Rulings on Briefs of Interested Persons

The presiding officer of the hearing set April 8, 1994, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. No briefs were received.

General Findings

Upon the basis of the record, it is found that:

- (1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;
- (2) The marketing agreement and order, as amended, and hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act:
- (3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of hazelnuts grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;
- (4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and
- (5) All handling of hazelnuts grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

List of Subjects in 7 CFR Part 982

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

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

PART 982—FILBERTS/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. In part 982 all references to "filbert", "filberts", "filbert/hazelnut", "filberts/hazelnuts" are revised to read as "hazelnut", "hazelnuts", "hazelnut", and hazelnuts", respectively.
- 3. Section 982.4 is revised to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

5. Section 982.30 is amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 982.30 Establishment and membership.

- (a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:
 - (b) * * *
- (1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made:
- (2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;
- (3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

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6. In § 982.32, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 982.32 Initial members and nomination of successor members.

- (a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.
- (b) Nominations for successor handler members and alternate members specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.
- (c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

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