

**§ 959.322 Handling regulation.**

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(f) \* \* \*

(5) *Export shipments.* Export shipments shall be exempt from all container requirements of this section.

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Dated: February 17, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-4596 Filed 2-23-98; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 982**

[Docket No. FV97-982-1 FIR]

**Hazelnuts Grown in Oregon and Washington; Reduced Assessment Rate**

**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 decreased the assessment rate established for the Hazelnut Marketing Board (Board) under Marketing Order No. 982 for the 1997-98, and subsequent marketing years. The Board is responsible for the 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. The 1997-98 marketing year covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** March 26, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by

contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." 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 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, 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, 1997, and continuing in effect indefinitely unless modified, 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.

This rule continues in effect the assessment rate established for the Board for the 1997-98, and subsequent marketing years of \$0.004 per pound of hazelnuts.

The 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 formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97, and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on August 28, 1997, and unanimously recommended 1997-98 expenditures of \$553,218 and an assessment rate of \$0.004 per pound of hazelnuts. In comparison, last year's budgeted expenditures were \$558,974. The assessment rate of \$0.004 is \$0.003 less than the rate previously in effect. At the former rate of \$0.007 per pound and an estimated 1997 hazelnut production of 70,000,000 pounds, the projected reserve on June 30, 1998, would have exceeded the level the Board believes is necessary to administer the program. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled \$284,894. The reduced assessment rate is expected to result in an operating reserve of \$257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed lower assessment rates, but decided that an assessment rate of less than \$0.004 would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997-98 marketing year include \$46,864 for personnel service (salaries and benefits), \$5,640 for rent, \$5,000 for compliance, \$17,000 for a crop survey, \$269,000 for promotion, and \$182,364 for an emergency fund. Budgeted expenses for these items in 1996-97 were \$50,020, \$5,640, \$5,000, \$15,000, \$275,000, and \$182,364, respectively.

The assessment rate recommended by the Board was derived by dividing

anticipated expenses by expected shipments of hazelnuts. With hazelnut shipments for the year estimated at 70,000,000 pounds, the \$0.004 per pound assessment rate should provide \$280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

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 meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. 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 1997-98 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of 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 hazelnut producers and handlers may be classified as small entities.

This rule continues in effect a decreased assessment rate established for the Board and collected from handlers for the 1997-98, and subsequent marketing years. The Board unanimously recommended 1997-98 expenditures of \$553,218 and an assessment rate of \$0.004 per pound of hazelnuts. The assessment rate of \$0.004 is \$0.003 less than the rate previously in effect. At the former assessment rate of \$0.007 per pound, the Board's reserve was projected to exceed the level the Board believes is necessary to administer the program. Therefore, the Board voted to lower its assessment rate and use more of the reserve to cover its expenses. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled \$284,894. The reduced assessment rate is expected to result in an operating reserve of \$257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997-98 marketing year include \$46,864 for personal services (salaries and benefits), \$5,640 for rent, and \$5,000 for compliance, \$17,000 for a crop survey, \$269,000 for promotion, and \$182,364 for an emergency fund. Budgeted expenses for these items in 1996-97 were \$50,020, \$5,640, \$5,000, \$15,000, \$275,000, and \$182,364, respectively.

Hazelnut shipments for the year are estimated at 70,000,000 pounds, which should provide \$280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order. The maximum permitted of one marketing year's operational expenditures is specified in § 982.62. The reduced assessment rate is expected to result in an operating reserve of \$257,497, which is about equal to what the Board spent last year for program expenses.

Recent price information indicates that the grower price for the 1997-98 marketing season will range between \$0.32 and \$0.43 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 1997-98 marketing year as a percentage of total grower revenue will range between .93 and 1.25 percent.

This action continues to reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and 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.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large hazelnut 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. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the August 28, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on October 14, 1997 (62 FR 53225). The rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended December 15, 1997. No comments were received.

After consideration of all relevant matter presented, including the Board's recommendation, and other information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (62 FR 53225, October 14, 1997) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 982

Marketing agreements, Hazelnuts, Reporting and recordkeeping requirements.

**PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON**

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 62 FR 53225 on October 14, 1997, is adopted as a final rule without change.

Dated: February 17, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-4593 Filed 2-23-98; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 984**

[Docket No. FV97-984-1 FIR]

**Walnuts Grown in California; Decreased Assessment Rate**

**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 decreased the assessment rate established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1997-98 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** March 26, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." 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 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, California walnut 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 walnuts beginning August 1, 1997, 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 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.

This rule continues in effect the assessment rate of \$0.0116 per kernelweight pound of certified merchantable walnuts established for the Board for the 1997-98 and subsequent marketing years.

The California walnut 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 California walnuts. 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 formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997-98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 12, 1997, and unanimously recommended 1997-98 expenditures of \$2,391,289 and an assessment rate of \$0.0116 per kernelweight pound of certified merchantable walnuts. In comparison, last year's budgeted expenditures were \$2,301,869. The assessment rate of \$0.0116 is \$0.0001 lower than the rate formerly in effect. The lower assessment rate is needed to bring expected assessment income closer to the amount necessary to administer the program for the 1997-98 marketing year. The quantity of assessable walnuts for 1997-98 is estimated at 207,000,000 kernelweight pounds, or 9,000,000 kernelweight pounds higher than estimated for 1996-97. With more assessable walnuts, the former rate of assessment would have generated substantially more funds than needed to meet the Board's financial obligations. Assessment income would have exceeded anticipated expenses by about \$31,000. The decrease in the assessment rate in conjunction with the anticipated increase in assessable walnuts should provide adequate assessment income to meet this year's expenses.

The major expenditures recommended by the Board for the 1997-98 year include \$240,326 for general expenses, \$147,126 for office expenses, \$1,928,837 for research expenses, \$50,000 for a production research director, and \$25,000 for the reserve. Budgeted expenses for these items in 1996-97 were \$232,684, \$150,508, \$1,840,677, \$48,000, and \$30,000, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California