



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Doc. No. AMS-SC-17-0036; SC17-982-1 FR]

**Hazelnuts Grown in Oregon and Washington; Increased
Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Hazelnut Marketing Board (Board) to increase the assessment rate established for the 2017-2018 and subsequent marketing years from \$0.005 to \$0.006 per pound of hazelnuts handled under the Marketing Order (Order). The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: DaleJ.Novotny@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard 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 E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington. Part 982 (hereinafter referred to as 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 Board locally administers the Order and is comprised of growers and handlers of hazelnuts operating within the area of production and also includes one public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory

actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled, "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Marketing Order now in effect, Oregon and Washington hazelnut handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning July 1, 2017, and continue until amended, suspended, or terminated.

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. Such 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 final rule increases the assessment rate established for the Hazelnut Marketing Board for the 2017-2018 and subsequent marketing years from \$0.005 to \$0.006 per pound of hazelnuts handled.

The hazelnut Marketing Order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members and alternate members of the Board are growers and handlers of Oregon and Washington hazelnuts. The Board's membership also includes one public member and an alternate public member, neither of whom are involved in the production or

handling of hazelnuts. The Board members are familiar with the program's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000-2001 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 17, 2017, and unanimously recommended 2017-2018 marketing year expenditures of \$878,627 and an assessment rate of \$0.006 per pound of hazelnuts handled. In comparison, last year's budgeted expenditures were \$765,598. The assessment rate of \$0.006 per pound is \$0.001 per pound higher than the rate currently in effect.

The major expenditures recommended by the Board for the 2017-2018 marketing year include \$210,590 for

administrative expenses, \$111,000 for a crop survey, \$342,037 for promotional activities, \$35,000 for consulting, and \$180,000 for undesignated emergency/miscellaneous expenses. Budgeted expenses for these items in the 2016-2017 marketing year were \$138,088, \$96,000, \$234,510, \$35,000, and \$262,000, respectively. The increase in administrative expenses reflects the addition of an administrative staff member. The budget increase for marketing and promotion expenditures reflects the Board's desire to improve domestic hazelnut's share of the edible nut market and to increase consumer awareness of Oregon and Washington hazelnut products.

The assessment rate recommended by the Board was derived at an annual meeting of the Board where budgetary matters for the forthcoming marketing year were discussed. After an open discussion with growers, handlers, and industry personnel, the Board established a crop estimate for the 2017-2018 marketing year. The Board considered the crop estimate, the recommended 2017-2018 marketing year expenses, and the Board's financial reserve when it recommended the assessment rate increase.

Shipments for the year are estimated to be 80,000,000 pounds, which should provide \$480,000 in assessment income at the \$0.006 per pound assessment rate. Income derived from handler assessments, along with funds from the Board's authorized reserve and other income, should be adequate to cover budgeted expenses. Section 982.62(a) specifies that the financial reserve is not to exceed approximately one marketing year's operational expenses. The Board expects its financial reserve to be \$316,881 at the beginning of the 2017-2018 marketing year and \$117,348 at the end of the year, which would be within the reserve limit authorized under the Order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are

open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2017-2018 marketing year budget, and those for subsequent marketing years, would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule 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 businesses 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.

According to the Board, there are approximately 800 growers of hazelnuts in the production area and approximately 17 handlers subject to regulation under the Marketing Order. Small agricultural producers (growers) are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms (handlers) are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to the latest National Agricultural Statistic Service (NASS) data, 2015 grower prices averaged \$1.40 per pound. With a total production of 62,000,000 pounds in the same year, the farm gate value for hazelnuts in 2015 totaled \$86.8 million (\$1.40 per pound multiplied by 62,000,000 pounds). Taking the total 2015 value of production for hazelnuts and dividing it by the approximate number of hazelnut growers provides an average return per grower of \$108,500. It is estimated by the Board that approximately 98 percent of hazelnut growers under the Marketing Order have annual receipts less than \$750,000. Therefore, a majority of hazelnut growers are considered small entities under the SBA standards.

