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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. F&V AO-205-A-6]

Filberts/Hazelnuts Grown in Oregon and Washington; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the filbert/hazelnut marketing agreement and order program (M.O. 982) to improve its operation and effectiveness. Each of the following changes was favored by the required two-thirds of the growers voting in a referendum. The amendment (1) Changes representation on the Filbert/Hazelnut Marketing Board to eliminate any reference to either cooperative or independent handlers and to recognize industry composition; (2) provides authority for advertising and promotion programs; (3) provides authority for crediting a handler's assessment for certain kinds of advertising and promotion; and (4) changes the method of establishing the Board's annual marketing policy and volume regulations to allow more flexibility to react to market conditions and provide for market growth. The referendum was conducted from May 22 through May 31, 1986 .

EFFECTIVE DATE: August 19, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250. Telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding: Notice of Hearing issued February 11, 1985, and published February 13, 1985 (50 FR 5995); Notice of Recommended Decision issued October 15, 1985, and published October 21, 1985 (50 FR 42537); Final Decision issued May 5, 1986, and published May 12, 1986 (51 FR 17354); press release announcing referendum results issued June 24, 1986.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291 or Departmental Regulation 1512-1.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Adminstrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of 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 Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

During the 1985-86 crop year, 12 handlers regulated under M.O. 982 handled filberts with an estimated crop value of approximately $16,738,000. The average value per handler was approximately $1,395,000. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000) almost all of the handlers of filberts would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The amendments to the order include provisions which would: provide producers an opportunity to periodically evaluate and express support or disapproval of the order; allow the board to become more representative of the industry by changing the structure and composition of board representation; and permit broader-based participation by growers and handlers in the administration of the order by limiting board tenure.

In addition, amendments to marketing policy and volume regulation provisions are designed primarily to streamline and improve procedures by eliminating unnecessary procedural steps and by adding additonal flexibility to handlers' abilities to satisfy withholding requirements. Thus, handlers should be able to better plan their filberts shipments, more easily make any adjustments to a strengthened market for filberts, and thereby reduce costs attributed to such volume regulations. These changes should benefit all handlers, including those who could be classified as small businesses.

The new § 982.58 provides for marketing and production research and development projects including paid advertising and promotion. This new authority should benefit handlers and growers by increasing filbert sales and reducing costs by developing new and more efficient production and marketing techniques. Also, § 982.58 authorizes crediting a handler's assessment for certain kinds of advertising and promotion. This should increase sales and at the same time allow handlers to pursue marketing programs which better fit their own individual needs.

For the reasons stated above, these amendments would not impose substantial costs on affected small businesses; they would rather heighten benefits to those businesses in direct proportion to the size of their operation without significantly increasing costs to handlers.

Finally, the amendments to the order would have no significant impact on small businesses recordkeeping and reporting burdens.

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 aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings may be in conflict with the findings and determinations set forth herein.

(a) *Findings 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 governing the formulation of marketing agreements and orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington.

Upon the basis of the record it is found that:

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

(2) The order, as amended, and as hereby further amended, regulates the handling of filberts 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 hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its 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;

(4) There are no differences in the production and marketing of filberts grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of filberts 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 all of the amendatory provisions effective upon publication in the **Federal Register.** Any delay beyond that date would interfere with effective order administration. The amendatory order provides for a marketing year beginning July 1, and the improvements in program operations and procedures provided by that order should be utilized from as near the start of the 1986–87 season as possible. Further, it is important that Filbert/Hazelnut Marketing Board nominations for grower, handler, and public members whose terms were to begin July 1, 1986, should be made and submitted to the Secretary as soon as practicable in order to have the reorganized and more representative Board make the decisions for the beginning of the 1986–87 marketing year. A prompt effective date would be consistent with achieving that objective.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its 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) The "Marketing Agreement, as Amended, Regulating the Handling of Filberts/Hazelnuts, Grown in Oregon and Washington" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby futher amended) who, during the period July 1, 1985, through April 1, 1986, handled not less than 50 percent of the volume of such filberts covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, 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, 1985, through April 1, 1986 (which has been deemed to be a representative period), have been engaged within Oregon and Washington, in the production of filberts for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, the handling of filberts grown in Oregon and Washington shall be in conformity to and in compliance with the following terms and conditions of the order, as hereby amended.

