than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

The order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled during the appropriate crop year, which for this season is August 1, 1995, through July 31, 1996. The budget of expenses for the 1996 fiscal year was prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers and producers. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by actual receipts of olives by handlers during the crop year. Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The recommended budget and rate of assessment is usually acted upon by the Committee after the crop year begins and before the fiscal year starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on December 14, 1995, and recommended 1996 marketing order expenditures of $2,600,785 for its budget. This is $280,865 less in expenses than the previous year. The major budget categories for the 1996 fiscal year include administration ($388,350), research ($213,000), and market development ($1,999,435).

The Committee also recommended an assessment rate of $28.26 per ton covering olives from the appropriate crop year. This is $1.78 less than last year's assessment rate of $30.04. The assessment rate, when applied to actual handler receipts of 62,182 tons from the 1995 olive crop year, would yield $1,757,726 in assessment income. This along with approximately $829,000 from the Committee's authorized reserves will be adequate to cover estimated expenses. Reserve funds forwarded from the 1995 fiscal year are estimated at $210,000 which is within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was issued on February 12, 1996, and published in the Federal Register (61 FR 6306; February 20, 1996). That rule provided a 30-day comment period which ended March 21, 1996. No comments were received.

While this action 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 from the operation of the marketing order. Therefore, 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, including the Committee's recommendation, and other available information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996 fiscal year began on January 1, 1996, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable olives handled during the fiscal year; (3) handlers are aware of this rule which was recommended by the Committee at a public meeting; and (4) an interim final rule was published in the Federal Register providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 932 are amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 61 FR 6306 on February 20, 1996, is adopted as a final rule without change.

Dated: April 16, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–9827 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 982

[Docket No. AO–205–A7; FV94–982–1FR]

Hazelnuts Grown in Oregon and Washington; Order Further Amending Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends the marketing agreement and order for hazelnuts grown in Oregon and Washington (order). The amendments change order provisions regarding: Volume control; nomination and membership of the Hazelnut Marketing Board (Board); fiscal operations; and the administration and operation of the program. These changes were favored by hazelnut producers in a mail referendum held from November 27 through December 15, 1995. The amendments will improve the administration, operation, and functioning of the marketing order program by bringing the program more in line with current industry operating practices.

EFFECTIVE DATE: April 22, 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 Avenue, 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, PO Box 96456, Washington, DC 20090–6456; telephone 202–720–6862; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on February 24, 1994, and published in the Federal Register on February 28, 1994 (59 FR 9425). Recommended Decision and Opportunity to File Written Exceptions issued on May 24, 1995, and published in the Federal Register on June 7, 1995 (60 FR 30170). Secretary's Decision and Referendum Order issued October 23, 1995, and published in the Federal Register on October 31, 1995 (60 FR 55333).

Preliminary Statement

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

This rule has been reviewed under Executive Order 12778, Civil Justice

Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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.

The final rule was formulated on the record of a public hearing held in Newberg, Oregon, on March 8, 1994, to consider the proposed amendment of the Marketing Agreement and Order No. 982, regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to collectively as the ''order.'' Notice of the hearing was published in the February 28, 1994, issue of the Federal Register (59 FR 9425).

The hearing was held 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 proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Hazelnut Marketing Board (Board), established under the order to assist in local administration of the program.

The proposals pertained to: (1) Changing the name of the commodity covered under the order from ''filberts'' to ''hazelnuts''; (2) for the purposes of inshell volume regulation, allowing the Board, with USDA approval, to make changes in the domestic market distribution area and providing the Board with the flexibility to recommend appropriate hazelnut releases for use until new crop hazelnuts are available for marketing; (3) increasing Board members' terms of office to two years and limiting the number of consecutive terms a member may serve from six terms to three; (4) changing voting procedures for nominating members to the Board, including changes to criteria used for nominating handler members and for weighing handlers' votes when electing nominees; (5) removing the ''verbatim'' reporting requirement on Board marketing policy meetings, and allowing Board telephone votes to remain unconfirmed until the next public Board meeting; (6) allowing the Board, with USDA approval, to establish different identification standards for inspected and certified hazelnuts; (7) changing procedures for establishing bonding requirements for deferred restricted obligations and allowing the Board to use defaulted bond payments to purchase excess restricted credits from handlers; (8) clarifying that mail order sales outside the production area are not exempt from order requirements; and (9) allowing the Board to accept advance assessment payments, provide discounts for such payments, borrow money, and accept voluntary contributions.

