

an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement or application of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's dismissal of the charge, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

**§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.**

(a) *Alternative Dispute Resolution (ADR).* After a merit determination to issue a complaint, the Regional Director will work with the parties to settle the dispute using ADR, to avoid costly and protracted litigation where possible.

(b) *Bilateral informal settlement agreement.* Prior to issuing a complaint but after a merit determination by the Regional Director, the Regional Director

may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(c) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to a bilateral settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may choose to approve a unilateral settlement between the General Counsel and the Charged Party. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel shall take action on the appeal as set forth in § 2423.11(e)-(g).

**§§ 2423.13–2423.19 [Reserved]**

Dated: February 13, 2008.

**Colleen Duffy Kiko,**

*General Counsel, Federal Labor Relations Authority.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 982**

**[Docket No. AMS–FV–07–0150; FV08–982–1 IFR]**

**Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2007–2008 Marketing Year**

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

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

**SUMMARY:** This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2007–2008 marketing

year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 8.1863 and 91.8137 percent, respectively, and the final free and restricted percentages are 9.2671 and 90.7329 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in outlets approved by the Board (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), the agency responsible for local administration of the marketing order.

**DATES:** Effective February 20, 2008. This interim final rule applies to all 2007–2008 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. Comments received by April 21, 2008 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet:* <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail:* [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–

2491, Fax: (202) 720-8938, or E-mail: 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 of Agriculture (USDA) 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 2007-2008 marketing year beginning July 1, 2007. This action applies to all 2007-2008 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. 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 USDA 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, USDA 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 USDA'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 free and restricted percentages which allocate the quantity of domestically produced hazelnuts that may be marketed in domestic inshell markets (free) and hazelnuts that must be exported, shelled, or otherwise disposed of by handlers (restricted). The Board met and, after determining that volume regulation would tend to effectuate the declared policy of the Act, developed a marketing policy to be employed for the duration of the 2007-2008 marketing year.

Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts, with the goal of providing producers with reasonable returns. Based on an estimate of the domestic inshell trade demand and total supply of domestically produced hazelnuts available for the 2007-2008 marketing year, the Board voted unanimously at their November 15, 2007, meeting to recommend to USDA that the interim final free and restricted percentages for the 2007-2008 marketing year be established at 8.1863 percent and 91.8137 percent, respectively. Additionally, the Board unanimously voted to set the final free and restricted percentages, effective May 1, 2008, at 9.2671 and 90.7329 percent, respectively.

The Board's authority to recommend volume regulation and use computations to determine the allocation of hazelnuts to individual markets is specified in § 982.40 of the order. Under the order's provisions, free and restricted market allocations of hazelnuts are expressed as percentages of the total hazelnut supply subject to regulation. The percentages are derived by dividing the estimated domestic inshell trade demand (computed by formula) by the Board's estimate of the total domestically produced supply of hazelnuts that are expected to be available over the course of the marketing year.

Inshell trade demand, the key component of the marketing policy, is the estimated quantity of inshell hazelnuts necessary to adequately supply the domestic inshell hazelnut market for the duration of the marketing year. The Board determines the domestic inshell trade demand for each year and uses that estimate as the basis for setting the percentage of the available supply of domestically produced hazelnuts that handlers may ship to the domestic inshell market throughout the marketing season. The order specifies that inshell trade demand be computed by averaging the preceding three years' trade acquisitions of inshell hazelnuts, allowing adjustments for abnormal crop or marketing conditions. In addition, the Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase.

As required by the order, prior to September 20 of each marketing year, the Board meets to establish its marketing policy for that year. If the Board determines that volume control would tend to effectuate the declared policy of the Act, the Board then follows

a procedure, specified by the order, to compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand that handlers may ship to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary stage of regulation is to guard against any potential underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total hazelnut supply subject to regulation, where total supply is the sum of the estimated crop production less the three-year average disappearance plus the undeclared carry-in from the previous marketing year.

