State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

■ Accordingly, we are amending 7 CFR parts 360 and 361 as follows:

PART 360–NOXIOUS WEED REGULATIONS

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

§ 360.200 [Amended]

■ 2. In § 360.200, the list in paragraph (c) is amended by adding, in alphabetical order, entries for ''*Lygodium flexuosum* (Linnaeus) Swartz (maidenhair creeper)'' and ''*Lygodium microphyllum* (Cavanilles) R. Brown (Old World climbing fern)''.

■ 3. A new § 360.400 is added to read as follows:

§ 360.400 Preemption of State and local laws.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not regulate in foreign commerce any noxious weed in order to control it, eradicate it, or prevent its dissemination. A State or political subdivision of a State also may not impose prohibitions or restrictions upon the movement in interstate commerce of noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary; or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in this part preempt all State and local laws and regulations that are inconsistent with or exceed the regulations in this part unless a special need request has been granted in accordance with the regulations in §§ 301.1 through 301.13 of this chapter.

PART 361–IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

■ 4. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581-1610; 7 CFR 2.22, 2.80, and 371.3.

■ 5. In § 361.2, the section heading is revised and paragraphs (a) through (d) are redesignated as paragraphs (b) through (e), respectively, and a new paragraph (a) is added to read as follows:

§ 361.2 Preemption of State and local laws; general restrictions on the importation of seed and screenings.

(a) The regulations in this part preempt State and local laws regarding seed and screenings imported into the United States while the seed and screenings are in foreign commerce. Seed and screenings imported for immediate distribution and sale to the consuming public remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be considered on a case-by-case basis.

* * * * *

§ 361.6 [Amended]

■ 6. In § 361.6, paragraph (a)(1) is amended by adding, in alphabetical order, entries for ''*Lygodium flexuosum* (Linnaeus) Swartz (maidenhair creeper)'' and ''*Lygodium microphyllum* (Cavanilles) R. Brown (Old World climbing fern)''.

Done in Washington, DC, this 6th day of October, 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–25119 Filed 10–16–09: 8:45 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–FV–09–0038; FV09–922–1 FIR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2009–2010 and subsequent fiscal periods from $2.00 to $1.00 per ton of apricots handled. The Committee locally administers the marketing order, which regulates the handling of apricots grown in designated counties in Washington. The decreased assessment rate is necessary to align the Committee's expected revenue with its proposed 2009–2010 budget.

DATES: *Effective Date: October 20, 2009.*

FOR FURTHER INFORMATION CONTACT: Robert 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@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or 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@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), 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.''

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

Under the order, Washington apricot handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable apricots for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1 and ends on March 31.

In an interim final rule published in the **Federal Register** on July 29, 2009, and effective July 30, 2009 (74 FR 37496, Doc. No. AMS–FV–09–0038; FV09–922–1 IFR), § 922.235 was amended by decreasing the assessment rate established for the Committee for the 2009–2010 and subsequent fiscal periods from $2.00 to $1.00 per ton of apricots handled. Because of the projections of a large crop this season, the Committee recommended the assessment rate decrease in order to maintain assessment income at a level proportionate to the current budget.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), 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 producers of fresh apricots in the regulated production area and approximately 22 handlers subject to regulation under the order. 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 $7,000,000.

Based on information compiled by the National Agricultural Statistics Service, the value of Washington's total apricot production in 2008 was $6,601,000. Based on 300 apricot producers, the average annual producer revenue from the sale of Washington apricots last year was approximately $22,000 per producer. In addition, based on Committee records and 2008 f.o.b. prices ranging from $20.00 to $26.00 per 24-pound loose-pack carton as reported by AMS Market News Service, the average annual revenue per handler in 2008 was $357,197. Therefore, the majority of Washington apricot producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009–2010 and subsequent fiscal periods from $2.00 to $1.00 per ton. The Committee unanimously recommended 2009–2010 expenditures of $7,843 and the decreased assessment rate at the May 21, 2009, meeting. The recommended assessment rate is $1.00 less than the rate in effect since the beginning of the 2008–2009 fiscal period. With an estimated 2009–2010 apricot crop of 7,600 tons, assessment income combined with funds from the Committee's monetary reserve should be adequate to cover budgeted expenses. The Committee recommended decreasing the assessment rate by 50 percent due to its estimate that the crop this season would approximately be twice the size of the crop actually harvested last year. With current crop and expense estimates, the Committee estimates that its reserve fund at the end of the 2009–2010 fiscal period will be about $8,300. This is equal to approximately one fiscal period's operational expenses as authorized by the order (§ 922.42).

