

**7 CFR Part 982****[Docket No. FV96-982-2 IFR]****Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1996-97 Marketing Year****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule establishes interim and final free and restricted percentages for domestic inshell hazelnuts for the 1996-97 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

**DATES:** Effective January 9, 1997 through June 30, 1997; comments which are received by February 7, 1997, will be considered prior to any finalization of the interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., Room 369, Portland, OR 97204; telephone (503) 326-2055 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 205-2830. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; FAX (202) 720-5698.

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

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 1996-97 marketing year (July 1, 1996-June 30, 1997). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after 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 the handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine released percentages are specified in section 982.40 of the order.

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

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

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

At its August 29, 1996, meeting, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,238 tons of hazelnuts from the 1996 supply for domestic inshell use. The preliminary restricted percentage of the 1996 supply for export and kernel markets totaled 13,007 tons.

Under the order, the Board must meet a second time, on or before November 15, to recommend interim final and final percentages. The Board uses then current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining

20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective by June 1, at least 30 days prior to the end of the marketing year, June 30. The final free and restricted percentages can be made effective earlier, if recommended by the Board and approved by the Secretary. Revisions in this marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with section 982.40(e).

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

inshell market from the 1996 supply subject to regulation. The interim final restricted percentage resulted in a restricted obligation of 13,007 tons.

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

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

	Tons	
Inshell Supply:		
(1) Total production (NASS estimate) .....	20,000	
(2) Less substandard, farm use (disappearance) .....	1,362	
(3) Merchantable production (the Board's adjusted crop estimate) .....	18,638	
(4) Plus undeclared carryin as of July 1, 1996, subject to regulation .....	1,668	
(5) Supply subject to regulation (Item 3 plus Item 4) .....	20,306	
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell hazelnuts for three prior years .....	4,513	
(7) Increase to encourage increased sales (2.2 percent of Item 6) .....	100	
(8) Less declared carryin as of July 1, 1996, not subject to regulation .....	566	
(9) Adjusted Inshell Trade Demand .....	4,047	
(10) 15 percent of the average trade acquisitions of inshell hazelnuts for three prior years (Item 6) .....	677	
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10) .....	4,724	

  

Percentages	Free	Re- stricted
(12) Interim final percentages .....	20	80
(Item 9 divided by Item 5) × 100		
(13) Final percentages .....	23	77
(Item 11 divided by Item 5) × 100		

In addition to complying with the provisions of the marketing order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situation. At its November 12, 1996, meeting, the Board recommended that an increase of 2.2 percent (100 tons) for market expansion

be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 677 tons for desirable carryout. The total free supply for the 1996-97 marketing year is 5,290 tons of hazelnuts, which is the final trade demand of 4,724 tons plus the declared carryin of 566 tons. This amount is 117 percent of prior years' sales and exceeds the goal of the Guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of hazelnuts in the production area and approximately 23 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. Using this criteria, virtually all of the producers are small

agricultural producers and an estimated 20 of the 23 handlers are small agricultural service firms. Thus, the great majority of hazelnut producers and handlers may be classified as small entities.

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

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

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 ten years, from a low of 13,000 tons in 1989 to a high of 41,000 tons in 1993. Average production has been around 24,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all growers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 54 percent of the ten-year average (1985–1995). Production in the biggest crop year (1993) was 170 percent of the ten-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

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

While the level of benefits of this rulemaking are difficult to quantify, 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 U.S. This production represents approximately 3 percent of total U.S. tree nut production and approximately 3 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the U.S. Section 982.40 or 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 the primary world market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel 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 marketing order. The reporting and recordkeeping burdens have been accepted by the handlers as necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements.

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

Written comments as to the effect of this action on small business entities, timely received will be considered before 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 1996–97 marketing year began July 1, 1996, 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 30-day comment period in which to respond. 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 982.244 is added to read as follows:

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

#### **§ 982.244 Free and restricted percentages—1996–97 marketing year.**

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 1996–97 marketing year shall be 20 and 80 percent, respectively.

(b) On June 1, 1997, the final free and restricted percentages for merchantable hazelnuts for the 1996–97 marketing year shall be 23 and 77 percent, respectively.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-277 Filed 1-7-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-NM-276-AD; Amendment 39-9876; AD 96-26-51]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 747 Series Airplanes Powered By Rolls Royce Model RB211 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T96-26-51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 747 series airplanes powered by Rolls Royce Model RB211 series engines by individual telegrams. This AD requires a one-time inspection to detect cracks and corrosion of various areas at all four engine pylons, and repair of any cracked or corroded engine pylon. This action is prompted by reports of cracking of the aft torque bulkhead at the number 1 and number 2 engine pylons. The actions specified by this AD are intended to detect and correct such cracking, which could result in failure of the pylon and consequent separation of the engine from the wing.

**EFFECTIVE DATE:** January 13, 1997, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96-26-51, issued on December 13, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 10, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-276-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Information concerning this AD may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tamara Dow, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2771; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** On December 13, 1996, the FAA issued telegraphic AD T96-26-51, which is applicable to certain Boeing Model 747 series airplanes powered by Rolls Royce Model RB211 series engines.

That action was prompted by two reports of cracking of the aft torque bulkhead at the number 1 and number 2 engine pylons. This cracking occurred on a Boeing Model 747-200F series airplane powered by Rolls Royce Model RB211 series engines. The airplane had accumulated 69,506 total flight hours and 17,499 total flight cycles.

Investigation revealed that the aft torque bulkhead at the number 1 pylon was cracked completely through just above the lower spar fitting where the fitting attaches to the diagonal brace. The crack extended eight inches forward on the outboard side skin of the number 1 pylon. In addition, the lower portion of the aft torque bulkhead at the number 1 pylon had separated and had dropped down approximately 0.5 inch.

Investigation also revealed that the aft torque bulkhead at the number 2 pylon was cracked (1.2 inch) in approximately the same location as the cracking on the number 1 pylon.

The cause of this cracking is unknown at this time. Modification of the strut/wing, which is currently required by AD 95-13-05, amendment 39-9285 (60 FR 33333, June 28, 1995), had not yet been accomplished on the airplane at the time of discovery of the cracking. However, it also is not known if this modification would have prevented this condition.

Cracking of the aft torque bulkhead at the engine pylons, if not detected and corrected in a timely manner, could result in failure of a pylon and consequent separation of the engine from the wing.

#### FAA's Determination

The FAA has determined that a one-time inspection to detect cracks and corrosion of the aft torque bulkhead at all four engine pylons is necessary to address the identified unsafe condition in a timely manner.

#### Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the

FAA issued telegraphic AD T96-26-51 to require a one-time detailed visual inspection to detect cracks and corrosion in the following areas: (1) The external surface of the lower half of the aft torque bulkhead at all four engine pylons, and (2) the external surface of the inboard and outboard side skins for a distance of 36 inches forward of the plane of the aft torque bulkhead at all four engine pylons. The AD also requires repair of any cracked or corroded engine pylon. In addition, the AD requires that operators submit a report of all inspection findings to the FAA.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 13, 1996, to all known U.S. owners and operators of certain Boeing Model 747 series airplanes powered by Rolls Royce Model RB211 series engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

#### Interim Action

This is considered to be interim action. The reports of inspection results that are required by this AD will enable the FAA to obtain better insight into the nature, cause, and extent of cracking found at the number 1 and number 2 engine pylons, and eventually to develop final action to address the subject unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in