

product sold inshell and thus could not be disposed of in non-human consumption outlets. Therefore, inshell almonds, including Peerless, are exempt from meeting the inedible disposition obligation. However, in order to determine the kernel weight of Peerless almonds sold inshell for reporting to the Board, a predetermined shelling ratio contained in the marketing order has been used in the absence of inspection. This shelling ratio converted the weight of inshell almonds to a shelled weight, or kernel weight. Over time, the total quantity and varieties of all almonds sold inshell have increased, while Peerless bleaching stock sales have declined. There has also been an increased desire and need to obtain an accurate product weight for growers, handlers, and the Board. Thus, it has become common industry practice to have inspections performed on Peerless almonds sold inshell, as with other varieties sold inshell, regardless of the inspection exemption.

Consistent with the Act, the almond marketing order was recently amended by a majority vote of producers to require that the weight of inshell almonds be determined by weighing a representative sample of such almonds. Previously, predetermined shelling ratios were used to determine the kernel weight. Thus, the shelling ratios were removed from the order. The purpose of the quality control amendments was to reflect current industry practices as referenced above, and to provide more accurate information for reporting purposes.

The amendments to the order necessitate conforming changes to the administrative rules and regulations. Section 981.442 of the quality control regulations is revised to remove an inspection exemption for Peerless inshell almonds. Thus, all almonds, regardless of form or variety, will be inspected.

In addition, § 981.401 is revised to remove the exemption for Peerless almonds from the definition of adjusted kernel weight. Currently, the adjusted kernel weight of Peerless inshell almonds is based on a predetermined weight contained in the shelling ratio table that was removed from the marketing order. Since Peerless inshell almonds will be required to have inspection, the actual kernel weight will be determined, thus providing an accurate weight.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will

tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the quality control requirements currently prescribed under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

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 rule until 30 days after publication in the Federal Register because: (1) The marketing order amendments prompting these changes were implemented on July 1, 1996; (2) related issues were discussed in amendatory proceedings to the marketing order (including a public hearing) and amendments to the order were subsequently approved by producers; (3) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 981.401 [Amended]

2. In § 981.401, the first sentence in paragraph (a) is amended by removing the words "Except for Peerless bleaching stock," and capitalizing the first letter in the word "adjusted", and by removing the last sentence; and by amending the first sentence in paragraph (b) by removing the words "Except for Peerless bleaching stock," and capitalizing the first letter of the word "the".

3. In § 981.442, paragraph (a)(1), the first sentence is amended by removing the words ", except lots of Peerless variety designated as bleaching stock," and in paragraph (a)(4), the last sentence is revised to read as follows:

§ 981.442 Quality Control.

(a) * * *
(4) * * * For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.
* * * * *

Dated: August 14, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–21120 Filed 8–19–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 982

[Docket No. FV96–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; 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 that established an assessment rate for the Hazelnut Marketing 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.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Martha Sue Clark, Program Assistant, 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, Marketing Specialist, 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. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

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 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, 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 and 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 in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the June 13, 1996, issue of the Federal Register (61 FR 29924). That interim final rule added § 982.340 to establish an assessment rate for the Board. That rule provided that interested persons could file comments through July 15, 1996. No comments were received.

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 those 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 marketing years 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 that good cause exists for not postponing the effective date of this rule 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 began 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 at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 982

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

Note: This section will appear in the Code of Federal Regulations.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule which was published at 61 FR 29924 on June 13, 1996, is adopted as a final rule without change.

Dated: August 13, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-21119 Filed 8-19-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 997 and 998

[Docket No. FV96-998-1 FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that increased the administrative assessment rate under Marketing Agreement 146 (agreement) for the 1995-96 crop year. Authorization of the increase in the

administrative assessment rate enabled 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 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, the increase in the assessment rate under the agreement must be applied to all non-signatory handlers.

EFFECTIVE DATE: Effective July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT:

Martha Sue Clark, Program Assistant, 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, Marketing Specialist, 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. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-2491, FAX 202-720-5698.

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 12988, 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.

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.

The interim final rule incorrectly stated that there are approximately 45 non-signers and 76 signatory handlers subject to the two regulations. Also, there are approximately 47,000 producers of peanuts in the 16 States covered under the agreement. 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. A majority of the producers and the non-signatory handlers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). Funds to administer the peanut agreement program are paid to the Committee and are derived from signatory handler assessments. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods and services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget and assessment rate. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that