

**PART 955—VIDALIA ONIONS GROWN IN GEORGIA**

■ Accordingly, the interim final rule amending 7 CFR part 955 which was published at 69 FR 68759 on November 26, 2004, is adopted as a final rule without change.

Dated: April 15, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 982**

[Docket No. FV05-982-1 FIR]

**Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2004-2005 Marketing Year**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim final rule establishing final free and restricted percentages for domestic inshell hazelnuts for the 2004-2005 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. This rule continues in effect the final free and restricted percentages of 6.4921 and 93.5079 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in approved outlets (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

**DATES:** Effective May 23, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland,

Oregon 97204-2807; 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](mailto: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."

The Department of Agriculture (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 2004-2005 marketing year (July 1, 2004 through June 30, 2005). 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 which 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. At the same time, the Board computes and announces preliminary free and restricted percentages for that marketing 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. The Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase. The Board may also modify the inshell trade demand to account for abnormalities due to crop or marketing conditions. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

Volume regulation under the order utilizes free and restricted percentages to allocate 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.

On August 24, 2004, the National Agricultural Statistics Service (NASS) released an estimate of 2004 hazelnut production for the Oregon and Washington area at 44,000 dry orchard-run tons. On August 26, 2004, the Board met and estimated total available supply for the 2004 crop year at 44,954 tons. The Board arrived at this estimate by using the crop estimate compiled by NASS (44,000 tons) and then adjusting that estimate to account for disappearance and carry-in. The order

requires the Board to reduce the estimate by the average disappearance over the preceding three years (1,584 tons) and to increase it by the amount of undeclared carryin from previous years' production (2,538 tons.)

Disappearance is the difference between the estimated orchard-run production and the actual supply of merchantable product available for sale by handlers. Disappearance can consist of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), (3) product used on the farm, sold locally, or otherwise disposed of by producers, and (4) statistical error in the orchard-run production estimate.

The Board computed the adjusted inshell trade demand of 2,064 tons by taking the average of the past three years' sales (2,952 tons) and reducing it by the declared carry-in from last year's crop (888 tons). Declared carry-in is product regulated under the order during a preceding marketing year but held in inventory for future sale. Undeclared carry-in is product that was produced in a previous marketing year but was not subject to regulation at that time. Undeclared carry-in is subject to regulation under the order and is accounted for as such by the Board.

The Board computed and announced preliminary free and restricted percentages of 3.6726 percent and

96.3274 percent, respectively, at its August 26, 2004, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,064 tons  $\times$  80 percent/44,954 tons = 3.6726 percent). The preliminary free percentage thus initially released 1,651 tons of hazelnuts from the 2004 supply for domestic inshell use, and the preliminary restricted percentage withheld 43,303 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 current crop estimates 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 3, 2004, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The NASS crop production estimate was 44,000 tons. However, based upon industry information, the Board reduced the estimate to 37,425 tons. The Board also decided that market conditions were such that the immediate release of an additional 15 percent for desirable carryout will not adversely affect the 2004–2005 domestic inshell market. No interim final free and restricted percentages were recommended. The Board recommended final free and restricted percentages of 6.4921 and 93.5079 percent, respectively. The final free percentage releases 2,507 tons of inshell hazelnuts from the 2004 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (which is lower than its initial estimate) and the following supply and demand information for the 2004–2005 marketing year:

Total available supply		Tons
(1) Production forecast (crop estimate) .....		37,425
(2) Less disappearance (three year average; 3.60 percent of Item 1) .....		1,347
(3) Merchantable production (Item 1 minus Item 2) .....		36,078
(4) Plus undeclared carryin as of July 1, 2004 (subject to regulation) .....		2,538
(5) Available supply subject to regulation (Item 3 plus Item 4) .....		38,616
Inshell trade demand		
(6) Average trade acquisitions of inshell hazelnuts (three prior years domestic sales) .....		2,952
(7) Less declared carryin as of July 1, 2004 (not subject to 2004–2005 regulation) .....		888
(8) Adjusted inshell trade demand (Item 6 minus Item 7) .....		2,064
(9) Desirable carryout on August 31, 2005 (15 percent of Item 6) .....		443
(10) Adjusted inshell trade demand plus desirable carryout (Item 8 plus Item 9) .....		2,507
Percentages		
	Free	Restricted
(11) Final percentages (Item 10 divided by Item 5) $\times$ 100 .....	6.4921	93.5079
(12) Final free tonnage (Item 10) .....	2,507	
(13) Final restricted tonnage (Item 5 minus Item 10) .....		36,109

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 make available an additional 443 tons for desirable carryout. The total free supply for the

2004–2005 marketing year is 3,395 tons of hazelnuts, which is the sum of the final trade demand of 2,952 tons and the 443 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 \$6,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 18 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is \$39,025. This is computed by dividing NASS figures for the average value of production for 2002 and 2003 (\$29,268,500) 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 89 percent of the handlers ship under \$6,000,000 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 main market outlets: Domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return for sales in the domestic inshell market. They receive less for product going to export inshell, and the least for kernels. Based on Board records of average shipments for 1994–2003, the percentage going to each of these markets was 11 percent (domestic inshell), 43 percent (export inshell), and 34 percent (kernels). Other minor market outlets in total make up the remaining 12 percent.

