

\$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 January 31, 1995, were \$367,369, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 30, 1995 (60 FR 5560). That interim final rule amended § 979.217 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through March 1, 1995. No comments were received.

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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994-95 fiscal period began on October 1, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule revising § 979.217 which was published

at 60 FR 5560 on January 30, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-8098 Filed 3-31-95; 8:45 am]

BILLING CODE 3410-02-W-P

7 CFR Part 982

[Docket No. FV94-982-3FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established 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 recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: May 3, 1995.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326-2725 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." This 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1994-95 marketing year. 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 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 request a modification of the order or to be exempted therefrom. A 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. 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 producers and handlers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. The interim final rule was issued on January 24, 1995, and published in the **Federal Register** (60 FR 5561, January 30, 1995), with an effective date of January 30, 1995. That rule established the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the finalization of interim and final free and restricted percentages will continue to benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns. That rule provided a 30-day comment period which ended March 1, 1995. No comments were received.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such figure by no more than 25 percent, if market conditions warrant such an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1994-95 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 25, 1994, meeting, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,020 tons of filberts/hazelnuts from the 1994 crop for domestic inshell use. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 8, 1994, reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 19 percent free and 81 percent restricted, and final free and restricted percentages were recommended at 23 percent and 77 percent, respectively. The interim final percentages made an additional 208 tons of inshell filberts/hazelnuts available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and released 3,775 tons to the domestic inshell market from the 1994 supply subject to regulation. The final marketing percentages released an additional 626 tons from the 1994 crop for domestic use. Thus, a total of 4,401 tons of inshell filberts/hazelnuts was available from the 1994 supply subject to regulation for domestic use when the final percentages were established. The Oregon Agricultural Statistics Service (OASS) provided an early estimate of 19,000 tons total filbert/hazelnut production for the Oregon and Washington area. The Board unanimously voted to accept the OASS estimate of 19,000 tons.

The Board determined that the inshell domestic market conditions would allow more supply without depressing the market and recommended immediate release of the additional 15 percent (the final percentages). The Board believed that the immediate release of filberts/hazelnuts by the final percentages would benefit the industry with increased returns to growers and more inshell filberts/hazelnuts available for consumers.

The marketing order also requires that, procedurally, the Board recommend interim final and final percentages. Therefore, the interim final percentages were recommended even though they will not be utilized this marketing season.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1994-95 marketing year:

	Tons
Inshell Supply:	
(1) Total production (OASS estimate)	19,000
(2) Less substandard, farm use (disappearance)	1,083
(3) Merchantable production (the Board's adjusted crop estimate)	17,917
(4) Plus undeclared carryin as of July 1, 1994, subject to regulation	1,527
(5) Supply subject to regulation (Item 3 plus Item 4)	19,444
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell filberts/hazelnuts for three prior years	4,170

	Tons	
(7) Increase to encourage increased sales (5 percent of Item 6)	208	
(8) Less declared carryin as of July 1, 1994, not subject to regulation	603	
(9) Adjusted Inshell Trade Demand	3,775	
(10) 15 percent of the average trade acquisitions of inshell filberts/hazelnuts for three prior years (Item 6)	626	
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)	4,401	
	Free	Restricted
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5) $\times 100$	19	81
(13) Final percentages (Item 11 divided by Item 5) $\times 100$	23	77

In addition to complying with the provisions of the marketing order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. The volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market have available a quantity equal to 110 percent of prior years' shipments in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. At its August 25, 1994, meeting, the Board recommended that an increase of 5 percent (208 tons) for market expansion be included in the inshell trade demand. The established final percentages, which release 100 percent of the inshell trade demand, will make available 4,401 tons from the 1994 crop plus 603 tons of declared carryin which is 120 percent of prior years' sales, thus exceeding the goal of the Guidelines.

Based on these considerations, 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 material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 5561, January 30, 1995), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982, which was published at 60 FR 5561 on January 30, 1995, is adopted as a final rule without change.

Dated: March 28, 1995.

Sharon Bomer Lauritsen,
Deputy Director, *Fruit and Vegetable Division*.
[FR Doc. 95-8100 Filed 3-31-95; 8:45 am]
BILLING CODE 3410-02-W

7 CFR Part 985

[Docket No. FV95-985-1IFR]

Spearmint Oil Produced in the Far West; Expenses and Assessment Rate for the 1995-96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim Final Rule with Request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1995-96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning June 1, 1995, through May 31, 1996. Comments received by May 3, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, *Fruit and Vegetable Division*, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 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: Caroline C. Thorpe, Marketing Order Administration Branch, *Fruit and Vegetable Division*, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 720-5127; or Robert Curry, *Northwest Marketing Field Office*, *Fruit and Vegetable Division*, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204, telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. 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, spearmint oil produced in the Far West is subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable oil produced during the 1995-96 fiscal year, beginning June 1, 1995, through May 31, 1996. 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