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 California kiwifruit industry, and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the July 15, 2004, 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 California kiwifruit 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 September 16, 2004 (69 FR 55733). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on November 15, 2004, 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 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 920 which was published at 69 FR 55733 on September 16, 2004, is adopted as a final rule without change.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27908 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 958 and 980

[Docket No. FV04–958–1 FIR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Relaxation of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onion varieties, and updates the regulatory text concerning certain reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in Idaho and Eastern Oregon and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule also continues in effect the action that relaxes the requirements for pearl and cipolline onions under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. Specifically, this rule continues in effect the action that changes the definition of pearl onions to mean onions 2 inches in diameter or less, establishes a relaxed minimum grade of U.S. No. 2 and relaxed minimum diameter of 1–1/2 inches for cipolline onions, and adds clarification and specificity to the reporting requirements for onions handled for peeling, chopping, or slicing. The changes will facilitate the marketing of onions handled under the marketing order, improve producer returns, and bring the section 8e import regulation into conformity with the marketing order.

DATES: Effective Date: January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George 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 Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, 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.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the action that relaxes handling regulations for pearl and cipolline onions produced in certain designated counties in Idaho, and Malheur County Oregon, by redefining pearl onions to mean onions 2 inches in diameter or less, and by establishing a relaxed minimum grade of U.S. No. 2 and a relaxed minimum diameter of 1½ inches for cipolline onion varieties. As provided under section 8e of the Act, these changes continue in effect the actions that also apply to all imported pearl and cipolline onions. This rule also continues in effect the action that adds clarification and specificity to the reporting requirements by updating § 958.328(d) for onions handled for peeling, chopping, or slicing to reflect current form provisions. These changes were unanimously recommended by the Committee on April 1, 2004, and are intended to facilitate the marketing of Idaho-Eastern Oregon onions and improve producer returns.

Sections 958.51 and 958.52 of the order authorize the Committee to recommend, and the USDA to issue, grade, size, quality, pack, and container regulations for any variety or varieties of onions grown in the production area. Section 958.53 authorizes the issuance of special regulations to facilitate the handling of pearl onions as well as other special purpose shipments. Section 958.65 authorizes the Committee to collect information from handlers. Regulations specific to the handling of onions produced in the regulated production area are contained in § 958.328 of the order's handling regulations, whereas relevant import regulations are contained in § 980.117 and § 980.501 of the vegetable import regulations.

Pearl onions and cipolline onions are small, specialty onions with end uses in both the fresh market (raw and cooked) and processed market. Although there are relatively few pearl onions and cipolline onions produced in the Northwest, increased producer interest in both types of onions, as well as changes in customer preferences, encouraged this Committee recommendation.

Pearl onions are defined, in part, in both the order and the import regulations as onions that are produced using specific cultural practices that limit growth and are inspected and certified as measuring no larger than the maximum designated size. Factors that can limit growth, and subsequently final bulb size, include the variety, plant density, depth planted, photoperiod, and temperature. Pearl onions are mild flavored white, red, or yellow skinned onions generally ranging in size from about ¾ inch to less than 2 inches in diameter.

Although pearl onions must be inspected and certified as measuring no larger than the maximum size designated under the order, they have been exempt from the minimum grade, size, and maturity requirements of the order since 1985. In order to be eligible for this exemption, the onions must be no greater than the stated maximum size limit. Although exempt from the grade, size, and maturity requirements, shipments of pearl onions are subject to administrative assessments.

Due to previous changes in handling, marketing, and buyer preferences, the defined maximum diameter of pearl onions was changed from 1½ inches to 1¾ inches in 1990 (55 FR 27825). Similarly, due to ongoing changes in handling, marketing, and buyer preferences, this rule continues in effect the action that further relaxes the size requirements by increasing the defined maximum diameter of pearl onions to 2 inches.

The pearl onion market is a minor segment of the onion market served by the Idaho-Eastern Oregon production area. As such, the Committee continues to believe that pearl onions do not compete directly with most of the onions produced in this area and that the current exemption from size, grade, and maturity requirements should continue.

