

of production on 44 percent of the harvested acres.

This final rule provides more equitable representation by transferring one member and one alternate member position from District 1 to District 3. District 1 is reduced to 2 members and alternates (17 percent representation and 12 percent of the production) while District 3 is increased to 4 members and alternates (33 percent representation and 39 percent of production). Districts 2 and 4 continue to be represented by 2 and 4 members and alternates, respectively.

To implement the recommended reapportionment for Districts 1 and 3, paragraphs (a) and (c) of § 966.161 of Subpart—Rules and Regulations (7 CFR 966.100 to 966.323) is revised accordingly.

This final rule provides for equitable and balanced representation on the Committee, and will not impose additional costs on growers and handlers.

Notice of action was published in the **Federal Register** on November 29, 1994 (59 FR 60919). The proposed rule provided a 30-day comment period which ended December 29, 1994. One comment supporting this action was received.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's unanimous recommendation and other information, it is found that this final rule will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

#### PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 966.161 is amended by revising paragraphs (a) and (c) to read as follows:

#### § 966.161 [Amended]

\* \* \* \* \*

(a) District 1—two members and their alternates.

(b) \* \* \*

(c) District 3—four members and their alternates.

\* \* \* \* \*

Dated: January 24, 1995.

**Sharon Bomer Lauritsen,**  
*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95-2216 Filed 1-27-95; 8:45 am]  
BILLING CODE 3410-02-P

#### 7 CFR Part 979

[Docket No. FV94-979-1IFR; Amendment 1]

#### Melons Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

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

**ACTION:** Amended interim final rule with request for comments.

**SUMMARY:** This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Melon Committee (Committee) under M.O. No. 979. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers. **DATES:** Effective October 1, 1994, through September 30, 1995. Comments received by March 1, 1995, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement

No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1994-95 fiscal period, which began October 1, 1994, and ends September 30, 1995. This interim final 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 the Secretary 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 requesting 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 producers of South Texas melons under this

marketing order, and approximately 19 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1994-95 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of \$207,500 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research projects were to be recommended at a later Committee meeting. The Committee administrative expenses of \$207,500 were published in the **Federal Register** as an interim final rule November 15, 1994 (59 FR 58760). That interim final rule added § 979.217, authorizing expenses for the Committee, and provided that interested persons could file comments through December 15, 1994. No comments were filed.

The Committee subsequently met on December 13, 1994, and unanimously recommended an increase of \$9,700 for administrative expenses, plus \$158,426 in research expenses, for a total budget of \$375,626. Budget items for 1994-95 which have increased compared to those budgeted for 1993-94 (in parentheses) are: Office salaries, \$22,000 (\$15,600), insurance, \$6,250 (\$5,250), accounting and audit, \$2,600 (\$2,300), rent and utilities, \$6,000 (\$4,000), disease management programs, \$86,716 (\$82,000), melon breeding and cultivar development, \$43,824 (\$23,118), and

variety evaluation, \$9,186 (\$8,460). Items which have decreased compared to the amount budgeted for 1993-94 (in parentheses) are: Insect management programs, \$18,700 (\$34,390), and \$3,823 for cultural practices for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The initial 1994-95 budget, published on November 15, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of \$0.07 per carton. This rate, when applied to anticipated shipments of approximately 45,000 cartons, will yield \$315,000 in assessment income, which, along with \$60,626 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of November 30, 1994, were \$367,369, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations 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 policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on October 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to that taken for the 1993-94 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments

timely received will be considered prior to finalization of this action.

#### List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

#### PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 979.217 is revised to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

#### § 979.217 Expenses and assessment rate.

Expenses of \$375,626 by the South Texas Melon Committee are authorized and an assessment rate of \$0.07 per carton is established for the fiscal period ending September 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: January 24, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

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#### 7 CFR Part 982

[Docket No. FV94-982-3IFR]

#### Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1994-95 Marketing Year

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1994-95 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export, and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was