PART 982—[AMENDED]

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

Authority: Agricultural Marketing Agreement Act of 1937, Secs., 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 982.9 Cooperative handler. [Removed]

2. Section 982.9 is removed.

§ 982.10 Independent handler. [Removed]

3. Section 982.10 is removed

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

"Inshell trade acquisitions" means the quantity of inshell filberts acquired by the trade from all handlers during a marketing year for distribution in the continental United States.

5. Section 982.17 is revised to read as follows:

§ 982.17 Marketing year.

"Marketing year" means the 12 months from July 1 to the following June 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

6. Section 982.30 is revised to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Filbert/Hazelnut Marketing Board consisting of 10 members, each of whom shal 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) Four of the members shall represent handlers, as follows:

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

(4) The fourth handler member shall be nominated by and represent all other handlers.

(c) Five members shall represent growers and shall be nominated for the districts designated in or established pursuant to § 982.31. One grower member shall represent each of the five grower districts unless changes are made pursuant to § 982.31(b).

(d) One member shall be a public member who is neither a grower nor a handler.

(e) The Secretary, or the Board with the approval of the Secretary, may revise the handler representation on the Board if the Board ceases to be representative of the industry.

7. Section 982.31 is revised to read as follows:

§ 982.31 Grower districts.

(a) For the purpose of nominating grower members and alternate members, the following districts within the production area are hereby established:

(1) District 1—The State of Washington, and Clackamas and Multnomah Counties in Oregon.

(2) District 2—Marion and Polk Counties in Oregon.

(3) District 3—Linn, Lane, and Benton Counties in Oregon.

(4) District 4—Yamhill County in Oregon.

(5) District 5—All other Oregon counties within the production area.

(b) The Secretary, upon the recommendation of the Board, may reestablish districts within the production area and may reapportion grower membership among the various districts: *Provided*, That in recommending any such changes, the Board shall give consideration to (1) the relative importance of production in each district and the number of growers in each district; (2) the geographic location of districts as they would affect the efficiency of administering this part; and (3) other relevant factors.

8. Section 982.32 is 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 serve on the Board as initial members of 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 filberts and, when shelled filbert grade and size regulations are in effect, the inshell equivalent of certified shelled filberts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the marketing year preceding the marketing year in which nominations are made.

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

(d) For the purposes of nominating and voting for handler members and alternates, the tonnage of filberts shall be credited to the handler responsible under the order for the payment of assessments of those filberts.

(e) Nominees to successor grower member and alternate member positions shall be submitted to the Secretary after the Board conducts balloting of growers, or officers or employees of growers, in the grower districts according to the following procedure: Names of the candidates to be shown on the ballot for a particular district may be submitted to the Board on petitions signed by not less than 10 growers on record with the Board as growers being in that district; each grower may sign only as many petitions as there are persons to be nominated within that district. If such petitions fail to result in submission of at least two names for a district, the Board shall request County Argicultural Extension Agents in that district to recommend one or more eligible growers to be included on the ballot. Ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all growers who are on record with the Board. The person receiving the highest number of votes shall be the member nominee for that district, and the person receiving the second highest number of votes shall be the alternate member. The Board shall recommend one candidate in case of a tie vote.

(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 marketing year, 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.

(g) The members of the Board shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

(h) The Board with the approval of the Secretary shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

9. Section 982.33 is revised to read as follows:

§ 982.33 Selection and term of office.

(a) *Selection.* Members and their respective alternates shall be selected by the Secretary from nominees submitted by the Board or from among other qualified persons.

(b) *Term of office.* Beginning July 1, 1986, the term of office of Board members and their alternates shall be for a period of one marketing year, but they shall serve until their respective successors are selected and have qualified: *Provided*, That beginning with the 1986–87 marketing year, no member shall serve more than six consecutive terms as member and no alternate member shall serve more than six consecutive terms as alternate.

(c) The members on the Board shall continue to serve until the new members and alternates have been selected and have qualified.

10. Section 982.34 is revised to read as follows:

§ 982.34 Qualification.

(a) Any person prior to selection as a member or an alternate member of the Board shall qualify by filing with the Secretary a written acceptance of willingness to serve on the Board.