On August 21, 2007, the National Agricultural Statistics Service (NASS) released an estimate of 2007 hazelnut production for the Oregon and Washington area at 33,000 dry orchard-run tons. NASS uses an objective yield survey method to estimate hazelnut production which has historically been very accurate.

On August 23, 2007, the Board met for the purpose of (1) determining if volume control regulation would tend to effectuate the declared policy of the Act; (2) estimating the total available supply and the domestic inshell trade demand for hazelnuts; (3) establishing preliminary free and restricted marketing percentages for the 2007-2008 marketing year; and (4) authorizing market outlets for restricted hazelnuts.

After discussion, the Board unanimously determined that volume regulation would be necessary to effectively market the industry's 2007 crop and would tend to effectuate the declared policy of the Act. The determination was based on (1) the size of the 2007 hazelnut crop; (2) the inability of the domestic inshell market to absorb such a large crop; (3) the projected large size of the world hazelnut crop and the probability of an oversupplied world market; and (4) the average price paid to Oregon-Washington growers has not exceeded the parity price in any one of the past 18 years.

The Board then estimated the total available supply for the 2007 crop year to be 33,603 tons. The Board arrived at that quantity by using the crop estimate compiled by NASS (33,000 tons) and then adjusting that estimate to account for disappearance and carry-in. The order requires the Board to reduce the crop estimate by the average disappearance over the preceding three years (1,426 tons) and to increase it by the amount of undeclared carry-in from previous years' production (2,029 tons).

In the calculation, disappearance is defined as the difference between the estimated orchard-run production and the actual supply of merchantable product available for sale by handlers. Disappearance can consist of (1) unharvested hazelnuts; (2) culled product (nuts that are delivered to handlers but later discarded); (3) product used on the farm, sold locally, or otherwise disposed of by producers; and (4) statistical error in the orchard-run production estimate.

Undeclared carry-in is defined as hazelnuts that were produced in a previous marketing year but were not subject to regulation because they were not shipped during that marketing year. Undeclared carry-in is subject to regulation during the current marketing year and is accounted for as such by the Board.

Additionally, the Board estimated domestic inshell trade demand for the 2007–2008 marketing year to be 2,478 tons. The Board arrived at this estimate by taking the average of the domestic inshell trade acquisitions for the 2003/2004, 2004/2005, and the 2006/2007 marketing years (2,649 tons), increasing that amount by 5 percent (133 tons) to encourage sales (as allowed by the order), and then reducing that quantity by the declared carry-in from last year's crop (304 tons). The trade acquisition data for the 2005–2006 marketing year was omitted from the Board's calculations, as allowed by the order, after it was determined to be abnormal due to crop and marketing conditions. The Board is also allowed to increase the average domestic inshell trade acquisitions in their calculation by up to 25 percent, if market conditions justify such an increase. At this stage in the establishment of the marketing policy, the Board voted unanimously that a 5 percent increase would be sufficient to encourage new sales without risking oversupply of the market.

The declared carry-in represents product regulated under the order during a preceding marketing year but not shipped during that year. This inventory must be accounted for when estimating the quantity of product to make available to adequately supply the market.

After establishing estimates for total available hazelnut supply and domestic inshell trade demand, the Board used those estimates to compute and announce preliminary free and restricted percentages of 5.8983 percent and 94.1017 percent, respectively. The Board computed the preliminary free percentage by multiplying the adjusted

inshell trade demand by 80 percent and dividing the result by the estimate of the total available supply subject to regulation (2,478 tons  $\times$  80 percent / 33,603 tons = 5.8983 percent). The preliminary free percentage initially released 1,982 tons of hazelnuts from the 2007–2008 supply for domestic inshell use. The Board authorized the preliminary restricted percentage (31,621 tons) to be exported or shelled for the domestic kernel markets.

Under the order, the Board must meet again on or before November 15 to review and revise the preliminary estimate of the total available supply of hazelnuts and to recommend interim final and final free and restricted percentages. As indicated earlier, when establishing preliminary free and restricted percentages, the Board utilizes a pre-harvest objective yield survey, compiled by NASS on behalf of the Board, to estimate the upcoming crop size. After the hazelnut harvest has concluded, usually sometime in October, information is available directly from handlers to more accurately estimate crop size. The Board may use this information to amend their preliminary estimate of total available supply before calculating the interim final and final percentages. At this meeting, the Board may also amend the percentage increase included in the computation of inshell trade demand to encourage increased sales.

Interim final percentages are calculated in the same way as the preliminary percentages but release 100 percent of the inshell trade demand, effectively releasing the additional 20 percent held back at the preliminary stage. Final free and restricted percentages may release up to an additional 15 percent of the average trade acquisitions of inshell hazelnuts for desirable carryout, to provide an adequate carryover of product into the following season. The order requires that final free and restricted percentages be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. The Board is allowed to combine the interim final and the final stages of the marketing policy, if marketing conditions so warrant, by recommending final percentages which immediately release 100 percent of the inshell trade demand (the preliminary percentage plus the additional 20 held back) plus any percentage increase the Board determines for desirable carryout. 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, as required by the order, on November 15, 2007, to review and approve an amended marketing policy and to recommend the establishment of interim final and final free and restricted percentages. At that time, the Board revised the crop estimate in the marketing policy to 36,270 tons (from 33,000 tons) after considering the results of post-harvest handler survey information compiled by the Board. The Board also revised the percentage increase meant to encourage sales that is included in the inshell trade demand computation from 5 percent to 25 percent, effectively allocating another 529 tons of inshell hazelnuts that may be marketed in the domestic market.

Using the revised crop estimate and the increased inshell trade demand, the Board then computed interim final free and restricted percentages. The percentages release the remaining 20 percent of the estimated inshell trade demand that was withheld during the preliminary stage of the marketing policy, as well as take into account the amendments made by the Board to the marketing policy computations (revising the total supply estimate and increasing the inshell trade demand). The interim final free and restricted percentages were therefore set at 8.1863 and 91.8137 percent, respectively. The interim final free percentage immediately releases a total 3007 tons of inshell hazelnuts from the 2007–2008 supply that may be marketed in domestic markets.

During the meeting, the Board decided that market conditions were such that the industry would benefit from the release of an additional 15 percent of the three year average trade acquisitions to allow for desirable carryout and that the increase would not adversely affect the 2007–2008 domestic inshell market. The final free and restricted percentages were set at 9.2671 and 90.7329 percent, respectively. The final percentages are to become effective May 1, 2008. The final free percentage releases 3,404 tons of inshell hazelnuts from the 2007–2008 supply for domestic use, which includes 397 tons released late in the marketing year for desirable carryout.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2007–2008 marketing year:

|   | Tons               |             |
|---|--------------------|-------------|
| <b>Total Available Supply</b>   |                    |             |
| (1) Production forecast (11/15/07 crop estimate) .....  |                    | 36,270      |
| (2) Minus: Disappearance (three year average—4.32 percent of Item 1) .....                        |                    | -1,567      |
| (3) Merchantable production (Item 1 minus Item 2) .....   |                    | 34,703      |
| (4) Plus: Undeclared carry-in as of July 1, 2007 (subject to 2007–2008 regulation) .....          |                    | + 2,029     |
| (5) Available supply subject to regulation (Item 3 plus Item 4) .....                             |                    | 36,732      |
| <b>Inshell Trade Demand</b>   |                    |             |
| (6) Average trade acquisition (ATA) of inshell hazelnuts (three prior years domestic sales) ..... |                    | 2,649       |
| (7) Plus: Increase to encourage increased sales (25% of average trade acquisitions) .....         |                    | + 662       |
| (8) Minus: Declared carry-in as of July 1, 2007 (not subject to 2007–2008 regulation) .....       |                    | -304        |
| (9) Adjusted inshell trade demand (Item 6 plus Item 7 minus Item 8) .....                         |                    | 3,007       |
|   | <b>Percentages</b> | <b>Free</b> |
| (10) Interim final percentages (Item 9 divided by Item 5) × 100 .....                             |                    | 8.1863      |
| (11) Interim final free tonnage (Item 9) .....  |                    | 3,007       |
| (12) Interim final restricted in tons (Item 5 minus Item 9) .....                                 |                    | 33,725      |
| (13) Final percentages (Item 14 divided by Item 5) × 100 .....                                    |                    | 9.2671      |
| (14) Final free tonnage (Interim final free tonnage (Item 11) plus 15% of ATA (397)) .....        |                    | 3,404       |
| (15) Final restricted tonnage (Item 5 minus Item 11) .....  |                    | 33,328      |