The major expenditures recommended by the Committee for the 2009–2010 fiscal period include $4,800 for the management fee and $3,043 for operational expenses. In comparison, budgeted expenses for the 2008–2009 seasons were $4,800 and $2,293, respectively.

The Committee discussed alternatives to this rule. With the potential for a much larger crop this season, assessment rates over $1.00 per ton were not seriously considered because of the potential of generating too much income and thus increasing the reserve fund to an amount higher than program requirements allow.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2009–2010 season could average about $1,000 per ton. Therefore, the estimated assessment revenue for the 2009–2010 fiscal period as a percentage of total producer revenue could approximate 0.1 percent.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers of Washington apricots. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. The Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 21, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action does not impose additional reporting or recordkeeping requirements on 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. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim final rule were requested by September 28, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, USDA is adopting the interim final rule as a final rule without change. To view the interim final rule on the Internet, navigate to: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809fd6a6.*

This action also affirms information contained in the interim final rule pertaining to Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 37496, July 29, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 922, which was published at 74 FR 37496 on July 29, 2009, is adopted as a final rule without change.

Dated: October 9, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–25121 Filed 10–16–09; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI53

[NRC–2008–0663]

Industry Codes and Standards; Amended Requirements; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 19, 2009, for the direct final rule that was published in the **Federal Register** on August 5, 2009. This direct final rule amended the NRC's regulations on governing vessel head inspection requirements. This amendment revised the upper range of the percentage of axial flaws permitted in a specimen set used for the qualification of nondestructive examination systems (procedures, personnel and equipment), which are used in the performance of inservice inspection (ISI) of pressurized water reactor (PWR) upper vessel head penetrations. This amendment was made as a result of the withdrawal of a stakeholder's recommendation necessitated by a typographical error in the original recommendation with respect to the maximum percentage of flaws that should be oriented axially.

DATES: The effective date of October 19, 2009, is confirmed for the direct final rule published August 5, 2009 (74 FR 38890).

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Manash K. Bagchi, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2905, e-mail *manash.bagchi@nrc.gov*.

SUPPLEMENTARY INFORMATION: On August 5, 2009 (74 FR 38890), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR Part 50 governing vessel head inspection requirements. This amendment revises the upper range of the percentage of axial flaws from 40 percent to 60 percent permitted in a specimen set used for the qualification of nondestructive examination systems (procedures, personnel and equipment), which are used in the performance of ISI of PWR upper vessel head penetrations. This amendment is being made as a result of the withdrawal of a stakeholder's recommendation necessitated by a typographical error in the original recommendation with respect to the maximum percentage of flaws that should be oriented axially. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 19, 2009. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 13th day of October, 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E9–25049 Filed 10–16–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0504; Airspace Docket No. 09–AGL–7]

Amendment of Class E Airspace; Tioga, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Tioga, ND. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Tioga Municipal Airport, Tioga, ND. This action also amends the geographic coordinates of Tioga Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Tioga Municipal Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 31, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Tioga, ND, reconfiguring controlled airspace at Tioga Municipal Airport, Tioga, ND. (74 FR 38142, Docket No. FAA–2009–0504). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Tioga, ND, adding additional controlled airspace extending upward from 700 feet above the surface at Tioga Municipal Airport, Tioga, ND, for the safety and management of IFR operations. This action also amends the geographic coordinates of Tioga Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is