

Dated: April 6, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV04-982-1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2003-2004 Marketing Year

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 establishing interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2003-2004 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 6.8393 percent and 93.1607 percent, respectively, and the final free and restricted percentages are 8.2303 percent and 91.7697 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that 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 unanimously recommended by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: May 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, 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."

USDA 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 action apply to all merchantable hazelnuts handled during the 2003-2004 marketing year (July 1, 2003, through June 30, 2004). 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.

This rule continues in effect marketing percentages that 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 quantity to be 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). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. 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.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 35,000 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.

At its August 28, 2003, meeting, the Board adjusted the NASS crop estimate down to 33,717 tons by deducting the average crop disappearance over the preceding three years (4.64 percent or 1,624 tons) and adding the undeclared carryin (341 tons) to the 35,000 ton production estimate. Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers.

The Board computed the adjusted inshell trade demand of 2,306 tons by taking the difference between the average of the past three years' sales (3,127 tons) and the declared carryin from last year's crop (821 tons).

The Board computed and announced preliminary free and restricted percentages of 5.4720 percent and 94.5280 percent, respectively, at its August 28, 2003, meeting. The preliminary free percentage was computed by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,306 tons $\times$ 80 percent $\div$ 33,717 tons = 5.4720 percent). The preliminary free percentage thus initially released 1,845 tons of hazelnuts from the 2003 supply for domestic inshell use, and the preliminary restricted percentage withheld 31,872 tons for the export and shelled (kernel) markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final

percentages. The Board uses crop estimates that are current at the time 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 order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. 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 13, 2003, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 6.8393 percent free and 93.1607 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 8.2303 free and 91.7697 percent restricted effective May 31, 2004. The final free percentage releases 2,775 tons of inshell hazelnuts from the 2003 supply for domestic inshell use.

The interim and final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2003–2004 marketing year:

		Tons
Inshell Supply:		
(1) Total production (crop estimate)		35,000
(2) Less substandard, farm use (disappearance; 4.64 percent of Item 1)		1,624
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)		33,376
(4) Plus undeclared carryin as of July 1, 2003, (subject to regulation)		341
(5) Supply subject to regulation (Item 3 plus Item 4)		33,717
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell hazelnuts for three prior years		3,127
(7) Less declared carryin as of July 1, 2003, (not subject to regulation)		821
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)		2,306
(9) Desirable carryout on August 31, 2004 (15 percent of Item 6)		469
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9)		2,775
Percentages		Free
		Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	6.8393	93.1607
(12) Final percentages (Item 10 divided by Item 5) × 100	8.2303	91.7697
(13) Final free in tons (Item 10)	2,775	
(14) Final restricted in tons (Item 5 minus Item 10)		30,942

In addition to complying with the provisions of the order, the Board also considered USDA'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 allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the

mechanism for dealing with oversupply situations. The established final percentages will make available an additional 469 tons for desirable carryout effective May 31, 2004. The total free supply for the 2003–2004 marketing year is 3,596 tons of hazelnuts, which is the sum of the final trade demand of 3,127 tons and the 469 ton desirable carryout. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

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.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service

firms are defined as those having annual receipts of less than \$5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 17 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately \$36,133. This is computed by dividing NASS figures for the average value of production for 2001 and 2002 (\$27,100,000) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under \$5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels. Based on Board records of average shipments for 1993–2002, the percentage going to each of these markets was 13 percent (domestic inshell), 43 percent (export inshell), and 44 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. 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 continental United States. On average, 77 percent of domestic inshell hazelnuts are shipped during the period October 1 through November 30, primarily to supply the holiday nut market.

The current volume control procedures have helped the industry to improve its marketing situation by keeping inshell supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market.

The adjusted inshell trade demand (2,306 tons) and the larger 2003 crop

were key market factors leading to the Board's recommendation for the 8.2303 percent final free percentage. The 35,000 ton hazelnut production for 2003 is 15,500 tons more than in 2002, and 14,500 tons less than the production level in 2001, the largest crop in the last ten years.