(b) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an officer, employee, or agent of a grower in the district for which nominated.

(c) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer, employee, or agent of a handler.

(d) Any member of alternate member who at the time of selection was a member (or employed by or an agent of a member) of the group which nominated that person shall, upon ceasing to be such, become disqualified to serve further and that position shall be deemed vacant. In the event any grower member or alternate member of the Board handles filberts produced by other growers or becomes an employee or agent of a handler, that person shall be disqualified to continue to serve on the Board in that capacity.

(e) No person nominated to serve as a public member or alternate member shall have a financial interest in any filbert growing or handling operation.

(f) The Board, with the approval of the Secretary, may issue rules and regulations covering matters of qualifications for members or alternate members.

11. Section 982.36 is revised to read as follows:

§ 982.36 Alternates.

An alternate for a member of the Board shall act in the place of the member during such member's absence or, upon the member's death, removal, resignation, or disqualification, until a successor for that member's term has been selected and has qualified.

12. Paragraphs (a) and (b) of § 982.37 are revised to read as follows:

§ 982.37 Procedure.

(a) Seven members of the Board shall constitute a quorum at an assembled meeting of the Board, and any action of the Board shall require the concurring vote of at least six members. At any assembled meeting, all votes shall be cast in person.

(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 in writing. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

13. Section 982.40 is revised to read as follows:

§ 982.40 Marketing policy and volume regulation.

(a) *General.* As provided in this section, prior to September 20 of each marketing year, the Board may hold meetings for the purpose of computing its marketing policy for that year and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce the preliminary computed free and restricted percentages.

(b) *Inshell trade demand.* If the Board determines that volume regulation would tend to effectuate the declared policy of the act, it shall compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand shall equal the average of the preceding three years' trade acquisitions of inshell filberts: *Provided,* That the Board may increase such average by no more than 25 percent if market conditions justify such an increase. If the trade acquisitions during any or all of these years were abnormal because of crop or marketing conditions, the Board may use a prior year or years in determining the three-year average.

(c) *Inshell allocation*—(1) *Preliminary computed percentages.* Prior to September 20 of a marketing year, the Board shall compute and announce preliminary computed free and restricted percentages for that year, to release 80 percent of the inshell trade demand for that year. The preliminary computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 80 percent, and by dividing that amount by the Board's estimate of orchard-run production less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 percent and the preliminary free percentage shall be the preliminary computed restricted percentage. At the same time, the Board may announce the portion of the restricted supply that may be shelled or exported, and the remainder of that supply to be disposed of in outlets approved by the Board pursuant to § 982.52.

(2) *Interim final and final percentages.* On or before November 15, the Board shall meet to recommend to the Secretary the interim final and final free and restricted percentages, including the portion of the restricted supply that may be shelled or exported. The interim final percentages shall release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages shall release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts for desirable carryout. If the trade acquisitions during any or all of these years were abnormal, the Board may use a prior year or years in determining this three-year average. The final free and restricted percentages shall become effective 30 days prior to the end of the marketing year, or earlier as may be recommended by the Board and approved by the Secretary. The recommendations to the Secretary shall include the following:

(i) The estimated tonnage of merchantable filberts expected to be produced during the marketing year.

(ii) The estimated tonnage of inshell filberts held by handlers on the first day of the marketing year which may be available for handling as inshell filberts thereafter.

(iii) Any other pertinent factors bearing on the marketing of filberts during the marketing year.

Whenever the Secretary finds, on the basis of the recommendation of the Board or other available information that, to establish the interim final and final free and restricted percentages would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

(d) *Grade and size regulations.* Prior to September 20, the Board may consider grade and size regulations in effect and may recommend modifications thereof to the Secretary.

(e) *Revision of marketing policy.* At any time prior to February 15 of the marketing year, the Board may recommend to the Secretary revisions in the marketing policy for that year: *Provided,* That in no event shall any such recommendation provide for free and restricted percentages based on an inshell trade demand which is more than 125 percent of the average of the preceding three years' trade acquisitions computed pursuant to paragraph (b) of this section for that marketing year. At any time during the period December 1 through February 10 at the request of two or more handlers, who during the preceding marketing year handled at least 10 percent of all filberts handled, the Board shall meet to determine whether the marketing policy should be revised.

