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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 982**

**[Docket No. AO-SC-16-0136; AMS-SC-16-0074; SC16-982-1]**

**Hazelnuts Grown in Oregon and Washington; Hearing on  
Proposed Amendment of Marketing Order No.982**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 982 (order), which regulates the handling of hazelnuts grown in Oregon and Washington. Two amendments are proposed by the Hazelnut Marketing Board (Board), which is responsible for local administration of the order. The proposed amendments would add both the authority to regulate quality and the authority to establish different regulations for different markets. In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. The proposals are intended to aid in pathogen reduction and meet the needs of different market destinations.

**DATES:** The hearing date is October 18, 2016, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The hearing will be held at the Holiday Inn, 25425 SW 95th Ave, Wilsonville, Oregon 97070.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Michelle Sharrow, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Melissa.Schmaedick@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Richard E. Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is

governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563 and 13175. Notice of this rulemaking action was provided to tribal governments through USDA's Office of Tribal Relations.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

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. 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 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the Board and submitted to USDA on May 16, 2016. After reviewing the proposals and other information submitted by the Board, USDA made a determination to schedule this matter for hearing.

The proposed amendments to the order recommended by the Board are summarized as follows:

1. Amend the order to add authority to regulate quality. This would include: Adding a new § 982.45(c); adding a new § 982.46(d); and revising §§ 982.12 and 982.40. Corresponding changes would also revise the subheading "Grade and Size Regulation" prior to § 982.45

and the section heading for § 982.45 "Establishment of grade and size regulations." to include quality.

2. Amend the order by adding § 982.45(d) to add authority to establish different outgoing quality regulations for different markets.

The Board works with USDA in administering the order. The proposals submitted by the Board have not received the approval of USDA. The proposed changes would add authority to regulate quality to aid in pathogen reduction and establish different outgoing quality regulations for different market destinations. The proposed amendments are intended to aid in the marketing of hazelnuts and improve the operation and administration of the order.

In addition to the proposed amendments to the order submitted by the Board, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing, or to correct minor inconsistencies and typographical errors.

The public hearing is held for the purpose of: (i) receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate

modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary

of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

**List of Subjects in 7 CFR Part 982**

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

**PART 982 - HAZELNUTS GROWN IN OREGON AND WASHINGTON**

1. The authority citation for 7 CFR part 982 continues to read as follows:

**Authority: 7 U.S.C. 601-674.**

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Hazelnut Marketing Board:

**Proposal Number 1**

3. Revise § 982.12 to read as follows:

**§ 982.12 Merchantable hazelnuts.**

Merchantable hazelnuts means inshell hazelnuts that meet the grade, size, and quality regulations in effect pursuant to § 982.45 and are likely to be available for handling as inshell hazelnuts.

4. Amend § 982.40 by revising paragraph (d) to read as follows:

**§ 982.40 Marketing policy and volume regulation.**

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(d) Grade, size, and quality regulations.

Prior to September 20, the Board may consider grade, size, and quality regulations in effect and may recommend modifications thereof to the Secretary.

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5. In § 982.45:

- a. Revise the heading prior to this section;
- b. Revise the section heading; and
- c. Add paragraph (c).

The revisions and addition read as follows:

**Grade, Size, and Quality Regulation**

**§ 982.45 Establishment of grade, size, and quality regulations.**

\* \* \* \* \*

(c) Quality regulations. For any marketing year, the Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements, to facilitate the reduction of pathogens, applicable to hazelnuts, as will contribute to orderly marketing or be in the public interest. In such marketing year, no handler shall handle hazelnuts unless they meet applicable minimum

quality and inspection requirements as evidenced by certification acceptable to the Board.

6. Revise § 982.46 by adding paragraph (d):

**§ 982.46 Inspection and certification.**

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(d) Whenever quality regulations are in effect pursuant to § 982.45, each handler shall certify that all product to be handled or credited in satisfaction of a restricted obligation meets the quality regulations as prescribed.

**Proposal Number 2**

7. Amend § 982.45 by adding paragraph (d) to read as follows:

**§ 982.45 Establishment of grade, size, and quality regulations.**

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(d) Different regulations for different markets. The Board may, with the approval of the Secretary, recommend different outgoing quality requirements for different markets. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

Proposal submitted by USDA:

**Proposal Number 3**

Make other such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing, or to correct minor inconsistencies and typographical errors.

September 27, 2016

Elanor Starmer  
Administrator  
Agricultural Marketing Service

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