

Dated: June 5, 1996.
 Kenneth C. Clayton,
Acting Administrator.
 [FR Doc. 96-14971 Filed 6-12-96; 8:45 am]
 BILLING CODE 3410-02-P

7 CFR Part 29

[Docket No. TB-95-13]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Horse Cave, Glasgow, and Greensburg, Kentucky, to become the consolidated market of Horse Cave-Glasgow-Greensburg. A mail referendum was conducted during the period of April 15-26, 1996, among tobacco growers who sold tobacco on these markets the previous season to determine producer approval/disapproval of the designation of these three markets as one consolidated market. Growers approved the merger. Therefore, for the 1996 and succeeding burley marketing seasons, the Horse Cave, Glasgow, and Greensburg, Kentucky, tobacco markets shall be designated as and called Horse Cave-Glasgow-Greensburg. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Rebecca Fial, Assistant to the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456; telephone number (202) 260-0151.

SUPPLEMENTARY INFORMATION: A notice was published in the March 18, 1996, issue of the Federal Register (61FR, 10902) announcing that a referendum would be conducted among active burley producers who sold tobacco on either Horse Cave, Glasgow, or Greensburg markets to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Horse Cave-Glasgow-Greensburg, Kentucky, would be designated as a burley tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1996 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Cave City, Kentucky, on September 13, 1995, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the April 15-26 referendum were mailed to 7,602 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 2,124 responses: 1,815 eligible producers voted in favor of the consolidation; 213 eligible producers voted against the consolidation; and 96 ballots were determined to be invalid.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not

intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. It has been determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29, subpart D, is amended as follows:

PART 29—[AMENDED]

Subpart D—Order of Designation of Tobacco Markets

1. The authority citation for 7 CFR Part 29, subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended by sec. 157(a)(1), 95 Stat. 374 (7 U.S.C. 511d).

2. In § 29.8001, the table is amended by adding a new entry (mmm) to read as follows:

Territory	Types of tobacco	Auction markets	Order of designation	Citation
(mmm) Kentucky	burley	Horse Cave-Glasgow-Greensburg, KY	July 15, 1996.	

Dated: June 5, 1996.
 Kenneth C. Clayton,
Acting Administrator.
 [FR Doc. 96-14970 Filed 6-12-96; 8:45 am]
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7 CFR Part 982

[Docket No. FV96-982-1IFR]

Hazelnuts Grown in Oregon and Washington; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the

Hazelnut Marketing Board (Board) under Marketing Order No. 982 for the 1996-97 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective July 1, 1996. Comments received by July 15, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this 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, 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, FAX 202-720-5698, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724, FAX 503-326-7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982; April 22, 1996, 61 FR 17556), regulating the handling of hazelnuts grown in Oregon and Washington. 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington hazelnut handlers 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 hazelnuts beginning July 1, 1996, and continuing 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 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. 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 to review the Secretary's ruling on the petition, provided an action 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 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 1,000 producers of Oregon and Washington 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 Oregon and Washington hazelnut producers and handlers may be classified as small entities.

The Oregon and Washington hazelnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of hazelnuts. They are familiar with the Board'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 recommended by a mail vote and discussed reconfirmed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Board, in a mail vote, unanimously recommended 1996-97

expenditures of \$558,974 and an assessment rate of \$0.007 per pound of hazelnuts. In comparison, last year's budgeted expenditures were \$483,685. The assessment rate of \$0.007 is the same as last year's established rate. Major expenditures recommended by the Board for the 1996-97 year include \$50,020 for personal services (salaries), \$5,640 for rent, \$5,000 for auditing, \$5,000 for compliance, \$15,000 for a crop survey, \$275,000 for promotion, and \$182,364 for the emergency fund. Budgeted expenses for these items in 1995-96 were \$50,735, \$5,650, \$3,500, \$5,000, \$11,000, \$250,000, and \$140,000, respectively. The Board will consider using emergency funds for authorized activities when it is reasonably certain that its estimate of assessable hazelnuts will be reached. It will not be able to make this determination until December 1996, the month in which the hazelnut harvest and deliveries to handlers usually are completed. Hence, any decision on whether or not to undertake additional activities will not be made until December 1996, at the earliest.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of Oregon and Washington hazelnuts. Hazelnut shipments for the year are estimated at 20,000,000 pounds which should provide \$280,000 in assessment income. Income derived from handler assessments, interest, and from the Nut Growers Society in payment for services performed by the Board under an agreement with the Society, along with funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds remaining in the reserve at the end of the 1996-97 marketing year should be about \$196,240. Funds in the reserve will be kept within the maximum permitted by the order.

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

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

Although this assessment rate is effective for an indefinite period, the

Board will continue to conduct a mail vote prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Any mail votes will be discussed and reconfirmed at a public meeting. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board 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 Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 marketing year begins on July 1, 1996, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable hazelnuts handled during such marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to the assessment rate action issued last year; 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 rule.

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—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

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

2. A new subpart—Assessment Rates and a new § 982.340 are added to read as follows:

Subpart—Assessment Rates

§ 982.340 Assessment rate.

On and after July 1, 1996, an assessment rate of \$0.007 per pound of assessable hazelnuts is established for Oregon and Washington hazelnuts.

Dated: June 7, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-14985 Filed 6-12-96; 8:45 am]

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7 CFR Parts 997 and 998

[Docket No. FV96-998-1IFR]

Increased Assessment Rate for Domestically Produced Peanuts Handled By Persons Not Subject to Peanut Marketing Agreement No. 146 and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the administrative assessment rate under Marketing Agreement 146 (agreement) for the 1995-96 crop year. Authorization of the increase in the administrative assessment rate enables the Peanut Administrative Committee (Committee) to collect sufficient funds to pay expenses for the remainder of the year. Funds to administer this program are derived from assessments on handlers who have signed the agreement. Public Law 103-66 requires the Department of Agriculture (Department) to impose an administrative assessment on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, this same increase in the assessment rate under the agreement will apply to all non-signatory handlers. **DATES:** Effective July 1, 1995, through June 30, 1996. Comments received by July 15, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments

concerning this 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, 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, FAX 202-720-5698, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770, FAX 941-299-5169.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, hereinafter referred to as the "Act"; Pub. L. 101-220, section 4(1), (2), 103 Stat. 1878, December 12, 1989; Pub. L. 103-66, section 8b(b)(1), 107 Stat. 312, August 10, 1993; and under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department established a 1995-96 crop year assessment rate applicable to non-signatory and signatory handlers effective July 1, 1995, through June 30, 1996. This rule increases the administrative assessment rates for the crop year which began July 1, 1995. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31 (c) and (d), are subject to the assessments. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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.