According to the Board, four of the approximately 17 hazelnut handlers process and ship 80 percent of the total crop. An estimation of handler receipts can be calculated using the same 2015 farm gate value of \$86.8 million from NASS, described above. Multiplying \$86.8 million by 80 percent ($\$86.8 \text{ million} \times 80 \text{ percent} = \69.4 million) and dividing by four indicates that the largest hazelnut handlers received an estimated \$17.4 million each. Dividing the remaining 20 percent (\$17.4 million) by the remaining 13 handlers yields average annual receipts of \$1.3 million per handler. Therefore, under SBA's definition of a small agricultural business, about 24 percent of handlers could be considered large businesses and about 76 percent could be considered small businesses. Thus, the majority of hazelnut handlers in Oregon and Washington may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2017-2018 and subsequent marketing years from \$0.005 to \$0.006 per pound of hazelnuts handled. The Board unanimously recommended 2017-2018 expenditures of \$878,627 and an assessment rate of \$0.006 per pound. The assessment rate

of \$0.006 per pound is \$0.001 per pound higher than the 2016-2017 rate. The quantity of assessable hazelnuts for the 2017-2018 marketing year is estimated at 80,000,000 pounds. Thus, the \$0.006 per pound rate should provide \$480,000 in assessment income. This amount, along with the Board's reserve funds and other income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2017-2018 marketing year include \$210,590 for administrative expenses, \$111,000 for a crop survey, \$342,037 for promotional activities, \$35,000 for consulting, and \$180,000 for undesignated emergency/miscellaneous expenses. Budgeted expenses for these items in the 2016-2017 marketing year were \$138,088, \$96,000, \$234,510, \$35,000, and \$262,000, respectively.

The Board believes there is a need to expand its promotion and outreach activities to increase consumers' awareness of, and desire for, Oregon and Washington hazelnuts in the edible tree nut market. The Oregon and Washington hazelnut industry has experienced a large amount of growth in new orchard plantings in recent years. The supply of hazelnuts grown in the production area is

expected to increase greatly as newly planted trees come into nut bearing age (approximately three to seven years after planting, depending on the variety of hazelnut tree). The increased assessment rate is necessary to fund expanded promotional activities intended to assist marketing of the anticipated increased supply of hazelnuts in the forthcoming years.

Prior to arriving at this budget and assessment rate, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, representatives from private research firms, and input from industry personnel. Alternative expenditure levels were discussed by these groups, based upon the relative value of various activities to the hazelnut industry. Many growers at the May 17, 2017, meeting were in favor of even greater spending by the Board on promotional activities for hazelnuts, while handlers were more conservative.

The Board ultimately determined that 2017-2018 marketing year expenditures of \$878,627 were appropriate, and the recommended assessment rate, when combined with reserve funds and other income, should generate sufficient revenue to meet its budgeted expenses. Further, the Board

will maintain a \$180,000 emergency fund throughout the 2017-2018 marketing year in order to cover any unforeseen or emergency operational expenses. If the 2017-2018 emergency funds are not expended, the resulting operating reserve would not exceed the limit authorized under the Order.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the grower price for the 2017-2018 marketing year could range between \$0.81 and \$1.80 per pound (NASS, 2017). Therefore, the estimated assessment revenue for the 2017-2018 marketing year as a percentage of total grower revenue could range between 0.74 and 0.33 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the Marketing Order. In addition, the Board's meeting was widely publicized throughout the Oregon and Washington

hazelnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 17, 2017, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, "Vegetable and Specialty Crops." No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large Oregon and Washington hazelnut 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the *Federal Register* on August 18, 2017 (82 FR 39369). Copies of the rule were mailed or sent via facsimile to all Board members and hazelnut handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 18, 2017, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. Both comments were generally in support of the assessment rate increase and believed that the action would have a minimal impact on consumers. However, one commenter was concerned that the notice and comment process for changes in assessment rates was burdensome, and the other commenter expressed the opinion that the assessment rate should have a time limit and should not be in effect indefinitely.

Notice and comment rulemaking is required by statute for all changes made to marketing order regulations, including, but not limited to, establishment of assessment rates. In addition, all marketing order regulations are in effect indefinitely unless a specific effective period is defined in the regulation when it is established. The Board chose not to establish a specific time period for the regulation and is aware that the regulation will be effective indefinitely until changed. Accordingly, no changes will be made to the rule as proposed, based on the comments 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board 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 982

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

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

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. Section 982.340 is revised to read as follows:
§ 982.340 Assessment rate.

On and after July 1, 2017, an assessment rate of \$0.006 per pound is established for Oregon and Washington hazelnuts.

Dated: December 26, 2017

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

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