

agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2003–2004 marketing year 10,652,495 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$7.45 per hundredweight, the Committee estimates that 48 handlers, or about 94 percent, had annual receipts of less than \$6,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for the 2003 marketing year (the most recent period that final statistics are available) was \$5.25 per hundredweight. The average annual producer revenue for each of the 272 Washington potato producers is therefore calculated to be approximately \$205,609.

In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule continues in effect the action that modified the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This change enables handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The authority for the pack and marking or labeling requirements is provided in § 946.52 of the order (70 FR 41129; July 18, 2005). Section 946.336(c) of the order's administrative rules prescribes the pack requirements for domestic and export shipments of potatoes.

The Committee believes that the recommendation should increase sales of U.S. No. 2 grade potatoes. This action is expected to further increase shipments of U.S. No. 2 potatoes to the food service industry, and help the Washington potato industry benefit from the increased growth in the food service industry. These changes might require the purchase of new equipment to mark the cartons. However, these costs will be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in cartons. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not allowing U.S. No. 2 grade potatoes to be shipped in cartons. However, the Committee believed that it was important to be able to respond to

changing market conditions and meet customer needs.

The Committee considered restricting carton size, carton types, as well as the size and location of the marking on the carton. However, the Committee decided not to specify size or type of container or size and location of the markings to allow handlers more flexibility in marketing U.S. No. 2 grade potatoes in cartons provided the cartons were marked permanently and conspicuously as to grade.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato 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.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's July 26, 2005, meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 12, 2005. Copies of the rule were mailed by Committee staff to all Committee members and Washington potato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended November 14, 2005. 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 Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 53723, September 12, 2005) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

#### PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 946 which was published at 70 FR 53723 on September 12, 2005, is adopted as a final rule without change.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–274 Filed 1–11–06; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 982

[Docket No. FV06–982–1 IFR]

#### Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005–2006 Marketing Year

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 2005–2006 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 11.4388 and 88.5612 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 outlets approved by the Board (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 Date:* January 13, 2006. This interim final rule applies to all 2005–2006 marketing year restricted hazelnuts until they are properly disposed of in accordance with

marketing order requirements. Comments received by March 13, 2006 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**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, 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](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 2005-2006 marketing year (July 1, 2005, through June 30, 2006). 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 establishes free and restricted percentages which allocate the quantity of domestically produced hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). The Board met and, after determining that volume regulation would tend to effectuate the declared policy of the Act, developed a marketing policy to be employed for the duration of the 2005-2006 marketing year. Using statistical compilations and a well defined procedure, the Board estimated inshell trade demand and total available supply for the coming marketing year and subsequently used those estimates as the basis for computing and announcing the free and restricted marketing percentages for the year. The Board determined that, for the 2005-2006 marketing year, projected inshell trade demand is 3,095 tons and projected total available new supply is 27,057 tons. Using those estimates, the Board voted unanimously at their November 15, 2005, meeting to recommend to USDA that the final free and restricted percentages for the 2005-2006 marketing year be established at 11.4388 and 88.5612 percent, respectively.

The Board's authority to recommend volume regulation and use computations to determine the allocation of hazelnuts to individual markets is specified in § 982.40 of the order. Under the order's provisions, free and restricted market allocations of

hazelnuts are expressed as percentages of the total supply subject to regulation and are derived by dividing the computed inshell trade demand by the Board's estimate of the total domestically produced supply of hazelnuts that will be available over the course of the marketing year.

Inshell trade demand, the key component of the marketing policy, is the quantity of inshell hazelnuts necessary to adequately supply the needs of the domestic market for the duration of the marketing year. The Board determines the inshell trade demand for each year and uses that estimate as the basis for setting the percentage of the available hazelnuts that handlers may ship to the domestic inshell market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three years' trade acquisitions of inshell hazelnuts, allowing adjustments for abnormal crop or marketing conditions. The Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase.

Prior to September 20 of each marketing year, the Board follows a procedure, specified by the order, to 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 any potential underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation where total supply is the sum of the estimated crop production less the three-year average disappearance plus the undeclared carry-in from the previous marketing year.

On or before November 15 of each marketing year, the Board must meet again to recommend interim final and final free and restricted percentages and to authorize permitted outlets for restricted percentages. Interim final percentages release 100 percent of the inshell trade demand (effectively releasing the 20 percent held back during the preliminary stage). Final percentages may release an additional 15 percent for desirable carryout and are effective 30 days prior to the end of the marketing year, or earlier as recommended by the Board.

On August 23, 2005, the National Agricultural Statistics Service (NASS) released an estimate of 2005 hazelnut production for the Oregon and Washington area at 28,000 dry orchard-

run tons. NASS uses an objective yield survey method to estimate hazelnut production which has historically been very accurate.

On August 25, 2005, the Board met and estimated total available supply for the 2005 crop year at 27,057 tons. The Board arrived at this estimate by using the crop estimate compiled by NASS (28,000 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 (1,075 tons) and to increase it by the amount of undeclared carry-in from previous years' production (132 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.

Undeclared carry-in is hazelnuts that were produced in a previous marketing year but were not subject to regulation because they were not shipped during that marketing year. Undeclared carry-in is subject to regulation during the current marketing year and is accounted for as such by the Board.

