

handlers with six members, and would have failed to assure equitable representation on the committee as is required pursuant to § 932.25.

This rule will not impose any additional reporting or recordkeeping requirements on any of the three olive 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. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. All three industry handlers are currently represented on the committee and participated in the deliberations.

An interim final rule concerning this action was published in the **Federal Register** on January 28, 1999. The committee staff advised each handler of such publication by personal contact. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 60-day comment period, which ended March 29, 1999. No comments were received.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 4286), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 64 FR 4286 on January 28, 1999, is adopted as a final rule without change.

Dated: April 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-10773 Filed 4-28-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV99-982-1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1998-99 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell hazelnuts for the 1998-99 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.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and 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 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 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 rule apply to all merchantable hazelnuts handled during the 1998-99 marketing year (July 1, 1998, through June 30, 1999). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect 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 National Agricultural Statistics Service (NASS) estimated hazelnut production at 16,500 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

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

At its August 27, 1998, meeting, the Board computed and announced

preliminary free and restricted percentages of 18 percent and 82 percent, respectively. The Board used the NASS crop estimate of 16,500 tons. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against an underestimate of crop size. The preliminary free percentage released 2,763 tons of hazelnuts from the 1998 supply for domestic inshell use. The preliminary restricted percentage of the 1998 supply for export and kernel markets totaled 12,623 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 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 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 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 12, 1998, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of an additional 15 percent for desirable carryout would not adversely affect the 1998-99 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. Final percentages were recommended at 30 percent free and 70 percent restricted. The final percentages released 4,115 tons of inshell hazelnuts from the 1998 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (14,500 tons) and the following supply and demand information for the 1998-99 marketing year:

	Tons	
Inshell Supply:		
(1) Total production (Board's estimate)	14,500	
(2) Less substandard, farm use (disappearance)	1,077	
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	13,423	
(4) Plus undeclared carryin as of July 1, 1997, subject to regulation	120	
(5) Supply subject to regulation (Item 3 plus Item 4)	13,543	
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,408	
(7) Less declared carryin as of July 1, 1997, not subject to regulation	954	
(8) Adjusted Inshell Trade Demand	3,454	
(9) Desirable carryout on August 31, 1999 (15 percent of Item 6)	661	
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9)	4,115	
	Free	Restricted
(11) Final percentages (Item 10 divided by Item 5) × 100	30	70

In addition to complying with the provisions of the order, the Board also considered the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years'

shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages are based on the final inshell trade demand, and will make available an additional 661 tons for desirable carryout. The total free supply for the 1998-99 marketing year is 5,069 tons of hazelnuts, which is the final trade demand of 4,408 tons plus the 661 tons for desirable carryout. This amount

is 115 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 action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the 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 these criteria, virtually all of the producers are small agricultural producers and an estimated 19 of the 22 handlers are small agricultural service firms. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

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

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

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 13,000 tons in 1989 to a high of 47,000 tons in 1997. Average production has been around 27,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 48 percent of the 10-year average (1988–1997). Production in the biggest crop year (1997) was 173 percent of the 10-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the producer price per pound has increased over the last 5 years, from \$.32 in 1993 to \$.45 in 1997.

The Board discussed the only alternative to volume regulation percentages which was not to regulate. Without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Although the 1998 hazelnut crop is much smaller than last year, the release of 14,500 tons on the domestic inshell market would cause producer returns to decrease drastically, and completely disrupt the 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 the 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, although China was the largest importer in 1997–98. 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.

This rule will not impose any additional reporting or recordkeeping

requirements on either small or large hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and encouraged to participate in Board deliberations. Like all Board meetings, the November 12, 1998, meeting was a public meeting held in a location central to the production area and all entities, both large and small, were able to express their views on this issue. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry. The Board itself is composed of 10 members, of which four are handlers, five are growers, and one is a public member.

An interim final rule concerning this action was published in the **Federal Register** on January 14, 1999. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 15, 1999. No comments were received.

After consideration of all relevant material presented, including the Board's recommendation and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 2422, January 14, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

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

For reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 64 FR 2422 on January 14, 1999, is adopted as a final rule without change.

Dated: April 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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BILLING CODE 3410-02-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 99-25]

RIN 3069-AA-73

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule which amended its regulation governing the operation of the Affordable Housing Program (AHP or Program) to make certain technical revisions clarifying Program requirements and improving the operation of the AHP.