In addition to complying with the provisions of the order, the Board also considered USDA'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 allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for a plentiful supply of inshell hazelnuts for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages make available approximately 755 additional tons to encourage increased sales. The total free supply for the 2007–2008 marketing year is estimated to be 3,404 tons of hazelnuts, which is 137 percent of the average of the last three prior years' sales (2,478 tons) and exceeds the goal of the Guidelines.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$6,500,000. There are approximately 650 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Using statistics compiled by NASS, the average value of production received by producers in 2004–2006 was \$54,088,000. Using those estimates, the average annual hazelnut revenue per producer would be approximately \$77,300. The level of sales of other crops by hazelnut producers is not known. In addition, based on records maintained by the Board, approximately 83 percent of the handlers ship under \$6,500,000 worth of hazelnuts on an annual basis. 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.

Currently, U.S. hazelnut production is allocated among three main market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return for sales in the domestic inshell market. They receive less for product going to export inshell, and the least for kernels. Based on Board records of average shipments for 1997–2006, the percentage going to each of these markets was 10 percent (domestic inshell), 53 percent (export inshell), and 36 percent (kernels). Other minor market outlets make up the remaining 1 percent.

The inshell hazelnut market can be characterized as having limited and inelastic demand with a very short primary marketing period. On average, 80 percent of domestic inshell hazelnut shipments occur between October 1 and November 30, primarily to supply holiday nut demand. The inshell market is, therefore, prone to oversupply and correspondingly low grower prices in the absence of supply restrictions. 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 continental U.S. and thereby mitigate market oversupply conditions.

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. Volume controls ensure that the domestic inshell market is fully

supplied while protecting the market from the negative effects of oversupply.

Although the domestic inshell market is a relatively small portion of total hazelnut sales (averaging 10 percent of total shipments for 1997–2006), it remains a profitable market segment. The volume control provisions of the order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production into the future.

Adverse climatic conditions that negatively impacted hazelnut production in the other hazelnut producing regions of the world in 2004 and 2005 have corrected and the total world supply in 2007–2008 is predicted to be near the historically high levels seen in 2006. Product prices in the world market have trended downward in the expectation of the large available supply. While the U.S. hazelnut industry continues to experience high demand for their large sized and high quality product, the prices that producers receive are tied to the global market. In light of the anticipated world supply situation, regulation of the domestic inshell market is important to the U.S. hazelnut industry to insulate that specialty market from the supply related challenges of the global hazelnut market.

In Oregon and Washington, lower hazelnut production years typically follow higher production years (a historically consistent cyclical pattern), and such was the case in 2007. The 2006 crop of 43,000 tons was 20 percent above the 10-year average (34,000 tons for 1997–2006) for hazelnut production. The 2007 crop (36,720 tons, according to the survey of handlers conducted by the Board) is estimated to be 16 percent below the previous year. Using the NASS estimate of 33,000 tons, the crop is 23 percent lower. It is predicted that the 2008 crop will follow the recent production pattern and will be larger than the current crop year. This cyclical trait also leads to an inversely corresponding cyclical price pattern for hazelnuts. The intrinsic cyclical nature of the hazelnut industry lends credibility to the volume control measures enacted by the Board under the marketing order.

