

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 982****[Docket No. AO-205-A7; FV94-982-1]****Filberts/Hazelnuts Grown in Oregon and Washington; Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order No. 982****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision invites written exceptions on proposed amendments to Marketing Agreement and Order No. 982 (order). The agreement and order regulate the handling of filberts/hazelnuts grown in Oregon and Washington. The proposed amendments would make changes in order provisions regarding: Volume control; nomination and membership of the Filbert/Hazelnut Marketing Board (Board); collecting assessments; and the administration and operation of the program. The proposed amendments were submitted by the Board to make the order more consistent with current industry conditions and needs. The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), is proposing conforming and other necessary changes. The proposed amendments are designed to improve order operations.

**DATES:** Written exceptions must be filed by July 7, 1995.

**ADDRESSES:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081-S, Washington, D.C. 20050-9200, FAX (202) 720-9776. Four copies of all written exceptions should be submitted and should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Teresa 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) 326-2724, FAX (503) 326-7440; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington,

D.C. 20090-6456; telephone: 202-720-6862; FAX 202-720-5698.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Public Hearing issued on February 24, 1994, and published in the February 28, 1994, issue of the **Federal Register** (59 FR 9425).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and, therefore, is excluded from the requirements of Executive Order 12866.

**Preliminary Statement**

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Order No. 982 and of the opportunity to file written exceptions thereto. For the purposes of this document and this formal rulemaking proceeding, Marketing Agreement and Order No. 982 is referred to as the "order" and the term filberts and filberts/hazelnuts is hereinafter referred to as hazelnuts. Copies of this decision may be obtained from Teresa Hutchinson or Tom Tichenor, at the addresses listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed further amendment of the order is based on the record of a public hearing held in Newberg, Oregon, on March 8, 1994. Notice of this hearing was published in the **Federal Register** on February 28, 1994. The notice of public hearing listed 12 proposals submitted by the Board, the agency responsible for local administration of the order, and one proposal by the Fruit and Vegetable Division (Division), of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), concerning conforming changes.

The proposals would: (1) Change the name of the commodity covered under the order from "filberts" to "hazelnuts;" (2) for purposes of volume regulation, establish the trade demand area as the entire United States and allow the Board, with the Secretary's approval, to make changes in the inshell trade acquisition distribution area; (3) change the length of Board members' terms of office and the number of consecutive terms that may be held, make changes in the criteria used for nominating handler members and for weighting

handler votes when electing handler nominees, and change the voting procedures used for nominating members; (4) allow Board telephone votes to remain unconfirmed until the next public Board meeting; (5) remove the "verbatim" reporting requirement on Board marketing policy meetings; (6) provide the Board with some flexibility in recommending final free and restricted percentages; (7) authorize different identification standards for inspected and certified hazelnuts; (8) correct current language that specifies handler credit for ungraded hazelnuts; (9) change the procedures for establishing bonding requirements for deferred restricted obligations and allow the Board to purchase excess restricted credits from handlers; (10) clarify that mail order sales outside the production area are not exempt from order requirements; (11) allow the Board to accept advance assessment payments, provide discounts for such payments, and accept voluntary contributions; and (12) make such changes as are necessary to conform with any amendment that may result from the hearing.

The public hearing was held to: (1) Receive evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determine whether there is a need for the proposed amendments to the order; and (3) determine whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act.

No person testified in opposition to the proposals offered at the hearing and no alternative proposals were offered.

At the conclusion of the hearing, the administrative law judge fixed April 8, 1994, as the final date for interested persons to file corrections to the hearing transcript, proposed findings and conclusions, and written arguments or briefs based on the evidence received at the hearing. Corrections to the hearing transcript were filed by the Division with the Hearing Clerk on April 5, 1994. No other corrections, findings, conclusions, arguments or briefs were filed.

**Small Business Considerations**

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts for the last three years of less