

amending and correcting 5 CFR parts 2634, 2635 and 2636 as follows:

**PART 2634—[AMENDED]**

1. The authority citation for part 2634 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

**§ 2634.304 [Corrected]**

2. Section 2634.304 is amended by removing the word "proceeding" between the words "the" and "statement" in the last sentence of paragraph (f)(3)(iii) and adding in its place the word "preceding".

**§ 2634.904 [Corrected]**

3. Section 2634.904 is amended by removing the word "of" between the words "industry" and "other" in the last sentence of paragraph (b) (before the examples) and adding in its place the word "or".

**PART 2635—[AMENDED]**

4. The authority citation for part 2635 continues to read as follows:

**Authority:** 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

**§ 2635.207 [Amended]**

5. Section 2635.203 is amended by removing the citation "41 CFR 301-1.103(b) and (f)" from the end of the last sentence of the Note following paragraph (b)(7) and adding in its place the citation "41 CFR part 301-53".

6. Section 2635.902 is amended by removing the terms "*et seq.*" from the first part of the citation in paragraph (o) and adding in their place the terms "through 7326", by removing the section citation "783(b)" from the second statute cited in paragraph (z) and adding in its place the section citation "783(a)", and by revising paragraph (q) to read as follows:

**§ 2635.902 Related statutes.**

\* \* \* \* \*

(q) The general prohibition (18 U.S.C. 219) against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (22 U.S.C. 611 through 621).

\* \* \* \* \*

**PART 2636—[AMENDED]**

7. The authority citation for part 2636 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

8. Section 2636.303 is amended by removing the words "set forth in § 305.601 of this title" from paragraph (a)(4), by removing the two references to "GS-16, Step 1" from Example 1 following the undesignated text after paragraph (a)(4) and adding in their place in each instance the reference "a position above GS-15", and by revising the introductory text of paragraph (a) to read as follows:

**§ 2636.303 Definitions.**

\* \* \* \* \*

(a) *Covered noncareer employee* means an employee, other than a Special Government employee as defined in 18 U.S.C. 202, who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule, and who is:

\* \* \* \* \*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 982**

[Docket No. FV99-982-1 IFR]

**Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1998-99 Marketing Year**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 1998-99 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.

**DATES:** Effective January 15, 1999. Comments which are received by March 15, 1999, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632, or E-mail: moabdocket\_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**SUPPLEMENTARY INFORMATION:** This 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 of Agriculture (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 1998–99 marketing year (July 1, 1998, through June 30, 1999). 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 the 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 the percentages are specified in § 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 16,500 tons for the Oregon and Washington area. 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 must be exported, shelled or otherwise disposed of by handlers (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.

At its August 27, 1998, meeting, the Board computed and announced preliminary free and restricted percentages of 18 percent and 82 percent, respectively. The Board used the NASS crop estimate of 16,500 tons. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against an underestimate of crop size. The preliminary free percentage released 2,763 tons of hazelnuts from the 1998 supply for domestic inshell use. The preliminary restricted percentage of the 1998 supply for export and kernel markets totaled 12,623 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 current crop estimates to calculate 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; (i.e., desirable carryout). 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 the 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, 1998, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of an

additional 15 percent for desirable carryout would not adversely affect the 1998–99 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. Final percentages were recommended at 30 percent free and 70 percent restricted. The final percentages release 4,115 tons of inshell hazelnuts from the 1998 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (14,500 tons) and the following supply and demand information for the 1998–99 marketing year:

	Tons	
Inshell Supply:		
(1) Total production (Board's estimate) .....	14,500	
(2) Less substandard, farm use (disappearance) .....	1,077	
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2) .....	13,423	
(4) Plus undeclared carryin as of July 1, 1997, subject to regulation .....	120	
(5) Supply subject to regulation (Item 3 plus Item 4) .....	13,543	
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell hazelnuts for three prior years .....	4,408	
(7) Less declared carryin as of July 1, 1997, not subject to regulation .....	954	
(8) Adjusted Inshell Trade Demand .....	3,454	
(9) Desirable carryout on August 31, 1999 (15 percent of Item 6) .....	661	
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9) .....	4,115	
	Free	Re-stricted
Percentages:		
(11) Final percentages (Item 10 divided by Item 5) × 100 .....	30	70

In addition to complying with the provisions of the 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 situations. The established final percentages are based on the final inshell trade demand, and will make available an additional 661 tons for desirable carryout. The total free supply for the 1998-99 marketing year is 5,069 tons of hazelnuts, which is the final trade demand of 4,408 tons plus the 661 tons for desirable carryout. This amount is 115 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 initial 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 800 producers of hazelnuts in the production area and approximately 22 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 these criteria, virtually all of the producers are small agricultural producers and an estimated 19 of the 22 handlers are small agricultural service firms. In view of the foregoing, it can be concluded that 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 while preventing oversupplies in that market.

Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The inshell market is inelastic and is characterized as having limited demand and being prone to oversupply.

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 13,000 tons in 1989 to a high of 47,000 tons in 1997. Average production has been around 27,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 48 percent of the 10-year average (1988-1997). Production in the biggest crop year (1997) was 173 percent of the 10-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 producer price per pound has increased over the last 5 years, from \$.32 in 1993 to \$.45 in 1997.

The Board discussed the only alternative to this rule which was not to regulate. Without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Although the 1998 hazelnut crop is much smaller than last year, the release of 14,500 tons on the domestic inshell market would cause producer returns to decrease drastically, and completely disrupt the market.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them 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 United States. This production represents, on average, less than 5 percent of total U.S. tree nut production, and less than 5 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 United States. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release

of 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.

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 quality. Europe, and Germany in particular, is historically the primary world market for U.S. produced inshell hazelnuts, although China was the largest importer in 1997-98. 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 market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens have been accepted by the handlers as 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 marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Further, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the November 12, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 4 are handlers, 5 are producers, and one is a public member.

Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1998-99 marketing year began July 1, 1998, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

#### 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

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

**Authority:** 7 U.S.C. 601-674.

2. Section 982.246 is added to read as follows:

**Note:** This section will not be published in the annual Code of Federal Regulations.

#### **§ 982.246 Free and restricted percentages—1998-99 marketing year.**

The final free and restricted percentages for merchantable hazelnuts for the 1998-99 marketing year shall be 30 and 70 percent, respectively.

Dated: January 7, 1999.

**Larry B. Lace,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-841 Filed 1-13-99; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[FV99-989-1 FIR]

#### Raisins Produced From Grapes Grown In California; Relaxations to Substandard and Maturity Dockage Systems

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule relaxing the substandard and maturity dockage systems for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Relaxing the limits for the 1998 crop reduces the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense. This minimizes producers' reconditioning costs and facilitates 1998 crop deliveries.

**EFFECTIVE DATE:** February 16, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, or Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632, or E-mail:

Jay\_N\_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement

and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the order, handlers may acquire raisins from producers under a weight dockage system and adjust the creditable fruit weight acquired according to the percentage of substandard raisins in a lot, or percentage of raisins that fall below certain levels of maturity. Certain marketing order obligations and producer payments are based on the creditable weight of raisins acquired by handlers. Because of unusual crop conditions this year created by the weather phenomenon known as El Nino, the industry predicted that a relatively high percentage of the 1998-99 crop will fall outside the limits of the substandard and maturity dockage systems.

This rule continues to relax the substandard and maturity dockage systems for raisins covered under the order. Under the order, handlers may acquire raisins from producers under a weight dockage system and adjust the creditable fruit weight acquired