Recent production and price data reflect the stabilizing effect of volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1997 and 2006, from a low of

15,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the smallest crop year and the largest crop year were 48 percent and 145 percent, respectively, of the 10-year average of 34,000 tons. Grower price, however, has not fluctuated to the extent of production. Prices in the lowest price year and the highest price year were 63 percent and 200 percent, respectively, of the 10-year average price of \$1,114 per ton. If the extraordinarily high price for the 2005 crop year is excluded as an aberration that stems from a global production crisis, the percentage variation in price drops to 70 percent and 145 percent of a \$988 per ton average price, respectively.

The lower level of variability of price versus the variability of production provides an illustration of the order's price-stabilizing impact. The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 0.33. In contrast, the coefficient of variation for hazelnut grower prices, excluding the 2005 price, is only 0.20, dramatically lower than the CV for production. The lower level of variability of price versus the variability of production provides an illustration of the order's price-stabilizing impact.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut production cost study from Oregon State University estimated cost-of-production per acre to be approximately \$1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level only four times from 1997 to 2006. Average grower revenue was below typical costs in the other years. Without the stabilizing influence of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability by moderating the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of volume regulation impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the

marketing of the 2007 hazelnut crop. However, without any regulation in effect, the Board believes that the industry would tend to oversupply the inshell domestic market. The 2007 hazelnut crop is smaller than last year's crop but is still 7 percent above the ten-year average. The unregulated release of 36,732 tons on the domestic inshell market could easily oversupply the small, but lucrative domestic inshell market. The Board believes that any oversupply would completely disrupt the market, causing producer returns to decrease dramatically.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA establishment of preliminary, interim final, and final percentages of hazelnuts to be released to the free and restricted markets each marketing year. The program results in a plentiful supply of hazelnuts for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 3 percent of total U.S. production of all tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 73 percent of the domestically produced hazelnut kernels were marketed in the domestic market and 27 percent were exported. 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 other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of their high quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts. Shipments have also been relatively consistent, not varying much from the 10-year average of 4,906 tons. Recent years, though, have seen a significant increase in export destinations. Last season, inshell shipments to Europe totaled 4,401 tons, representing just 16 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, Hong Kong in particular, have increased dramatically in the past few years, rising to 79 percent of total inshell exports of 27,259 tons for the 2006–2007 marketing year. The industry

continues to pursue export opportunities.

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, Vegetable and Specialty Crops. 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 information requirements and duplication by industry and public sector agencies. This rule does not change those requirements.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 23, 2007, and November 15, 2007, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on the establishment of interim final and final free and restricted percentages for the 2007-2008 marketing year under the hazelnut marketing order. 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 2007-2008 marketing year began July 1, 2007, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) the percentages make the full trade demand available so handlers can take advantage of inshell marketing opportunities; (3) 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 (4) 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. A new section 982.255 is added to read as follows:

#### **§ 982.255 Free and restricted percentages—2007-2008 marketing year.**

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2007-2008 marketing year shall be 8.1863 and 91.8137 percent, respectively.

(b) On May 1, 2008, the final free and restricted percentages for merchantable hazelnuts for the 2007-2008 marketing year shall be 9.2671 and 90.7329 percent, respectively.

Dated: February 12, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08-739 Filed 2-15-08; 8:45 am]

**BILLING CODE 3410-02-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

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

[Docket No. AMS-FV-07-0130; FV08-989-1 IFR]

#### **Raisins Produced from Grapes Grown in California; Final Free and Reserve Percentages for 2007-08 Crop Natural (sun-dried) Seedless Raisins**

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

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

**SUMMARY:** This rule establishes final volume regulation percentages for 2007-08 crop Natural (sun-dried) Seedless (NS) 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 locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 85 percent free and 15 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

**DATES:** Effective February 20, 2008. The volume regulation percentages apply to acquisitions of NS raisins from the 2007-08 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by April 21, 2008, 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901; Fax: (559) 487-5906; or E-mail: [Rose.Aguayo@usda.gov](mailto:Rose.Aguayo@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).