Upon the basis of evidence introduced at the hearing and the record thereof, the Acting Assistant Secretary, Marketing and Regulatory Programs, on October 23, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Secretary's Decision and Referendum Order, directing that a referendum be conducted during the period November 27 through December 15, 1995, among producers of Oregon and Washington hazelnuts to determine whether they favored the proposed amendments to the order. In the referendum, all amendment proposals were favored by more than two-thirds of the producers voting in the referendum. Accordingly, all proposed amendments are included in this order further amending the order.

The amended marketing agreement was subsequently mailed to all hazelnut handlers in the production area for their approval. The marketing agreement was signed by hazelnut handlers representing more than 50 percent of the volume of hazelnuts handled by all handlers during the representative period of July 1, 1994, to June 30, 1995.

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 Agriculture Marketing Service has determined that this action will 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 of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

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 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 the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

There are approximately 25 handlers regulated under Marketing Order No. 982. In addition, there are approximately 1,000 producers of hazelnuts in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the hazelnut marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

For discussion of the anticipated impact on small businesses, the amendments have been grouped into program categories. Amendments concerning the order's marketing and volume control programs will: Change the name of the commodity to ''hazelnuts'' (§ 982.4 and every other place it appears in part 982); establish the trade demand area as the continental United States and allow the Board to make changes in the inshell trade acquisition area, with approval of the Secretary (§ 982.16); provide the Board the flexibility to release up to 15 percent of the average three year inshell trade acquisitions for desirable carryout (§ 982.40); correct the current language that determines handler credit for ungraded hazelnuts (§ 982.51); establish the bonding rate for deferred restricted obligations at the estimated value of restricted credits for the current marketing year and allow the Board to use defaulted bond payments to purchase excess restricted credits (§ 982.54); and clarify that mail order sales outside the production area are not exempt from order requirements (§ 982.57). These amendments are

designed to assist the Board in its domestic and export marketing efforts. The amendments allow the Board to make program and management decisions that are more consistent with changing market conditions and to better respond to changing marketing needs. Because the Board acts in the best interests of the industry, increased Board decision-making flexibility should benefit the industry and, thus, small businesses in the industry.

Regarding nomination and Board membership, the amendments will: Change from one to two years the length of Board member and alternate member terms of office (§ 982.33); limit the number of consecutive terms members and alternate members may hold to three 2-year terms (§ 982.33); and make conforming changes and a correction in the qualifications for nominating members (§§ 982.30 and 982.32). The amendments are designed to ease the burden of conducting nomination meetings every year and enhance the Board's efficiency. The amendments are administrative in nature and will not impose additional costs on small businesses.

Other amendments to the order's administrative procedures and operations will: Allow Board telephone votes to remain unconfirmed in writing until the next public Board meeting (§ 982.37); remove the ''verbatim'' reporting requirement on Board marketing policy meetings (§ 982.39); allow the Board to accept advance assessment payments and provide discounts for such payments (§ 982.61); and allow the Board to accept voluntary contributions (new § 982.63). These amendments are intended to improve the operations of the Board, lessen the administrative burden on Board members and staff, and improve management of the order's financial resources. As such, the changes will have negligible, if any, economic impact on small entities.

Finally, one amendment provides the Board with the authority to establish more up-to-date identification standards (§ 982.46), which will make order identification and certification provisions consistent with current industry practices and provide handlers more flexibility in meeting identification requirements.

All of these changes are designed to enhance the administration and functioning of the order to the benefit of the industry. Accordingly, it is determined that the revisions of the order will not have a significant economic impact on handlers or producers.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to OMB for approval.

List of Subjects in 7 CFR Part 982

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

Order Further Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the amendments to Marketing Agreement and Order No. 982 (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, as hereby further amended, regulates the handling of hazelnuts grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of hazelnuts grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective upon publication.

