

Therefore, the estimated assessment revenue for the 2001–02 season as a percentage of total grower revenue could range between 1.5 and 4.7 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 6, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. 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.

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

An interim final rule concerning this action was published in the **Federal Register** on November 9, 2001, (66 FR 56599). Copies of that rule were also mailed or sent via facsimile to all tomato handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 8, 2002, and no comments were received.

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

After consideration of all relevant material presented, including the 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.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 66 FR 56599 on November 9, 2001, is adopted as a final rule without change.

Dated: March 7, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–5939 Filed 3–12–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV01–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 2000–2001 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule is adopting and reinstating, without change, an interim final rule that established interim and final free and restricted percentages for domestic inshell hazelnuts for the 2000–2001 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. This action is necessary because the interim final rule inadvertently allowed the marketing percentages to expire on June 30, 2001. The Department of Agriculture is therefore adopting and reinstating the interim final rule. The marketing percentages established by the interim final rule will continue to apply until all restricted hazelnuts from the 2000–2001 marketing year have been properly disposed of in accordance with marketing order requirements. 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: *Effective date:* March 14, 2002.

Applicability date: This final rule applies from July 1, 2000, until all restricted hazelnuts generated during the 2000–2001 marketing year are properly disposed of in accordance with marketing order requirements.

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, room 2525–S, PO Box 96456, Washington, DC 20090–6456; 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, room 2525–S, PO Box 96456, Washington, DC 20090–6456; 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 2000–2001 marketing year (July 1, 2000, through June 30, 2001), or until all restricted hazelnuts from that year 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 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, 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 reinstates percentages that 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 25,000 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 initially adjusted the crop estimate down to 24,153 tons by taking into consideration the average crop disappearance over the preceding three years (8.32 percent) and the undeclared carry-in (1,234 tons). The Board computed the adjusted inshell trade demand of 3,163 tons by taking the difference between the average of the past three years' sales (4,347 tons) and the declared carry-in from last year's crop (1,184 tons).

The Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, at its August 31, 2000, 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 (3,163 tons × 80 percent / 24,153 tons = 10 percent). The preliminary free percentage thus initially released 2,530 tons of hazelnuts from the 2000 supply for domestic inshell use, and the restricted percentage withheld 21,738 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 carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 14, 2000, 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 14 percent free and 86 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 17 percent free and 83 percent restricted effective May 1, 2001. The final free percentage releases 3,815 tons of inshell hazelnuts from the 2000 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 2000-2001 marketing year:

	Tons
Inshell Supply:	
(1) Total production (Board's estimate)	23,000
(2) Less substandard, farm use (disappearance)	1,914
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	21,086
(4) Plus undeclared carry-in as of July 1, 2000, subject to regulation	1,233
(5) Supply subject to regulation (Item 3 plus Item 4)	22,319
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,347
(7) Less declared carry-in as of July 1, 2000, not subject to regulation	1,184
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	3,163
(9) Desirable carry-out on August 31, 2001 (15 percent of Item 6)	652
(10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9)	3,815

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	14	86
(12) Final percentages (Item 10 divided by Item 5) × 100	17	83

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 secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages are based on the final inshell trade demand, and made available an additional 652 tons for desirable carry-out effective May 1, 2001. The total free supply for the 2000–2001 marketing year is 4,999 tons of hazelnuts, which is the sum of the final trade demand of 4,347 tons and the 652 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Final 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 rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Small agricultural producers have been 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 whose annual receipts are less than \$5,000,000. Using

these criteria, all of the producers are small agricultural producers and a majority of the 22 handlers are small agricultural service firms. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

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

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

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

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 15,500 tons in 1998 to a high of 47,000 tons in 1997. Average production has been around 29,800 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small. For instance, production in the shortest crop year (1998) was 55 percent of the 10-year average (1990–1999). Production in the biggest crop year (1997) was 158 percent of the 10-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

As an alternative, the Board discussed not regulating the 2000–2001 hazelnut crop. However, without any regulations in effect, the Board believes that the

industry would oversupply the inshell domestic market.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

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

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the United States. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of quality. Europe, and Germany in particular, is historically the primary world market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts (kernels) sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The

information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581-0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other marketing order programs, reports and forms are periodically reviewed to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements. In addition, the USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Further, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the November 14, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Additionally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule regarding this action was published in the **Federal Register** on March 6, 2001. A copy of the rule was provided to the Board's staff for distribution to Board members as well as the hazelnut industry. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on May 7, 2001. No comments were received. USDA is adopting and reinstating the interim final rule because the marketing percentages inadvertently expired on June 30, 2001. The marketing percentages established by the interim final rule will continue to apply until all restricted hazelnuts from the 2000-2001 marketing year have been properly disposed in accordance with marketing order requirements. Some of these dispositions are made after June 30, 2001, the end of the 2000-2001 marketing year.

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

After consideration of all relevant material presented, including the Board's recommendation, and other

information, it is found that adopting and reinstating as a final rule without change the provisions of § 982.248 in the interim final rule published in the **Federal Register** (66 FR 13396, March 6, 2001), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The percentages established by the interim final rule continue to apply until all restricted hazelnuts from the 2000-2001 marketing year have been properly disposed of in accordance with the marketing order requirements; (2) the interim final rule was published in the **Federal Register** on March 6, 2001, with a May 7, 2001, comment period, and no comments were received; and (3) handlers are aware of this action and are prepared to comply with the marketing percentages.

List of Subjects in 7 CFR Part 982

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

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, § 982.248 as published in the interim final rule at 66 FR 13396 on March 6, 2001, is adopted and reinstated as a final rule without change. Section 982.248 reads as follows:

§ 982.248 Free and restricted percentages—2000-2001 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2000-2001 marketing year shall be 14 and 86 percent, respectively.

(b) On May 1, 2001, the final free and restricted percentages for merchantable hazelnuts for the 2000-2001 marketing year shall be 17 and 83 percent, respectively.

Dated: March 7, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE177, Special Conditions 23-112-SC]

Special Conditions; Eclipse Aviation Corporation, Model 500 Airplane; Protection of Systems From High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: This document issues special conditions for the Eclipse Aviation Corporation, 2503 Clark Carr Loop SE, Albuquerque, NM 87106 on the Eclipse Model 500 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays manufactured by Eclipse Aviation Corporation for which the applicable regulations do not contain adequate or appropriate airworthiness standard for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 21, 2002. Comments must be received on or before April 12, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE156, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE177. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment