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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV95-982-2FIR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1995-96 Marketing Year

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 established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1995-96 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced filberts/hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Teresa L. 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) 326-2725 or Mark A. Slupek, Marketing Specialist, Marketing Order

Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." This 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 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1995-96 marketing year. 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. A 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 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 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 filberts/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 producers and handlers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. The interim final rule was issued on January 22, 1996, and published in the Federal Register (61 FR 2665, January 29, 1996), with an effective date of January 29, 1996. That rule established the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the finalization of interim and final free and restricted percentages will continue to benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns. That rule provided a 30-day comment period which ended February 28, 1996. No comments were received.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80

percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such figure by no more than 25 percent, if market conditions warrant such an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout. Desirable carryout is used for early season shipments until the new crop is available for market.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut supply subject to regulation which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1995-96 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 28, 1995, meeting, the Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, to release 80

percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,478 tons of filberts/hazelnuts from the 1995 supply for domestic inshell use. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 15, 1995,

reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 12 percent free and 88 percent restricted, and final free and restricted percentages were recommended at 14 percent and 86 percent, respectively. The Board also recommended that the final percentages be effective on June 1, 1996, which is 30 days prior to the end of the season. The interim final percentages made an additional 870 tons of inshell filberts/hazelnuts available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and released 4,348 tons to the domestic inshell market from the 1995 supply subject to regulation. The final marketing percentages release an additional 637 tons from the 1995 crop for domestic use. Thus, a total of 4,985 tons of inshell filberts/hazelnuts will be available from the 1995 supply subject to regulation for domestic use when the final percentages are established. The National Agricultural Statistics Service (NASS) estimated filbert/hazelnut production at 38,000 tons for the Oregon and Washington area. The Board unanimously voted to accept the NASS estimate.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1995-96 marketing year:

	Tons	
	Free	Restricted
Inshell Supply:		
(1) Total production (NASS estimate)		38,000
(2) Less substandard, farm use (disappearance)		2,466
(3) Merchantable production (the Board's adjusted crop estimate)		35,534
(4) Plus undeclared carryin as of July 1, 1995, subject to regulation		11
(5) Supply subject to regulation (Item 3 plus Item 4)		35,545
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell filberts/hazelnuts for three prior years		4,247
(7) Increase to encourage increased sales (15 percent of Item 6)		637
(8) Less declared carryin as of July 1, 1995, not subject to regulation		536
(9) Adjusted Inshell Trade Demand		4,348
(10) 15 percent of the average trade acquisitions of inshell filberts/hazelnuts for three prior years (Item 6)		637
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)		4,985
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5) × 100	12	88
(13) Final percentages (Item 11 divided by Item 5) × 100	14	86

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its

computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that the

domestic inshell market have available a quantity equal to 110 percent of prior years' shipments in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market

expansion while retaining the mechanism for dealing with oversupply situations. At its August 28, 1995, meeting, the Board recommended that an increase of 15 percent (637 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 637 tons for desirable carryout. The total free supply will be the final trade demand of 4,985 tons plus the declared carryin of 536 tons or 5,521 tons. This is 130 percent of prior years' sales and exceeds the goal of the Guidelines.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 2665, January 29, 1996), will tend to effectuate the declared policy of the Act.

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—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982, which was published at 61 FR 2665 on January 29, 1996, is adopted as a final rule without change.

Dated: March 13, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96-6694 Filed 3-19-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[FV95-985-5FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1996-97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1996-97 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, thus helping to maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 1996 through May 31, 1997.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2724; or Tershira T. Yeager, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 720-5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah). This marketing 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 final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1996-97 marketing year, which begins on June 1, 1996. This final 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. A 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 no later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 8 spearmint oil handlers subject to regulation under the marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) oil allotment base, and approximately 145 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts