

sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meetings were widely publicized throughout the production area. All interested persons were invited to attend the meetings. The Committee actively seeks participation in its deliberations at all of its meetings. Both the October 8 and November 12, 1996, meetings were open to the public and representatives of both large and small entities expressed their views on these and related issues. The majority of the Committee, composed of six producers and three handlers, as well as a public member and respective alternates for each position, represent small entities. Additionally, in the proposed rule published in the **Federal Register** (62 FR 5933) on February 10, 1997, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. A copy of the proposal was also made available on the Internet by the U. S. Government Printing Office. The comment period ended March 12, 1997, and no comments were received concerning the impacts of this action on small businesses.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1997 shipping season begins in June; (2) handlers are well aware of this action which was discussed at two open public meetings which were widely publicized in the production area; and (3) a proposed rule was published on this action and provided for a 30-day comment period. No comments were received.

#### List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 956 is amended as follows:

#### PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR Part 956 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. New sections 956.162 and 956.163 are added to Subpart—Rules and Regulations to read as follows:

##### § 956.162 Container markings.

Effective April 15, 1997, no handler shall ship any container of Walla Walla Sweet Onions except in accordance with the following terms and provisions:

(a) Each container of Walla Walla Sweet Onions shall be conspicuously marked with the "Genuine Walla Walla Sweet Onion" logo. The marking may be in the form of a decal or a stamped imprint of any color and size: *Provided*, That the decal or stamped imprint must be placed in plain sight and easy to read.

(b) Walla Walla Sweet Onions may be handled not subject to the marking requirements of this section when handlers ship such onions pursuant to § 956.163, or ship such onions in field packed bulk bins containing more than 500 pounds net weight for sale to roadside stands and farmers' market operators for repacking and direct consumer sale: *Provided*, That subject to Committee verification of handler container inventories, handlers may use their existing inventories of unmarked containers until April 15, 1999.

##### § 956.163 Handling for specified purposes.

(a) Assessment and container marking requirements specified in this part shall not be applicable to shipments of onions for any of the following purposes:

(1) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions: *Provided*, That such shipments must be donated and not sold in order for this exemption to apply;

(2) Shipments of Walla Walla Sweet Onions for livestock feed;

(3) Shipments of Walla Walla Sweet Onions for planting and for plants;

(4) Shipments of Walla Walla Sweet Onions as salad onions;

(5) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;

(6) Shipments of Walla Walla Sweet Onions for disposal;

(7) Shipments of Walla Walla Sweet Onions for seed.

(b) [Reserved]

Dated: April 7, 1997.

**Sharon Bomer Lauritsen,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 97–9479 Filed 4–11–97; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 982

[Docket No. FV96–982–2 FIR]

#### Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1996–97 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 hazelnuts for the 1996–97 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

**EFFECTIVE DATE:** May 14, 1997.

**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) 326–2055 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 205–2830. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; FAX (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 115 and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 1996-97 marketing year (July 1, 1996-June 30, 1997). 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic

market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine released percentages are specified in § 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 20,000 tons for the Oregon and Washington area. After discussion, the consensus of the Board was to use the NASS estimate as the basis for the preliminary, interim final and final free and restricted percentage computations.

The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The quantity marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which are exported, shelled or otherwise disposed of (restricted). The preliminary free percentage releases 80 percent of the adjusted inshell trade demand. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate. The Board used the NASS crop estimate of 20,000 tons.

At its August 29, 1996, meeting, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively. 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 3,238 tons of hazelnuts from the 1996 supply for domestic inshell use. The preliminary restricted percentage of the 1996 supply for export and kernel markets totaled 13,007 tons.

Under the order, the Board must meet a second time, on or before November 15, to recommend interim final and final percentages. The Board uses then 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 the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to 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 by June 1, at least 30 days prior to the end of the marketing year, June 30. The final free and restricted percentages can be made effective earlier, if recommended by the Board and approved by the Secretary. Revisions in this marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 12, 1996, and reviewed and approved an amended marketing policy. The Board recommended that the three-year average trade acquisition figure of 4,513 tons be increased by 100 tons to provide product for an experimental marketing program using roasted inshell hazelnuts. The Board also recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 20 percent free and 80 percent restricted. The interim final percentage makes an additional 809 tons of inshell hazelnuts available for the domestic inshell market including roasted product. The interim final marketing percentages are based on the industry's final production estimates (20,000 tons) and release 4,047 tons to the domestic inshell market from the 1996 supply subject to regulation. The interim final restricted percentage resulted in a restricted obligation of 13,007 tons.

The final free and restricted percentages were recommended at 23 percent and 77 percent, respectively. The Board also recommended that the final percentages be effective on June 1, 1997. The established final marketing percentages release for domestic inshell use an additional 677 tons from the supply subject to regulation. Thus, a total of 4,724 tons of inshell hazelnuts will be released from the 1996 supply for domestic inshell use.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1996-97 marketing year:

Inshell supply	Tons
(1) Total production (NASS estimate) .....	20,000

Inshell supply	Tons	
(2) Less substandard, farm use (disappearance) .....	1,362	
(3) Merchantable production (the Board's adjusted crop estimate) .....	18,638	
(4) Plus undeclared carryin as of July 1, 1996, subject to regulation .....	1,668	
(5) Supply subject to regulation (Item 3 plus Item 4) .....	20,306	
Inshell Trade Demand		
(6) Average trade acquisitions of inshell hazelnuts for three prior years .....	4,513	
(7) Increase to encourage increased sales (2.2 percent of Item 6) .....	100	
(8) Less declared carryin as of July 1, 1996, not subject to regulation .....	566	
(9) Adjusted Inshell Trade Demand .....	4,047	
(10) 15 percent of the average trade acquisitions of inshell hazelnuts for three prior years (Item 6) .....	677	
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10) .....	4,724	
Percentages	Free	Restricted
(12) Interim final percentages (Item 9 divided by Item 5)×100 .....	20	80
(13) Final percentages (Item 11 divided by Item 5)×100 .....	23	77