14. Section 982.41 is revised to read as follows:

§ 982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40 shall apply to all merchantable filberts handled during the current marketing year. Until the preliminary computed free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

15. Section 982.51 is revised to read as follows:

§ 982.51 Restricted credit for ungraded inshell filberts and for shelled filberts.

(a) A handler may withhold ungraded inshell filberts in lieu of certified merchantable filberts in satisfaction of that handler's restricted obligations, and the weight on which credit may be received shall be the shelled filbert equivalent weight as inspected by the Federal-State Inspection Service multiplied by 2.5 percent. Any lot of ungraded filberts not meeting the moisture requirements for certified merchantable filberts shall not be eligible for credit. All determinations as to the shelled filbert equivalent weight shall be made by the Federal-State Inspection Service at the handler's expense. Filberts so withheld shall be subject to the applicable requirements of § 982.50. The weight of all such lots for which a handler has received credit shall be adjusted by the Board when the lots are handled or disposed of so that the creditable weight is equal to the amount of certified merchantable inshell filberts or certified shelled filberts that are subsequently handled or disposed of from those lots. If this adjustment causes the handler to no longer be in satisfaction of that handler's restricted obligation as required by § 982.50, the deficiency shall be satisfied in the subsequent marketing year. If this adjustment results in a handler disposing of, in restricted outlets, a quantity in excess of that handler's restricted obligation, such excess shall not be credited to such handler's restricted obligation during the subsequent marketing year.

(b) A handler may withhold, in accordance with § 982.50(a), certified shelled filberts in lieu of merchantable filberts in satisfaction of such handler's restricted obligation, subject to such terms and conditions as are recommended by the Board and established by the Secretary. The inshell equivalent of such filberts shall be determined by multiplying the weight of the shelled filberts by 2.5.

(c) The Secretary upon recommendation of the Board and other available data may modify these procedures, change the conversion factors, and specify factors for conversion for different varieties of filberts.

16. Paragraphs (b) and (d) of § 982.52 are revised to read as follows:

§ 982.52 Disposition of restricted filberts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted filberts for shipment to destinations outside the continental United States shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted filberts shall deliver to the Board the certified merchantable restricted filberts 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 filberts 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 reimportation into the continental United States. A handler may be permitted to act as 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 filberts are so sold by the Board.

* * * * *

(d) *Restricted credits.* During any marketing year, handlers who dispose of a quantity of eligible filberts in restricted outlets in excess of their restricted obligations, may transfer such excess credits to another handler or handlers. Upon a handler's written request to the Board during a marketing year, the Board shall transfer any or all of such excess restricted credits to such other handler or handlers that the handler may designate. The Board, with the approval of the Secretary, shall establish rules and regulations for the transfer of excess restricted credits.

17. Paragraphs (a) and (c) of § 982.54 are revised to read as follows:

§ 982.54 Deferment of restricted obligation.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 when restricted filberts may be withheld shall be temporarily deferred to any date requested by the handler, but not later than 60 days prior to the end of the marketing year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking before beginning to handle merchantable filberts during the marketing year. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50, subject to any adjustment pursuant to § 982.51.

* * * * *

(c) *Bonding rate.* Said bonding rate for each pack shall be an amount per pound as established by the Board. 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.

* * * * *

18. Section 982.57 is revised to read as follows:

§ 982.57 Exemptions.

(a) *General.* The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards that exempt from any or all requirements pursuant to this part such quantities of filberts or types of shipments as do not interfere with the volume and quality control objectives of this part, and shall require such reports, certifications, or other conditions as are necessary to ensure that such filberts are handled or used only as authorized.

(b) *Sales by growers direct to consumers.* Any filbert grower may sell filberts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such filberts 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 filberts are disposed of only as authorized.

19. A new center heading entitled "Market Development" and a new § 982.58 following that heading are added to read as follows:

Market Development

§ 982.58 Research, promotion, and market development.

(a) *General.* The Board, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of filberts (hazelnuts). The Board may also provide for crediting the pro rata expense assessment obligations of a handler with such portion of such handler's direct expenditures for such marketing promotion including paid advertising as may be authorized. The expenses of such projects shall be paid from funds collected pursuant to § 982.61 or credited pursuant to paragraph (b) of this section.