Although the domestic inshell market is a relatively small proportion of total sales (13 percent of average shipments over the last ten years, and 11 percent of average shipments for the last two years), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The domestic kernel market and inshell exports are both expected to continue to be good outlets for U.S. hazelnut production.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1993 and 2002, from a low of 15,400 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year was 49 percent and 159 percent, respectively, of the 10-year average tonnage of 31,220. Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2004.

The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 0.39. In contrast, the coefficient of variation for hazelnut grower prices is 0.12, less than one third of the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower cost of production to grower revenue in recent years highlights the financial impacts on growers at varying production levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately \$1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2002. Average grower revenue was below typical costs in the other years. Since 1995, the highest level of revenue per bearing acre was \$1,552 (1997) and the lowest was \$561 in 1996. Without the stabilizing impact of the

order, growers may have lost more money. While crop size fluctuates, the volume regulations contribute to orderly marketing and market stability, and help to moderate the variation in returns for all producers and handlers, both large and small.

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. This regulation provides an equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the hazelnut crop during the 2003–2004 marketing year. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA the 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.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 4 percent of total U.S. production for other tree nuts, and less than 4 percent of the world's hazelnut production.

During the 2002–2003 season, 87 percent of the kernels were marketed in the domestic market and 13 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop new markets and expand demand, with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S.-produced inshell hazelnuts, with a 10-year average of 5,249 tons, 40 percent of total average exports of 12,478 tons. The largest share went to Germany. In 1995, 70 percent of export shipments went to

Europe. Recent years have seen a significant shift in export destinations, however, with Europe's share declining to 30 percent of inshell shipments (3,321 tons) in the 2002–2003 season. Inshell shipments to Asia have increased dramatically in the past few years, growing to 55 percent of total exports of 10,979 tons in the 2002–2003 season. Hong Kong is the largest export destination, followed by China. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. 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. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 28 and November 13, 2003, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 16, 2004. The Board's staff mailed copies of this rule to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended March 16, 2004. Two comments were received during that period. However, because the comments did not address the substance of the interim final rule, they are not being considered in this finalization.

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 Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 2493, January 16, 2004) 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.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 982 which was published at 69 FR 2493 on January 16, 2004, is adopted as a final rule without change.

Dated: April 6, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–8213 Filed 4–9–04; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064–AC79

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comment.

SUMMARY: The FDIC is adopting, on an interim basis, a final rule amending its securities disclosure regulations applicable to banks with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). This amendment implements the requirements of the Exchange Act, as amended by the Sarbanes-Oxley Act of 2002, which mandates electronic filing of reports related to beneficial ownership of securities by the directors, executive officers, and principal shareholders of public companies. Current provisions of the FDIC's securities disclosure regulations prohibit electronically transmitted filings or submissions of

materials in electronic format to the FDIC. The amended rules provide an exception to this prohibition, requiring electronically transmitted filings of beneficial ownership reports by bank directors, officers and principal shareholders to disclose securities transactions and ownership. Related technical or procedural provisions are also being amended as appropriate.

DATES: These amendments are effective on June 11, 2004. Written comments must be received by the FDIC not later than June 11, 2004. These amendments may be immediately followed by the affected party.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Website:* <http://www.fdic.gov/regulations/laws/federal/propose.html>.

- *E-mail:* comments@fdic.gov.

Include RIN number in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station located at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, D.C. 20429, between 9 a.m. and 4:30 p.m. on business days, and the FDIC may post the comments on its Web site at <http://www.fdic.gov/regulations/laws/federal/propose.html>.

FOR FURTHER INFORMATION CONTACT:

Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898–8922; Mary Frank, Senior Financial Analyst, Division of Supervision and Consumer Protection, (202) 898–8903; or Carl J. Gold, Counsel, Legal Division, (202) 898–8702, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background and Authority for This Final Rule

a. *Appropriate Federal Banking Agency Authority Under the Exchange Act*

Section 12(i) of the Securities Exchange Act of 1934 as amended (15