EFFECTIVE DATE: The final rule shall be effective on June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, (202) 408-2848, or Janet M. Fronckowiak, Associate Director, (202) 408-2575, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

On August 4, 1997, the Finance Board published a final rule adopting comprehensive revisions to the AHP regulation, see 12 CFR part 960, which, among other changes, authorized the 12 Federal Home Loan Banks (Banks), rather than the Finance Board, to approve applications for AHP subsidies beginning January 1, 1998. See 62 FR 41812 (Aug. 4, 1997) (1997 AHP Regulation). On May 20, 1998, the Finance Board published an Interim Final Rule amending the 1997 AHP Regulation to make certain technical revisions clarifying Program requirements and improving the operation of the AHP. See 63 FR 27668 (May 20, 1998). The Interim Final Rule provided for a 60-day comment period.

The Finance Board received nine comment letters on the Interim Final

Rule. Commenters included: three Banks, two Bank Advisory Councils, one Bank member, and one financial institutions trade association. Because the purpose of the Interim Final Rule was to make certain technical clarifying revisions, comments that raised issues beyond the scope of the Interim Final Rule changes are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the Interim Final Rule on which significant comments were received are discussed below.

II. Analysis of Final Rule

A. Minimum Credit Product Usage Limit—§§ 960.5(b)(10)(i)(C), (ii)

Section 960.5(b)(10)(i)(C) of the 1997 AHP Regulation authorized a Bank, in its discretion, after consultation with its Advisory Council, to establish a requirement that a member submitting an AHP application have made use of “a credit product” offered by the Bank, other than AHP or Community Investment Program (CIP) credit products, within the previous 12 months (single credit product usage limit). One of the arguments the Finance Board considered in determining to allow imposition of such a limit was that AHP subsidies are derived from a Bank’s earnings and, therefore, fairness suggests that availability of subsidies may be linked to the extent to which a member contributes to the Bank’s earnings through the single purchase of a Bank credit product. The Finance Board determined, after weighing the arguments, that giving the Banks the discretion, after consultation with their Advisory Councils, to adopt a single credit product usage limit would enable the Banks to be most responsive to the needs and views in their Districts. However, in the course of the Banks’ implementation of this change under the AHP, the Banks indicated to the Finance Board that a member’s single use of a Bank credit product does not make a meaningful contribution to Bank earnings, from which AHP subsidies are derived. The Banks argued instead for authority to adopt a credit product usage limit based on the member’s use of a *minimum amount* of a Bank’s credit product. The Banks also proposed that the required level of credit product usage be linked to a member’s asset size.

In response to these arguments, the Interim Final Rule revised § 960.5(b)(10)(i)(C) to permit a Bank, after consultation with its Advisory Council, to establish a requirement that a member submitting an AHP application must have made use of a

minimum amount of a credit product offered by the Bank, other than AHP or CIP credit products, within the previous 12 months, provided that such a minimum threshold for credit product usage established by a Bank shall not exceed 1.5 percent of the member’s total assets, and all members shall have access to some amount of AHP subsidy, as determined by the Bank, regardless of whether they meet the Bank’s minimum threshold for credit product usage (minimum credit product usage limit).

Two commenters opposed this change, for some of the same reasons evaluated and discussed by the Finance Board in the 1997 AHP rulemaking. See 61 FR 57799, 57808-09 (Nov. 8, 1996); 62 FR 41812, 41819 (August 4, 1997); see also, 60 FR 55487, 55490-91 (Nov. 1, 1995). The commenters have not presented new arguments that were not considered by the Finance Board in the 1997 AHP rulemaking. The Finance Board continues to believe that the Banks should have the discretion, after consultation with their Advisory Councils, to adopt a minimum credit product usage limit as appropriate based on the needs and views in the Bank’s District. Accordingly, the minimum credit product usage limit provision contained in the Interim Final Rule is adopted without change in the final rule.

The Interim Final Rule also clarified in § 960.5(b)(10)(ii) that “[a]ny limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members.” This requirement is intended to ensure that such limits are not structured or applied in a discriminatory manner. A commenter pointed out that, under a technical reading of this language, a Bank would have to make an equal amount of AHP subsidy available to all members, regardless of whether the member meets the minimum threshold requirement for credit product usage. This was not the intent of the amended language in § 960.5(b)(10)(ii). Accordingly, the language has been clarified in the final rule to provide that any limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members receiving subsidy pursuant to such limit.

B. Procedure for Approval of Applications for Funding—§ 960.6

1. Scoring Criterion for Use of Donated Government-Owned or Other Properties—§ 960.6(b)(4)(iv)(A)

Under § 960.6(b)(4)(iv)(A) of the Interim Final Rule, an application may