(b) *Creditable expenditures.* The Board, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion including paid advertising, that promotes the sale of filberts, filbert products, or their uses. No handler shall receive credit for any allowable direct expenditures that would exceed the total of the handler's assessment obligation which is attributable to that portion of the handler's assessment designated for marketing promotion including paid advertising.

(c) *Rules and regulations.* Before any projects involving marketing promotion, including paid advertising and the crediting of the pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary, after recommendation by the Board, shall prescribe appropriate rules and regulations as are necessary to effectively administer such projects.

20. Section 982.61 is amended by revising the third sentence to read as follows:

§ 982.61 Assessments.

* * * Each handler shall pay to the Board on demand, assessments on all such assessable filberts at the rate fixed by the Secretary, less any amounts credited pursuant to § 982.58. * * *

21. A new § 982.64 entitled "Creditable promotion and advertising reports" to be published under the center heading "Records and Reports" is added to read as follows:

§ 982.64 Creditable promotion and advertising reports.

Each handler shall file such reports of creditable promotion including paid advertising conducted pursuant to § 982.58 as recommended by the Board and approved by the Secretary.

22. Section 982.69 is amended by revising the first sentence to read as follows:

§ 982.69 Verification of reports.

For the purpose of checking and verifying reports submitted by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to each handler's premises at any time during reasonable business hours and shall be permitted to inspect any filberts held by such handler and all records of the handler with respect to filberts held or disposed of by such handler and all records of the handler with respect to promotion and advertising activities conducted pursuant to § 982.58. * * *

23. Section 982.71 is amended by revising the first sentence to read as follows:

§ 982.71 Records.

Each handler shall maintain such records of filberts received, held, and disposed of by the handler, an such records detailing such handler's promotion and advertising activities, as may be prescribed by the Board in order to perform its function under this part. * * *

24. Section 982.86 is amended by redesignating current paragraphs (b) (3) and (4) as (b) (4) and (5), respectively, and by adding a new paragraph (b)(3) to read as follows:

§ 982.86 Effective time, termination, or suspension.

* * * * *

(b) * * *

(3) *Referendum.* The Board shall recommend to the Secretary during the first half of every 10-year period starting January 1, 1990, that a referendum be conducted to ascertain whether continuance of this subpart is favored by the producers.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective August 19, 1986.

Signed at Washington, DC, on August 11, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 86–18438 Filed 8–18–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF EDUCATION

34 CFR Parts 63 and 211

Removal of Miscellaneous Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends Title 34 of the Code of Federal Regulations (CFR) by removing certain obsolete parts. The parts are no longer needed for the reasons described in this document. The Secretary takes this action to eliminate unnecessary regulations.

EFFECTIVE DATE: August 19, 1986.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd, 400 Maryland Avenue, SW. (Room 2129, FOB–6), Washington, DC 20202. Telephone: (202) 732–2887.

SUPPLEMENTARY INFORMATION: Under Executive Order 12291, effective February 17, 1981, the Department of Education (ED) is reviewing and, where possible, eliminating unnecessary regulations.

Part 63—Telecommunications Demonstration Program. These regulations are obsolete because the legislative authorization of appropriations for this program expired on October 1, 1981, and has not been renewed.

Part 211—Guidance and Counseling. These regulations are obsolete because the legislative authorization of appropriations for this program expired on October 1, 1983, and has not been renewed.

Grants previously awarded by ED under 34 CFR Parts 63 and 211 remain subject to the regulations in effect at the time the grants were made.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the removal of these obsolete regulations is purely technical and does not establish new substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on these regulations is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 63

Education, Grant programs—communications, Grant programs—education, Telecommunications.

34 CFR Part 211

Education, Elementary and secondary education, Grant programs—education, Teachers.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers do not apply)

Dated: August 14, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

PART 63—TELECOMMUNICATIONS DEMONSTRATION PROGRAM—[REMOVED]

1. Part 63 is removed.

PART 211—GUIDANCE AND COUNSELING—[REMOVED]

2. Part 211 is removed.

[FR Doc. 86–18691 Filed 8–18–86; 8:45 am]

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