

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

#### List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

#### **PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for 7 CFR part 958 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 958.240 is revised to read as follows:

##### **§ 958.240 Assessment rate.**

On and after July 1, 2000, an assessment rate of \$0.08 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: June 27, 2000.

**Robert C. Keeney**

*Deputy Administrator, Fruit and Vegetable Programs*

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**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 982**

[Docket No. FV00–982–1 FIR]

#### **Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1999–2000 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 1999–2000 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 marketing order.

**EFFECTIVE DATE:** July 5, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, 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) 720–5698.

Small businesses may request information on complying with this regulation 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) 720–5698, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982,

both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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. It is intended that this action apply to all merchantable hazelnuts handled during the 1999–2000 marketing year (July 1, 1999, through June 30, 2000). 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 continues in effect 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 38,000 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 adjusted inshell trade demand used by the Board was the average of the past three years' sales (4,136 tons), plus an additional 10 percent for market development (414 tons), minus the declared carryin from last year's crop (110 tons).

The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. 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.

Based on the NASS crop estimate of 38,000 tons, the Board computed and announced preliminary free and

restricted percentages of 10 percent and 90 percent, respectively, at its August 31, 1999, meeting. This action initially released 3,552 tons of hazelnuts from the 1999 supply for domestic inshell use as the preliminary free percentage. The preliminary restricted percentage of the 1999 supply for export and kernel markets thus initially totaled 31,143 tons.

A special meeting of the Board was held on October 26, 1999, to increase the percentage of free product released for market development from 10 percent (414 tons) to 20 percent (827 tons) which is 120 percent of the three-year average trade acquisitions of inshell hazelnuts. The Board took this action because it determined that the demand for domestic inshell hazelnuts was greater than previously thought. Based upon the new adjusted trade demand of 4,854 tons, the Board computed revised preliminary free and restricted percentages of 11 percent and 89 percent, respectively. This revised preliminary free percentage (11 percent) released 3,883 tons of hazelnuts from the 1999 supply for domestic inshell use rather than the initially computed 3,552 tons. The revised preliminary restricted percentage (89 percent) of the 1999 supply for export and kernel markets thus totaled 30,720 tons, rather than 31,143 tons.

Under the order, the Board must meet 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 order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or 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 15, 1999, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 15 percent free and 85 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 16 percent free and 84 percent restricted effective March 1, 2000. The final percentages release 5,474 tons of inshell hazelnuts from the 1999 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (36,548 tons) and the following supply and demand information for the 1999–2000 marketing year:

		Tons
<i>Inshell Supply:</i>		
(1) Total production (Board's estimate) .....		36,548
(2) Less substandard, farm use (disappearance) .....		3,271
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2) .....		33,277
(4) Plus undeclared carryin as of July 1, 1999, subject to regulation .....		4
(5) Supply subject to regulation (Item 3 plus Item 4) .....		33,281
<i>Inshell Trade Demand:</i>		
(6) Average trade acquisitions of inshell hazelnuts for three prior years .....		4,136
(7) Increase to encourage increased sales (20 percent of Item 6) .....		827
(8) Less declared carryin as of July 1, 1999, not subject to regulation .....		109
(9) Adjusted Inshell Trade Demand .....		4,854
(10) Desirable carryout on August 31, 2000 (15 percent of Item 6) .....		620
(11) Adjusted Inshell Trade Demand plus desirable carryout (Item 9 plus Item 10) .....		5,474
	Free	Restricted
<i>Percentages:</i>		
(12) Interim final percentages (Item 9 divided by Item 5) .....	15	85
(13) Final percentages (Item 11 divided by Item 5) × 100 .....	16	84

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. At its October 26 and November 15, 1999, meetings the Board recommended that an increase of 20 percent (827 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 made available an additional 620 tons for desirable carryout effective March 1, 2000. The total free supply for the 1999–2000 marketing year is 4,756 tons of hazelnuts, which is the final trade demand of 4,136 tons plus the 620 tons for desirable carryout. This amount is 135 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, the 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 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 order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those having annual receipts of 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, excluding receipts from other sources.

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 (1989–1998). 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 \$.49 in 1998.

The Board discussed not regulating. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic 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. A third market is for shelled hazelnuts (kernels) 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 are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. 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 all Federal marketing order programs, reports and forms are periodically reviewed to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements. In addition, 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.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations. Like all Board meetings, those held on August 31, October 26, and November 15, 1999, were open to the public 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. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 19, 2000. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 20, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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** (65 FR 2841, January 19, 2000), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found 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 percentages continued herein apply to all merchantable hazelnuts handled during the 1999–2000 marketing year; (2) the 1999–2000 marketing year ends June 30, 2000; and (3) handlers are aware of this action and are prepared to comply with the marketing percentages.

#### List of Subjects in 7 CFR Part 982

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

## PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 65 FR 2841 on January 19, 2000, is adopted as a final rule without change.

Dated: June 27, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–16740 Filed 6–30–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV00–985–4 FIR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Decreased Assessment Rate

**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 decreased the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2000–2001 and subsequent marketing years from \$0.10 per pound to \$0.09 per pound of spearmint oil handled. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** August 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; 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, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation 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) 720–5698, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), 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. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 2000, and continue until amended, suspended, or terminated. 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. Such 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 continues to decrease the assessment rate established for the Committee for the 2000–2001 and subsequent marketing years from \$0.10