June 2007, which is a difference of 21 percent. In the case of penalties greater than $1,000, but less than or equal to $10,000, inflation adjustment increases are to be rounded to the nearest multiple of $1,000. Increases are to be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the Atomic Energy Act to $100,000 per day per violation. In 1996, under the Debt Collection Improvement Act (DCIA), the NRC adjusted this figure to $110,000. The DCIA also amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years. Therefore, in 2000 the NRC adjusted the maximum CMPs to $120,000, and in 2004 the NRC adjusted the maximum CMPs to $130,000. The NRC is required to adjust the CMPS within its jurisdiction again this year. After this mandatory adjustment for inflation, the adjusted maximum CMP for a violation of the AEA or any regulation or order issued under the AEA will be $140,000 per day per violation (rounding the amount of the inflation adjustment increase, 9.8 percent, to the nearest multiple of $10,000). Thus, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of $140,000 per day per violation. The amended maximum CMP applies only to violations that occur after the effective date of this final rule.

Monetary penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 and 3802, and the NRC's implementing regulations, § 13.3(a)(1) and (b)(1) are currently limited to $6,000. In 2004, when the NRC last adjusted CMPs for inflation, these penalties did not meet the statutory criteria to be changed because the inflation increase was not large enough. The NRC must adjust CMPs for the change in inflation since the last time the CMPs were adjusted. For the Program Fraud Civil Remedies Act CMPs, this means the change in the CPI since 2000; that difference is 21 percent. When this change is applied to § 13.3(a)(1) and (b)(1) (and rounding to the nearest multiple of $1,000) the new penalty amount will be $7,000. Thus, the NRC is amending § 13.3(a)(1) and (b)(1) by increasing the maximum civil penalty for each false statement or claim under the Program Fraud Civil Remedies Act from $6,000 to $7,000. The amended CMP applies only to violations that occur after the effective date of this final rule.

The Commission has no discretion to set alternative levels of adjusted civil penalties because the amount of inflation adjustment must be calculated by a formula established by statute.