

§ 982.50

deterioration, it may require that such lot of hazelnuts be reinspected at the handler's expense prior to handling.

[40 FR 53227, Nov. 17, 1975, as amended at 61 FR 17560, Apr. 22, 1996]

CONTROL OF DISTRIBUTION

§ 982.50 Restricted obligation.

(a) No handler shall handle inshell hazelnuts unless prior to or upon shipment thereof, he: (1) Has withheld from handling a quantity, by weight, of certified merchantable hazelnuts determined by dividing the quantity handled, or to be handled, by the applicable free percentage and multiplying the quotient by the restricted percentage; (2) has withheld from handling an equivalent quantity of creditable ungraded inshell hazelnuts under § 982.51(a); or (3) has under § 982.51(b), declared in lieu of a quantity of certified merchantable hazelnuts, under paragraph (a)(1) of this section, the equivalent quantity, by weight as determined under that section, of shelled hazelnuts certified as meeting the standards in effect for Oregon No. 1 grade for shelled hazelnuts as contained in Oregon Grade Standards for Hazelnut Kernels or such other standards as may be recommended by the Board and established by the Secretary. Any handler who intends to withhold shelled hazelnuts in satisfaction of a restricted obligation must make such declaration to the Board prior to shelling any such hazelnuts. Withholding may be temporarily deferred under the bonding provisions in § 982.54. The quantity of hazelnuts required to be withheld shall be the restricted obligation. Certified merchantable hazelnuts handled in accordance with this subpart shall be deemed to be the handler's quota fixed by the Secretary within the meaning of section 8a(5) of the Act.

(b) Inshell hazelnuts withheld by a handler in satisfaction of his restricted obligation shall not be handled and shall be held by him subject to examination by and accounting control of, the Board until disposed of pursuant to this part.

(c) A handler having certified merchantable hazelnuts which have not been handled at the end of a marketing

7 CFR Ch. IX (1-1-01 Edition)

year may elect to have those hazelnuts bear the restricted and assessment obligations of that year or of the marketing year in which handled. The Board shall establish such procedures as are necessary to facilitate the administration of this option among handlers.

(d) Whenever the restricted percentage for a marketing year is reduced, each handler's restricted obligation shall be reduced to conform with the new restricted percentage. Any handler who, upon such reduction, is withholding restricted hazelnuts in excess of his new restricted obligation may have the excess freed from withholding by complying with such procedures as the Board may require to insure identification of the remaining hazelnuts withheld.

[40 FR 53227, Nov. 17, 1975, as amended at 46 FR 26039, May 11, 1981]

§ 982.51 Restricted credit for ungraded inshell hazelnuts and for shelled hazelnuts.

(a) A handler may withhold ungraded inshell hazelnuts in lieu of certified merchantable hazelnuts in satisfaction of that handler's restricted obligations, and the weight on which credit may be received shall be the shelled hazelnut equivalent weight as inspected by the Federal-State Inspection Service multiplied by 2.5. Any lot of ungraded hazelnuts not meeting the moisture requirements for certified merchantable hazelnuts shall not be eligible for credit. All determinations as to the shelled hazelnut equivalent weight shall be made by the Federal-State Inspection Service at the handler's expense. Hazelnuts so withheld shall be subject to the applicable requirements of § 982.50. The weight of all such lots for which a handler has received credit shall be adjusted by the Board when the lots are handled or disposed of so that the creditable weight is equal to the amount of certified merchantable inshell hazelnuts or certified shelled hazelnuts that are subsequently handled or disposed of from those lots. If this adjustment causes the handler to no longer be in satisfaction of that handler's restricted obligation as required by § 982.50, the

deficiency shall be satisfied in the subsequent marketing year. If this adjustment results in a handler disposing of, in restricted outlets, a quantity in excess of that handler's restricted obligation, such excess shall not be credited to such handler's restricted obligation during the subsequent marketing year.

(b) A handler may withhold, in accordance with §982.50(a), certified shelled hazelnuts in lieu of merchantable hazelnuts in satisfaction of such handler's restricted obligation, subject to such terms and conditions as are recommended by the Board and established by the Secretary. The inshell equivalent of such hazelnuts shall be determined by multiplying the weight of the shelled hazelnuts by 2.5.

(c) The Secretary upon recommendation of the Board and other available data may modify these procedures, change the conversion factors, and specify factors for conversion for different varieties of hazelnuts.

[51 FR 29548, Aug. 19, 1986, as amended at 61 FR 17560, Apr. 22, 1996]

§ 982.52 Disposition of restricted hazelnuts.

Hazelnuts withheld from handling as inshell hazelnuts pursuant to §§982.50 and 982.51 may be disposed of as follows:

(a) *Shelling.* Any handler may dispose of such hazelnuts by shelling them under the direction or supervision of the Board or by delivering them to an authorized sheller. Any person who desires to become an authorized sheller in any marketing year may submit written application during such year to the Board. Such application shall be granted only upon condition that the applicant agrees:

(1) To use such restricted hazelnuts as he may receive for no purpose other than shelling;

(2) To dispose of or deliver such restricted hazelnuts, as inshell hazelnuts, to no one other than another authorized sheller;

(3) To comply fully with all laws and regulations applicable to shelling of hazelnuts; and

(4) To make such reports, certified to the Board and to the Secretary as to their correctness, as the Board may require.

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in §982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

(c) *Other outlets.* In addition to the dispositions authorized in paragraphs (a) and (b) of this section, the Board may designate such other outlets into which such hazelnuts may be disposed which it determines are noncompetitive with normal market outlets for inshell hazelnuts. Such dispositions shall be made under the direction or supervision of the Board.

(d) *Restricted credits.* During any marketing year, handlers who dispose of a quantity of eligible hazelnuts in restricted outlets in excess of their restricted obligations, may transfer such excess credits to another handler or handlers. Upon a handler's written request to the Board during a marketing year, the Board shall transfer any or all of such excess restricted credits to such other handler or handlers that the handler may designate. The Board, with the approval of the Secretary,