

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 the 2001–02 fiscal period began on October 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.219 is revised to read as follows:

§ 979.219 Assessment rate.

On and after October 1, 2001, an assessment rate of \$0.06 per carton is established for South Texas melons.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6140 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV02–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 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 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. 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.

DATES: This interim final rule is effective March 15, 2002. Comments received by May 13, 2002, 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 E-mail: moab.docketclerk@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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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, suite 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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 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 2001–2002 marketing year (July 1, 2001, through June 30, 2002). 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 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 quantity to be 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). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. 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.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 48,000 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 Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared carry-in (6 tons.) Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. This difference or disappearance consists of unharvested hazelnuts, cull product that is harvested and delivered to handlers but later discarded, or product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons x 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 tons for the export and kernel market.

Under the order, the Board must meet again 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 carry-out). 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 USDA. 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, 2001, 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 4.9363 percent free and 95.0637 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were recommended at 6.1048 percent free and 93.8952 percent restricted effective May 31, 2002. The final free percentage releases 2,722 tons of inshell hazelnuts from the 2001 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1) ..	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387

Percentages	Free	Restricted
(14) Final percentages (Item 10 divided by Item 5) $\times$ 100	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

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 plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales 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 \$5,000,000. There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to

regulation under the order. Average annual hazelnut revenue per producer is approximately \$35,700, computed by dividing National Agriculture Statistics Service (NASS) figures for the average value of production for 1999 and 2000 (\$28.563 million) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under \$5,000,000 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 market outlets: inshell domestic, inshell export, and shelled (kernel) markets. Handlers and growers receive the highest return on inshell domestic, less for inshell export, and the least for kernels (shelled). Based on Board records of average shipments for 1997–2000, the percentage going to each of those markets was 13 percent (domestic inshell), 46 percent (export inshell) and 41 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and 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. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping inshell hazelnut supplies in balance with domestic needs. Volume

controls fully supply the domestic inshell market while preventing an oversupply of that market. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

This rule implements volume control procedures for the 2001–2002 marketing year by establishing marketing percentages (free and restricted percentages) which determine the quantity of inshell hazelnuts that may be marketed in domestic markets. The free quantity may be marketed in domestic inshell markets and the restricted quantity must be exported, shelled, or otherwise disposed of by handlers. The computations for 2001–2002 are explained herein.

The Board is required to meet prior to September 20 of each marketing year to establish its marketing policy for that year. At its marketing policy meeting, the Board computes and announces its estimate of inshell trade demand, which is the quantity of inshell hazelnuts that handlers typically ship to the domestic market throughout the marketing season. If it determines that volume regulations would tend to effectuate the declared policy of the Act, the Board also computes and announces the preliminary free and restricted percentages for that year. At subsequent meetings, the Board determines interim final percentages and final percentages, which may be the same as, or higher than, the preliminary percentages.

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. If market conditions warrant, the Board may increase the three-year average by up to 25 percent.

Establishing the preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent 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 and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

At its November 2001 meeting, the Board computed the available supply of

merchantable product for sale by handlers by subtracting the average crop disappearance over the preceding three years (7.12 percent) from the 48,000-ton hazelnut crop estimate. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are harvested and delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. Subtracting an additional 6 tons (the undeclared carryin) yielded the adjusted crop estimate of 44,588 tons.

The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted inshell trade demand by 80 percent and dividing the result by the adjusted crop estimate: $(2,201 \text{ tons} \times 80 \text{ percent}) / 44,588 \text{ tons} = 3.9495 \text{ percent}$. Establishing the 3.9495 percent preliminary free percentage allowed the initial release of 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use. Establishing the 96.0505 percent restricted percentage had the effect of allocating 42,804 tons to the export and kernel markets.

Under the order, the Board must meet again on or before November 15 each year to recommend interim final and final percentages, using current crop

estimates. The interim final percentages are calculated in the same way as the preliminary percentages. Computing and announcing the interim final percentage allows the release of the remaining 20 percent (to total 100 percent) of the inshell trade demand previously computed by the Board. In establishing final free percentage and restricted percentages, the Board 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 carry-out).

