Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV95-982-1FIR]

Filberts/Hazelnuts Grown in Oregon and Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service,

USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 982 for the 1995–96 marketing year. Authorization of this budget enables the Filbert/ Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers. EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

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 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.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. 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 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington filberts/hazelnuts are subject to assessments. Funds to administer the Oregon-Washington filbert/hazelnut order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable filberts/hazelnuts during the 1995–96 marketing year which began

July 1, 1995, and ends June 30, 1996. 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 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 1,000 producers of Oregon and Washington filberts/hazelnuts under this marketing order, and approximately 25 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 Oregon and Washington filbert/hazelnut producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 marketing year was prepared by the Filbert/Hazelnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of filberts/hazelnuts. They are familiar with the

Board'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 assessment rate recommended by the Board was derived by dividing anticipated expenses by the expected quantity of assessable filberts/hazelnuts handled. Because that rate will be applied to the actual quantity of filberts/ hazelnuts, it must be established at a rate that will provide sufficient income

to pay the Board's expenses.

The Board, in a mail vote conducted last April, unanimously recommended a 1995–96 budget of \$483,685, \$23,325 less than the previous year. Budget items for 1995-96 which had increased compared to those budgeted for 1994-95 (in parentheses) are: Personal services (salaries), \$50,735 (\$48,000), postage, \$3,000 (\$1,800), communications, \$1,200 (\$1,100), printing and publishing, \$2,400 (\$2,300), insurance, \$700 (\$650), rent, \$5,650 (\$5,560), utilities, \$850 (\$800), equipment maintenance and rental, \$1,500 (\$1,400), and office supplies, \$2,000 (\$1,500). Items which had decreased compared to those budgeted for 1994-95 (in parentheses) are: Computer services, \$750 (\$1,500), furniture, \$250 (\$1,500), equipment, \$250 (\$1,500), and research (\$25,000) for which no funding was recommended this year. All other items were budgeted at last year's amounts. including \$250,000 for promotion.

The Board also unanimously recommended an assessment rate of \$0.007 per pound, the same as last year. At the time of the mail vote, assessable shipments were estimated at 60,000,000 pounds. This rate, when applied to anticipated shipments of 60,000,000 pounds, yields \$420,000 in assessment income. This, along with \$5,000 in interest income, \$2,572 from the Nut Growers Society in payment for services performed by the Board under an agreement with the Society, and \$56,113 from the Board's authorized reserve, was adequate to cover budgeted expenses. Funds in the reserve as of July 31, 1995, were \$286,673, which is within the maximum permitted by the order of one marketing year's expenses.

An interim final rule was published in the Federal Register on August 7, 1995 (60 FR 40061). That interim final rule added § 982.339 to authorize expenses and establish an assessment rate for the Board. That rule provided that interested persons could file written comments through September 6, 1995. The manager informed the Department of the Board's August 28, 1995, meeting recommendation to increase the level of authorized expenses.