Due to changing dynamics in the cultural and handling practices in this region, as well as buyer and consumer preferences, this relaxation in requirements will help facilitate the efficient movement of pearl onions into fresh market channels and may also enhance producer returns.

Cipolline onions—also known as Borettana onions—are traditional Italian onions that are relatively small and button shaped, and include white, red, and yellow varieties. As noted earlier, cipolline (pronounced chip-ah-LEE-nee) onions have constituted a very small percentage of the onions produced and marketed in the order's regulated production area in the past. However, due to an increase in cipolline onion production, and a growing consumer interest in this specialty onion, the order's grade and size requirements were beginning to adversely affect the handling and marketing of cipolline onions.

Under the order, white, red, and yellow onion varieties handled for the fresh market have varying minimum grade and size requirements. Specifically, white varieties must meet a minimum grade of U.S. No. 1, 1 inch minimum to 2 inches maximum or at least 1½ inches minimum, whereas red varieties must meet a minimum grade of U.S. No. 2 and a minimum diameter of 1½ inches. The most prevalent onions packed in the Idaho-Eastern Oregon production area, yellow onion varieties, must meet a minimum grade of U.S. No. 2 and measure 3 inches or larger in diameter, or, if packed to U.S. No. 1 grade, they may have a minimum measurement of 1¾ inches in diameter. Prior to this change, cipolline onions were handled, graded, and inspected in accordance with the different order requirements for white, red, and yellow onion varieties.

Cipolline onions, however, range in size from about 1 inch in diameter to about 3 inches in diameter, with prevalence found in the 2-inch to 3-inch sizes. Since most of the cipolline onions produced in this area are yellow, U.S. No. 2 grade cipolline onions would have difficulty meeting the three-inch minimum size requirement. Following a review of the cultural practices, supply situation, and demand characteristics for cipolline onions, the Committee determined that the marketing of all cipolline onion varieties would be enhanced if handlers were held to a minimum grade of U.S. No. 2 and a minimum size of 1½ inches in diameter—the same minimum requirements for all Idaho-Eastern Oregon red varieties.

This rule, by establishing a minimum grade and size for all cipolline onion varieties distinct from the prevalent white, red, and yellow varieties, will help ensure that marketable cipolline onions meet the minimum requirements of the order. While the requirements in place prior to this action allowed for the shipment of white cipolline onions that graded U.S. No. 1, 1-inch minimum to 2-inches maximum, no such shipments were ever made from the production area. Therefore, this change in the minimum grade and size requirements is not expected to impact the shipment of white cipolline onions.

As mentioned earlier, section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions produced in South Texas, since the marketing orders were established. The import regulations specify that import requirements for onions are to be based on the seasonal categories of onions produced in both marketing order areas. In that regard, imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March 9 and the South Texas onion marketing order during the period March 10 through June 4 of each season. Pearl and cipolline onions are not currently produced in South Texas. However, they are produced and marketed in limited quantities through out the year under the Idaho-Eastern Oregon onion marketing order. Therefore, the requirements for imported pearl and cipolline onions should be based upon the requirements established under Marketing Order No. 958 for the entire year.

As a consequence, this action continues in effect changes to § 980.117(a)(1) and (2) and (b)(1) of the onion import regulations by determining that imports of pearl and cipolline onions during the entire year are in most direct competition with the marketing of onions produced under Marketing Order No. 958 and changes to § 980.117(h) and (i) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to 2 inches or less in diameter. Accordingly, all cipolline onions imported must be U.S. No. 2 grade or better and measure 1½ inches or more in diameter, and pearl onions cannot be larger than 2 inches in diameter.

This rule also continues in effect the action that clarifies certain handler reporting requirements. Under the handling regulations, onions that are inspected and certified as meeting the grade, size, maturity, and pack requirements of the order and are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection. Section 958.328(d) provides reporting procedures for the handling of such previously inspected onions for peeling, chopping, or slicing.

The Committee uses Form FV–37, Rehandling of Onions Report, to collect information from handlers specific to onions handled under this section. These reporting requirements are in place primarily to ensure handler compliance with the order's provisions. This rule continues in effect the action that adds clarification and specificity to the regulations by updating § 958.328(d) to reflect current Form FV–37 provisions. The change is expected to minimize handler errors in completing the form and help ensure timely submission of the completed form to the Committee.