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 USDA. 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, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free

percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

	Tons
Inshell supply:	
(1) Total production (crop estimate)	48,000
(2) Less substandard, farm use (disappearance; 7.12 percent of Item 1) ..	3,418
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	44,582
(4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation)	6
(5) Supply subject to regulation (Item 3 plus Item 4)	44,588
Inshell trade demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,473
(7) Less declared carry-in as of July 1, 2001 (not subject to regulation)	1,272
(9) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,201
(9) Desirable carry-out on August 31, 2002 (15 percent of Item 6)	521
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	2,722

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) $\times 100$	4.9363	95.0637
(12) Interim final free in tons (Item 8)	2,201	
(13) Interim final restricted in tons (Item 5 minus Item 8)		42,387
(14) Final percentages (Item 10 divided by Item 5) $\times 100$	6.1048	93.8952
(15) Final free in tons (Item 10)	2,722	
(16) Final restricted in tons (Item 5 minus Item 10)		41,866

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 at least 110 percent of prior years' shipments before allocating supplies for the export

inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons (average trade acquisitions for three prior years) and the 521 ton desirable carry-out. This amount is 115

percent of prior years' sales and exceeds the 110 percent goal of the Guidelines.

The high level of production and carryin were key market factors leading to the 6.1048 percent final free percentage. Hazelnut production in 2001 is estimated to be an all-time record, 1,000 tons higher than the previous record set in 1997. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (i.e., average trade acquisitions of 3,473 tons) equals about 8 percent of the supply (44,588 tons subject to regulation). However, the

free tonnage carryin level of 1,272 tons was also high (37 percent of the quantity of inshell hazelnuts that handlers typically ship), meaning that even less of the new production was needed to fully supply the 2001–2002 domestic inshell market. Although the domestic inshell market is a relatively small proportion of total sales (13 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, inshell exports and kernels, are expected to continue to provide good outlets for US hazelnut production.

Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2002, and burdensome carryin levels will likely be significantly reduced.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the ten year period between 1991 and 2000, from a low of 16,500 tons (inshell) in 1998 to a high of 47,000 tons in 1997. Production in the shortest crop year and the biggest crop year were 55 percent and 157 percent, respectively, of the 10-year average tonnage of 29,880. The coefficient of variation (a standard statistical measure of variability; “CV”) for hazelnut production over the ten-year period is 0.35. In contrast, the coefficient of variation for hazelnut grower prices is 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order’s price-stabilizing impacts.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately \$1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Without the stabilizing impact of the order, growers may have lost more money. The volume regulations contribute to orderly marketing and market stability, and help moderate 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 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. This regulation provides equitable allotment of the most profitable market, the domestic inshell hazelnut market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2001–2002 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA 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.

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

Last season, 82 percent of the kernels were marketed in the domestic market and 18 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 quality. Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a ten-year average of 5,452 tons out of total average exports of 10,236 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 3,986 tons, representing 28 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 58 percent of total

exports of 14,400 tons in 2000. 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. 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. 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 31, and November 15, 2001, 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 2001–2002 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 2001–2002 marketing year began July 1, 2001, 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 982.249 is added to read as follows:

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

§ 982.24 Free and restricted percentages—2001–2002 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 4.9363 and 95.0637 percent, respectively.

(b) On May 31, 2002, the final free and restricted percentages for merchantable hazelnuts for the 2001–2002 marketing year shall be 6.1048 and 93.8952 percent, respectively.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6147 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–05]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1999. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 110 to 108, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2003.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT:

Marlene M. Betts, Acting Chief, Marketing Programs Branch, Room 2627–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number is 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has

determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 26, 2001, issue of "Cattle," USDA's National Agricultural Statistics Service (NASS) estimates that in 2000 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and will result in a decrease in Board membership from 110 to 108.

Background and Final Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by USDA from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that