In addition to complying with the provisions of the marketing order, the Board also considered 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 hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments 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 situation. At its November 12, 1996, meeting, the Board recommended that an increase of 2.2 percent (100 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 677 tons for desirable carryout. The total free supply for the 1996-97 marketing year is 5,290 tons of hazelnuts, which is the final trade demand of 4,724 tons plus the declared carryin of 566 tons. This amount is 117 percent of prior years' sales and exceeds the goal of the Guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 hazelnuts in the production area and approximately 23 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. Using this criteria, virtually all of the producers are small agricultural producers and an estimated 20 of the 23 handlers are small agricultural service firms. Thus, the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. The current volume control procedures fully supply the domestic inshell market, provide for market expansion, and help prevent oversupplies in that market.

Industry statistics show that total hazelnut production has varied widely over the last ten years, from a low of 13,000 tons in 1989 to a high of 41,000 tons in 1993. Average production has been around 24,000 tons. As crop size has fluctuated, volume regulations have contributed towards orderly marketing and market stability, and have helped moderate the variation in returns for all growers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 54 percent of the ten-year average (1985-1995). Production in the biggest crop year (1993) was 170 percent of the ten-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the grower price per pound has increased steadily over the last four years from \$.28 in 1992 to \$.46 in 1995.

While the level of benefits of this rulemaking are difficult to quantify, it is clear that the stabilizing effects of the volume regulations are still required in order to help both small and large handlers to maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents approximately 3 percent of total U.S. tree nut production and approximately 3 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the U.S. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary the

preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

The marketing order authority for regulating the quantity of hazelnuts marketed is intended to stabilize markets, in the interest of producers, handlers, and consumers. The restricted percentage limits the amount of the crop that goes into the primary market (domestic inshell market) so that this market is adequately supplied. Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The domestic inshell market is quite small and prone to oversupply in the absence of volume regulation. The excess that is not needed for the primary market is set aside and sold into noncompetitive market channels where such sales will not depress primary market prices. The quantity control authority provides the industry with a framework for softening the extremes in supply and prices that can occur with agricultural commodities, like hazelnuts, subject to the vagaries of nature.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of the high quality of U.S. hazelnuts. Europe, and Germany in particular, is the major export market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel (shelled) market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

The critical marketing problem confronting the hazelnut industry is that the available supply for the 1996–97 marketing year far exceeds domestic inshell market needs. The quantity needed for the domestic inshell market during the 1996–97 marketing year (4,724 tons) is less than one-fourth of the supply subject to regulation (20,306 tons). Hence, the Board determined that volume regulation was needed to stabilize supplies and prices. Without the supply correction fostered by

regulation in 1996–97, the Board believed that weak marketing conditions and price cutting would cause the industry's economic condition to deteriorate.

In considering quantity control for the 1996–97 marketing year, the Board considered the estimated tonnage of merchantable hazelnuts expected to be produced during the 1996–97 marketing year, the estimated tonnage of inshell hazelnuts carried in from the previous marketing year available for marketing as inshell hazelnuts during 1996–97, all available information on possible markets for the crop taking into consideration anticipated imports, inventory in marketing channels, prices, competing nut supplies, and other economic conditions which could impact the marketing of the 1996–97 inshell hazelnut crop. This all resulted in the Board's recommendation to limit the amount of the 1996–97 crop going into the domestic inshell market and the marketing percentage computation table set forth earlier in this document.

No change has occurred in the relationship between supply and demand since the interim final rule was issued, and that rule made a sufficient volume of free hazelnuts available for the domestic inshell market. Hence, a release of additional supplies at this time of the season would make more hazelnuts available for this market than are needed, resulting in disorderly marketing conditions. Also, the additional supplies could adversely impact the marketing of the upcoming crop.

It is the Department's view that the marketing percentages recommended by the Board, and established by the Department, for the 1996–97 marketing year have provided all members of the industry, both large and small, with a means for stabilizing supplies and prices, and for maintaining and expanding markets for hazelnuts.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are the minimum necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

The interim final rule was issued by the Department on December 31, 1996; put on public display at the Office of the Federal Register on January 7, 1997; and published in the **Federal Register** (62 FR 1035, January 8, 1997), with an effective date of January 9, 1997. The Board manager mailed information concerning that action to all known industry members, and it was also made available through the Internet by the Office of the Federal Register. That rule provided a 30-day comment period which ended February 7, 1997. No comments were received concerning either the interim final rule or the initial regulatory flexibility analysis.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (62 FR 1035, January 8, 1997), 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—HAZELNUTS GROWN IN OREGON AND WASHINGTON**

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 62 FR 1035 on January 8, 1997, is adopted as a final rule without change.

Dated: April 8, 1997.

**Sharon Bomer Lauritsen,**

*Acting Director, Fruit and Vegetable Division.*

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BILLING CODE 3410–02–P

#### **DEPARTMENT OF AGRICULTURE**

##### **Agricultural Marketing Service**

##### **7 CFR Part 989**

[FV97–989–11FR]

##### **Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for the 1996–97 Crop Year for Natural (Sun-Dried) Seedless Raisins**

**AGENCY:** Agricultural Marketing Service, USDA.