The inshell hazelnut market can be characterized as having limited and inelastic demand with a very short primary marketing period. On average, 78 percent of domestic inshell hazelnut shipments occur between October 1 and November 30, primarily to supply holiday nut demand. The inshell market is, therefore, prone to oversupply and low grower prices in the absence of supply restrictions. Volume regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. and to prevent oversupplied market conditions.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. Volume controls ensure that the domestic inshell market is fully supplied while protecting the market from the negative effects of oversupply.

The relatively high level of production in 2004 and the large carryin from previous year's production were key market factors leading to the relatively low 6.4921 percent final free percentage. Hazelnut production was originally estimated by NASS to be 44,000 tons, which would have made it the third largest crop on record. The Board revised the forecast to 37,425 tons after harvest was completed, a level that is still 21 percent above the prior 10-year average. Even if carryin had been zero, the amount of production that handlers typically ship into the domestic inshell market (*i.e.*, average trade acquisitions of 2,952 tons) equals only about 8.1 percent of supply (the 36,078 tons subject to regulation).

Although the domestic inshell market is a relatively small proportion of total sales (11 percent of total shipments), 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 other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Data from NASS shows that total hazelnut production has varied widely over the 10-year period between 1994 and 2003, from a low of 15,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year were 50 percent and 160 percent, respectively, of the 10-year

average tonnage of 31,035. Grower price has not fluctuated to the extent of production. Prices in the lowest price year and the highest price year were 93 percent and 115 percent, respectively, of the 10-year average price of \$898 per ton. The considerable lower variability of price versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut production cost 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 only twice from 1994 to 2003. Average grower revenue was below typical costs in the other years. Without the stabilizing impact of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability and help 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 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 2004–2005 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would tend to oversupply the inshell domestic market. The 2004–2005 hazelnut crop is larger than last season and much larger than expected due to the cyclical nature of hazelnut production. Generally, a large crop one season is followed by a reduced crop the following season, and a small crop is followed by a large crop the following season. The unregulated release of 38,616 tons on the domestic inshell market would oversupply that small market and would cause producer returns to decrease dramatically, thereby disrupting the market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of 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 5 percent of the world's hazelnut production.

Last season, 79 percent of the kernels were marketed in the domestic market and 21 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 and expand other markets 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 5,255 tons out of total average exports of 14,048 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 5,526 tons, representing 24 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 70 percent of total exports of 23,319 tons in 2003. 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 26, and November 3, 2004, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 21, 2004. Copies of this rule were mailed by the Board's staff to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending February 22, 2005, was provided to allow interested parties to respond to the rule.

Two comments were received during the comment period in response to the interim final rule. Both commenters opposed the action as a restriction of free trade that artificially inflates prices.

USDA disagrees with the commenters. As previously stated, the marketing of domestic inshell hazelnuts is regulated by USDA upon the recommendation of the Board to balance the supply of such hazelnuts with the demand. The Board believes that equilibrium in the supply and demand of domestic inshell hazelnuts benefits consumers and improves returns to producers. USDA guidelines stipulate that the domestic inshell hazelnut market has at least 110 percent of the prior years' sales are available to supply consumers' needs and facilitate market expansion. In order to ensure that the supply is not unduly restricted, the Board recommended releasing 115 percent of the estimated trade demand of inshell hazelnuts to the domestic market. Even with regulation, hazelnuts generally trade at price levels below that of walnuts, almonds, and pistachios, all of which compete in the marketplace with hazelnuts.

One of the commenters expressed concern that taxpayer dollars were used to cover Board costs. Taxpayer dollars are not used to fund the Board. Funds generated from assessments on the handlers of hazelnuts are used to pay these costs.

Accordingly, no changes will be made in the finalization of the interim final rule 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/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 finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 76385, December 21, 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 76385 on December 21, 2004, is adopted as a final rule without change.

Dated: April 15, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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#### **DEPARTMENT OF AGRICULTURE**

##### **Rural Utilities Service**

##### **7 CFR Part 1728**

##### **Specifications and Drawings for 12.47/7.2 kV Line Construction**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, is amending its regulations regarding RUS Bulletin 50-3, Specifications Drawings for 12.5/7.2 kV Line Construction. This bulletin is currently incorporated by reference in RUS regulations and the revised and renumbered RUS Bulletin 1728F-804 would continue to be incorporated by reference. This rule is necessary to provide the latest RUS specifications, materials, equipment, and construction methods for RUS electric borrowers to construct their rural overhead electric distribution systems. RUS proposes to update, renumber and reformat this bulletin in accordance with the agency's new publications and directives system.

**DATES:** This rule will be effective October 21, 2005.