



Figure 1. Official identification symbol of the Plant Variety Protection Office.

Dated: July 27, 2000.

**Robert L. Epstein,**

*Acting Deputy Administrator, Science and Technology.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 982

[Docket No. FV00-982-2 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule increases the assessment rate established for the Hazelnut Marketing Board (Board) for the 2000-2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts handled. The Board locally administers the marketing order, which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** August 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest

Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** 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, 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."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, 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 on July 1, 2000, and continue until amended, suspended, or terminated. 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 the Secretary 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 the Secretary 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 the Secretary'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 increases the assessment rate established for the Board for the 2000-2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts handled.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board

are producers and handlers of hazelnuts. They are familiar with the Board'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 and budget were recommended by a mail vote. The recommendation will be discussed and reconfirmed at the Board's next scheduled public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000–2001 expenditures of \$596,293 and an assessment rate of \$0.005 per pound of hazelnuts. In comparison, last year's budgeted expenditures were \$568,457. The assessment rate of \$0.005 is \$0.001 higher than the rate previously in effect. At a rate of \$0.004 per pound and an estimated 2000–2001 hazelnut production of 50,000,000 pounds, the Board believes that the projected reserve on June 30, 2001, would not have been adequate to administer the program. The increased assessment rate is expected to result in an operating reserve of \$150,147 at the end of the 2000–2001 marketing year.

The major expenditures recommended by the Board for the 2000–2001 marketing year include \$39,613 for personal services (salaries and benefits), \$7,416 for rent, \$5,000 for compliance, \$23,000 for the crop estimate, \$275,000 for promotion, and \$182,364 for an emergency fund. Budgeted expenses for these items in 1999–2000 were \$51,385, \$7,308, \$5,000, \$21,000, \$275,000, and \$182,364, respectively. The Board will consider using emergency funds for authorized activities when it is reasonably certain that its estimate of assessable hazelnuts is reached. It will not be able to make this determination until December 2000, the month in which the hazelnut harvest and deliveries to handlers usually are completed.

The Board based its recommended assessment rate increase on the 2000–2001 crop estimate, the 2000–2001 marketing year expenditures estimate,

and the current and projected balance of the operating reserve. Hazelnut shipments for the 2000–2001 marketing year are estimated at 50,000,000 pounds, which should provide \$250,000 in assessment income. Income derived from handler assessments, along with interest income (\$13,000) and funds from the Board's authorized reserve (\$333,293), will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one marketing year's operational expenses). Excess funds may be maintained and used by the Board until December 1 following the end of a marketing year (§ 982.62(b)). The Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 conduct a mail vote prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Any mail votes will be discussed and reconfirmed at a public meeting. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department 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 2000–2001 budget has been reviewed and approved. Budgets for subsequent marketing years will also be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the 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.

There are approximately 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. Currently, about 86 percent of hazelnut handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. Further, it is estimated that virtually all hazelnut producers have annual receipts of less than \$500,000, excluding receipts from other sources. Thus, the majority of handlers and producers of hazelnuts may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts. The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000–2001 expenditures of \$596,293 and an assessment rate of \$0.005 per pound. The assessment rate of \$0.005 per pound is \$0.001 higher than the \$0.004 per pound rate previously in effect. The quantity of assessable hazelnuts for the 2000–2001 marketing year is estimated at 50,000,000 pounds. Income derived from handler assessments, along with interest income and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 marketing year include \$39,613 for personal services (salaries and benefits), \$7,416 for rent, \$5,000 for compliance, \$23,000 for the crop estimate, \$275,000 for promotion, and \$182,364 for an emergency fund. Budgeted expenses for these items in 1999–2000 were \$51,385, \$7,308, \$5,000, \$21,000, \$275,000, and \$182,364, respectively. As mentioned earlier, the Board will not make any decision on using emergency funds until December 2000, at the earliest.

The Board based its recommended assessment rate increase on the 2000–2001 crop estimate, the 2000–2001 marketing year expenditures estimate, and the current and projected balance of the operating reserve. Hazelnut shipments for the 2000–2001 marketing year are estimated at 50,000,000

pounds, which should provide \$250,000 in assessment income. Income derived from handler assessments, along with interest income (\$13,000) and funds from the Board's authorized reserve (\$333,293), will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order (approximately one marketing year's operational expenses). Excess funds may be maintained and used by the Board until December 1 following the end of a marketing year (§ 982.62(b)). The Board is required to refund or credit, upon request, each handler's share of the excess prior to January 1.

The Board reviewed and unanimously recommended 2000–2001 expenditures of \$596,293. With the 2000–2001 marketing year assessable hazelnut crop estimated at 50,000,000 pounds, or 26,000,000 pounds less than for 1999–2000, the Board recommended the assessment rate increase to prevent its operating reserve from going lower than \$150,000. The Board believes that a reserve less than this is too low. Prior to arriving at this budget, the Board considered information from various sources, including the Proration Committee, the Budget Committee, and the Marketing and Promotion Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research, marketing, and promotion projects to the hazelnut industry.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the producer price for the 2000–2001 marketing year could range between \$0.32 and \$0.49 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could range between 1.02 and 1.56 percent.

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 producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 14, 2000 (65 FR 37300). Copies of the proposed rule were also mailed or sent via facsimile to Board members. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending July 14, 2000, was provided for interested persons to respond to the proposal. No comments were 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/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 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 marketing year began on July 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable hazelnuts handled during such marketing year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other assessment rate actions issued in past years.

#### 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 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, 2000, an assessment rate of \$0.005 per pound is established for Oregon and Washington hazelnuts.

Dated: July 28, 2000.

**Robert C. Keeney,**  
*Deputy Administrator, Fruit and Vegetable Programs.*

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**BILLING CODE 3410–02–U**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Parts 11, 21, and 25**

#### **Changed Product Rule Meeting; Public Meeting**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; Public meeting.

**SUMMARY:** This document announces two public meetings pertaining to the recent issue of the Changed Product Rule (65 FR 36243). Meetings in both the United States and in Europe have been planned. The international meeting will be held in Hoofddorp, The Netherlands September 20–21, 2000. The U.S. meeting will be held in Kansas City, Missouri, October 3–4, 2000. The international meeting is scheduled in support of the JAA Notice of Proposed Amendment (NPA) circulation to help commenters to better understand the NPA. The U.S. meeting will focus on the rule, transport category aircraft, as well as other products (normal, utility, acrobatic, and commuter airplanes; normal and transport category rotorcraft; manned free balloons; aircraft engines; and propellers). The meeting purpose is to present information regarding the rule, guidance material and to gather comments pertaining to the development of the follow-on Advisory Circular revisions related to general aviation aircraft and other product areas.

**DATES:** The international meeting will be held September 20–21, 2000, beginning at 11:00 a.m. in Hoofddorp, The Netherlands.

The U.S. industry meeting will be held October 3–4, 2000, starting at 9:00 a.m. in Kansas City, Missouri. Registration begins at 8:00 a.m.

**ADDRESSES:** The meetings will be held at the following locations:

International: Joint Aviation Authorities (JAA) Headquarters, Saturnusstraat 8–