This form has been approved previously by the Office of Management and Budget (OMB) under OMB Number 0581–0178, Vegetable and Specialty Crops. This action will not impact the information collection burden hours currently approved by OMB for this form.

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 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.

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 42 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 190 onion producers in the regulated area. In addition, based on the most recent information available, approximately 472 importers of onions are subject to import regulations and may be affected by this rule. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on its assessment records, the Committee estimates that about 39 of the 42 handlers ship less than $5,000,000 worth of onions on an annual basis. In addition, based on the acreage (20,600), production (12,000,000 cwt), and total producer revenue ($130,768,000) reported by the National Agricultural Statistics Service for 2003, and the current number of onion producers (190), the average annual gross producer revenue is approximately $688,252. Thus, the majority of the onion handlers and the onion producers in this industry may be classified as small entities. Although it is not known how many importers of onions may be classified as small entities, we believe that many of the 472 importers can be classified as such. There are two firms involved in altering onions under the order and both firms may be classified as small entities.

This rule continues in effect the action that relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onions, and clarifies certain reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. Authority for this action is contained in §§ 958.51, 958.52, 958.53, and 958.65 of the order. This rule—unanimously recommended by the Committee at its April 1, 2004, meeting—continues in effect the action that changes § 958.328(h) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers (as defined in the U.S. Standards for Grades of Onions), and that have been inspected and certified as measuring 2 inches in diameter or less. In addition, this rule continues in effect the action that changes § 958.328(a)(2) by adding cipolline onions to the minimum grade and size requirements established for red onion varieties: U.S. No. 2 grade or better and 1½ inch diameter or larger.

Under authority in section 8e of the Act, this rule also continues in effect the action that changes § 980.117(a)(1) and

(2), and (b)(1), of the onion import regulations by determining that imports of pearl and cipolline onions are in most direct competition during the entire year with the marketing of onions produced under Marketing Order No. 958 and changes § 980.117(h) and (i) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to 2 inches in diameter or less. Although not specifically referenced in the text of § 980.117, this rule also continues in effect the action that relaxes the minimum grade and size for imported cipolline onions to U.S. No. 2 grade and 1½ inches in diameter.

Finally, this rule continues in effect the action that updates § 958.328(d) to reflect the current form used for onions handled for peeling, chopping, or slicing. This action is intended to facilitate the handling and marketing of pearl and cipolline onions, increase producer returns, and help minimize errors in completing Form FV–37 concerning the handling of onions for peeling, chopping, or slicing, and to help ensure timely submission of the form to the Committee.

According to the Committee, there is currently one producer and one handler of pearl and cipolline onions in the regulated production area, and, as such, statistics relating to the production and marketing of pearl and cipolline onions in the Idaho-Eastern Oregon onion production area cannot be made available. The quantity of such specialty onions, however, would be minor in relation to the prevalent large, globular shaped Spanish-type onion produced in the production area. Regarding pearl and cipolline onions produced elsewhere in the United States or imported into the United States: statistical information is available grouped by dry bulb type onions, green onions, or onion sets and is generally unavailable by variety, size, or color. However, the U.S. Department of Commerce does track the quantity of pearl onions imported into the United States with a maximum diameter of .39 inches. In 2003, for example, approximately 211 hundredweight of pearl onions (less than or equal to .39 inches in diameter) were imported—in diminishing order—from Chile, Spain, China, Mexico, and India. In comparison, most onions imported into the U.S. are produced in Mexico, Canada, Peru, and Chile. Currently, there are no government statistics on the domestic production or importation of cipolline onions.

Regarding the impact of this rule on affected entities, relaxing the size requirement for pearl onions and the grade and size requirement for cipolline onions is expected to benefit handlers, importers, and producers. With the change in the definition of pearl onions to include onions as large as 2 inches in diameter, a potentially greater quantity of onions will pass inspection and thus be certified under the order's pearl onion exemption provisions. Similarly, by relaxing the minimum grade and size requirements for cipolline onions, a greater quantity of these onions should meet the order's handling regulations. This could translate into an increased market for cipolline onions and greater returns for handlers, importers, and producers. While the requirements in place prior to this action allowed for the shipment of white cipolline onions that graded U.S. No. 1, 1-inch minimum to 2 inches maximum, no such shipments were ever made. Therefore, this action is not expected to impact the shipment of white cipolline onions.