A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program. The Board, producers, and handlers need as much time as possible to make plans to implement the amended order and discuss any needed changes to the regulations and Board operating procedures. Also, the order amendments include a change in the term of office for Board members and alternates and a change in the voting procedures for nominations. The industry will soon begin conducting nominations for a term of office beginning July 1, 1996, and these new procedures need to be in effect before nominations begin.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective upon publication, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after publication in the Federal Register (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping hazelnuts covered by the said order, as amended, as hereby further amended) who, during the period July 1, 1994, through June 30, 1995, handled 50 percent or more of the volume of such hazelnuts covered by the said order, as amended, as hereby further amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period July 1, 1994, through June 30, 1995 (which has been deemed to be a representative period), have been engaged within the Oregon and Washington production area in the production of such hazelnuts for fresh market.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of hazelnuts grown in Oregon and Washington, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Secretary's Decision issued on October 23, 1995, and published in the Federal Register on October 31, 1995 (60 FR 55333), shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 982 the heading is revised and all references to ''filbert'', ''filberts'', ''filbert/hazelnut'', ''filberts/hazelnuts'' are revised to read as ''hazelnut'', ''hazelnuts'', ''hazelnut'', and hazelnuts'', respectively.

3. Section 982.4 is revised to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

5. Section 982.30 is amended by revising paragraphs (a), introductory text, (b)(1), (b)(2), and (b)(3) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

* * * * *

6. In § 982.32, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

7. In § 982.33, paragraph (b) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: *Provided,* That beginning with the 1996–97 marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

8. In § 982.37, paragraph (b) is revised to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

9. In § 982.39, paragraph (i) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

§ 982.40 [Amended]

10. In § 982.40, paragraph (c)(2) introductory text is amended by removing the word ''shall'' in the third sentence and adding in its place the word ''may''.

11. Section 982.46 is amended by revising paragraph (b) to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

§ 982.51 [Amended]

12. In § 982.51, paragraph (a) is amended by removing the word ''percent'' at the end of the first sentence.

13. Section 982.52 is amended by revising paragraph (b) to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

14. Section 982.54 is amended by revising paragraphs (b), (c), (d), (e) and (f) to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

15. In § 982.57, paragraph (b) is revised to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales are not exempt sales under this part.

16. Section 982.58 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

17. Section 982.61 is amended by designating the current text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

18. A new § 982.63 is added to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

Dated: April 16, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–9824 Filed 4–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1131

[DA–96–03]

Milk in the Central Arizona Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document continues to suspend certain provisions of the Central Arizona Federal milk marketing order during April 1, 1996, through March 31, 1997. The continued suspension eliminates the requirement that a cooperative association ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of a manufacturing plant operated by the cooperative. United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the market, requested the suspension. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: April 1, 1996, through March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 7, 1996; published March 13, 1996 (61 FR 10288).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Arizona marketing area.

Notice of proposed rulemaking was published in the Federal Register on March 13, 1995 (61 FR 10288) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of April 1, 1996, through March 31, 1997, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)'' and ''or the previous 12-month period ending with the current month.''

Statement of Consideration

This rule continues to suspend certain provisions of the Central Arizona order for the months of April 1996 through March 1997. The suspension removes the requirement that a cooperative association that operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

The order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month.

Continuation of the current suspension of this shipping requirement was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA states that the continued pool status of their manufacturing plant is threatened if the suspension is not continued. UDA contends that the same marketing conditions that warranted the suspension last year still exist. UDA maintains that members who increased their milk production to meet the projected demands of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso.

During the past year, there has been an increase in producer milk while handler requirements for bulk milk deliveries has decreased. This decrease is primarily a result of reduced Class I sales by Central Arizona handlers in Mexico because of the continued devaluation of the Mexican peso. Pool status of UDA's manufacturing plant will not be maintained absent continuation of the suspension. Thus, costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

UDA again requested that the suspension be granted for an indefinite period beginning in April 1996. After reviewing the marketing conditions of the Central Arizona marketing area and their relationship with the uncertain value of the Mexican peso, this