The clarification of reporting requirements for peeled, chopped, and sliced onions will have the tangible effect of providing more clearly understood instructions to handlers who are required to complete Form FV–37.

The Committee considered several alternatives to the relaxation in handling regulations for pearl and cipolline onions. The Committee initiated this action due to a request from the Idaho-Eastern Oregon onion industry's single pearl and cipolline onion producer and handler for an all-inclusive exemption from the requirements of the order. A special subcommittee was formed to study the request. The initial request was an exemption for an entire specialty product line, which included onion sets, pearl onions, boiler onions, prepack onions, cipolline onions, and shallots. The requester's main contention with the order is that none of his onions fit the profile of the Idaho-Eastern Oregon onion industry's foremost product, the large, globular shaped and mild Spanish-type onion. In addition, the requester was of the view that the Committee's promotion efforts—a major budgetary item for the Committee—does not benefit him as a producer and marketer of the small specialty onions. The requester also stated that the cost to him in complying with the order—in administrative assessments and inspection fees—is too high when considering his benefits from the order.

The subcommittee noted that onion sets and shallots do not need to be considered for further exemptions since neither is regulated under the marketing order. In addition, the subcommittee determined that boiler and prepacker size onions should not be exempt from the handling regulations since both are produced throughout the regulated production area. Various members of the subcommittee were of the view that the marketing of out-of-grade and off-size boiler and prepacker onions would have a negative impact on the marketing of all Idaho-Eastern Oregon onions.

Further, as noted earlier in this document, pearl onions have been exempt from the minimum grade, size, and maturity requirements of § 958.328 for several years. The subcommittee determined that an increase in the maximum size for pearl onions would facilitate the handling and marketing of these onions. The subcommittee considered increasing the maximum size under the pearl onion definition from 1⅞ inches to as much as 2¾ inches in diameter. This was rejected, however, because this would permit handlers to ship these onions exempt from the quality requirements in competition with larger sized onions subject to such requirements. The subcommittee also rejected consideration of an exemption from the current assessment and inspection requirements for pearl onions as being detrimental to the program. Pearl onions are inspected under the order to assure that they do not exceed the maximum diameter permitted.

Finally, the subcommittee considered various exemption and regulatory options in regard to cipolline onions. A complete exemption from the order was rejected since the subcommittee considered the cipolline onions as being a competitive product to the prevalent onion varieties produced and marketed under the order. Consideration was also given to establishing a different regulatory scheme for the county in which the cipolline onions are produced. This was not considered a viable option due to administrative concerns and the fact cipolline onions can be produced anywhere within the production area.

The Committee, based on the subcommittee's consideration of the issue, determined that pearl and cipolline onions are promoted through the order's generic promotion efforts since a major component of these efforts are coupled to the Idaho-Eastern Oregon onion logo. In this regard, the Committee feels that all handlers within the regulated production area benefit from the order.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion 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, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 1, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, as indicated earlier, the subcommittee appointed to consider this matter met on February 25, 2004, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on September 22, 2004. Copies of the rule were made available by the Committee's staff to all producers, handlers, and interested persons. In addition, the rule was made available though the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended November 22, 2004. Two comments were received during that period. Neither comment addressed the substance of the interim final rule; therefore, no changes are made as a result of these comments.

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 Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 56667) will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the finalization of this rule.

List of Subjects

7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

PART 980—VEGETABLES; IMPORT REGULATIONS

■ Accordingly, the interim final rule amending 7 CFR parts 958 and 980 which was published at 69 FR 56667 on September 22, 2004, is adopted as a final rule without change.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27909 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV05–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2004–2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 2004–2005 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 6.4921 and 93.5079 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in outlets approved by the Board (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* December 22, 2004. This interim final rule applies to all 2004–2005 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. Comments received by February 22, 2005 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; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, 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.