As provided by the order, the Board computed inshell trade demand to be 3,095 tons by taking the average of the past three years' sales (2,775 tons),

increasing the three year average by 15 percent to encourage increased sales (416 tons), and then reducing that quantity by the declared carry-in from last year's crop (96 tons). Declared carry-in is product regulated under the order during a preceding marketing year but not shipped during that year. This inventory must be accounted for when estimating the quantity of product to make available to adequately supply the market.

The Board computed and announced preliminary free and restricted percentages of 9.1511 percent and 90.8489 percent, respectively, at its August 25, 2005, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the total available supply subject to regulation (3,095 tons  $\times$  80 percent / 27,057 tons = 9.1511 percent). The preliminary free percentage initially released 2,476 tons of hazelnuts from the 2005–2006 supply for domestic inshell use, and the preliminary restricted percentage withheld 24,581 tons for the export and 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 15, 2005, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that it would not be necessary to release additional domestic inshell hazelnuts to ensure adequate carryout. Accordingly, no interim final free and restricted percentages were recommended. The Board recommended final free and restricted percentages of 11.4388 and 88.5612 percent, respectively, and that those percentages be effective immediately. The final free percentage releases approximately 3,095 tons of inshell hazelnuts from the 2005–2006 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2005–2006 marketing year:

	Tons	
Total Available Supply:		
(1) Production forecast (crop estimate) .....	28,000	
(2) Less disappearance (three year average; 3.84 percent of Item 1) .....	1,075	
(3) Merchantable production (Item 1 minus Item 2) .....	26,925	
(4) Plus undeclared carry-in as of July 1, 2005 (subject to regulation) .....	132	
(5) Available supply subject to regulation (Item 3 plus Item 4) .....	27,057	
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell hazelnuts (three prior years domestic sales) .....	2,775	
(7) Add: Increase to encourage increased sales (15% of average trade acquisitions) .....	416	
(8) Less: Declared carry-in as of July 1, 2005 (not subject to 2005–2006 regulation) .....	96	
(9) Adjusted inshell trade demand (Item 6 plus Item 7 minus Item 8) .....	3,095	
	Percentages	
	Free	Restricted
(10) Final percentages (Item 9 divided by Item 5) $\times$ 100 .....	11.4388	88.5612
(11) Final free tonnage (Item 9) .....	3,095	
(12) Final restricted tonnage (Item 5 minus Item 11) .....		23,962

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 approximately 416 additional tons to encourage increased sales. The total free supply for the 2005–2006 marketing year is estimated to be 3,095 tons of hazelnuts. That amount would be 112 percent of prior years' sales and would exceed the goal of the Guidelines.

#### Initial 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 initial 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 703 producers of hazelnuts in the production area and approximately 18 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately \$64,000. This is computed by dividing NASS figures for the average value of production for 2003 and 2004 (\$44,863,000) 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 83 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 1995–2004, the percentage going to each of these markets was 11 percent (domestic inshell), 49 percent (export inshell), and 38 percent (kernels). Other minor market outlets make up the remaining 2 percent.

The inshell hazelnut market can be characterized as having limited and inelastic demand with a very short primary marketing period. On average, 76 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 correspondingly 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 U.S. and thereby mitigate market oversupply 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.

Although the domestic inshell market is a relatively small portion of total hazelnut 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. Adverse climatic conditions have negatively impacted production in the other hazelnut producing regions of the world, creating lower than normal world supplies. As a result, it is expected that demand and producer

price for U.S. hazelnuts will remain above average for some time.

In Oregon and Washington, low hazelnut production years typically follow high production years (a historically consistent pattern), and such was the case in 2005. The 2004 crop of 37,500 tons was 15 percent above the 10-year average (1995–2004) for hazelnut production. The 2005 crop is estimated to be 14 percent below the average. It is predicted that the 2006 crop will follow this pattern and will be larger than the current crop year. This cyclical trait also leads to inversely corresponding cyclical price patterns for hazelnuts. The intrinsic cyclical nature of the hazelnut industry lends credibility to the volume control measures enacted by the Board under the marketing order.

Recent production and price data reflect the stabilizing effect of volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1995 and 2004, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the smallest crop year and the largest crop year were 47 percent and 151 percent, respectively, of the 10-year average of 32,685 tons. Grower price, however, has not fluctuated to the extent of production. Prices in the lowest price year and the highest price year were 90 percent and 150 percent, respectively, of the 10-year average price of \$959 per ton. The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 0.36. In contrast, the coefficient of variation for hazelnut grower prices is 0.19, about half of the CV for production. The lower level of variability of price versus the variability of production provides an illustration of the order's price-stabilizing impact.

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 three times from 1995 to 2004. Average grower revenue was below typical costs in the other years. Without the stabilizing influence of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability by moderating 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 2005–2006 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would tend to oversupply the inshell domestic market. Even though the 2005–2006 hazelnut crop is much smaller than last year's crop and 16 percent below the ten-year average, the unregulated release of 27,057 tons on the domestic inshell market would oversupply that small, but lucrative market. The Board believes that any oversupply would completely disrupt the market, causing producer returns to decrease dramatically.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA establishment of preliminary, interim final, and final percentages 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 3 percent of total U.S. production of all tree nuts, and less than 6 percent of the world's hazelnut production.

Last season, 68 percent of the domestically produced hazelnut kernels were marketed in the domestic market and 32 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. Recent years, though, have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 4,304 tons, representing just 22 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 68 percent of total exports of 19,881 tons in 2004. 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.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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 25, and November 15, 2005, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on the establishment of final free and restricted percentages for the 2005–2006 marketing year under the hazelnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2005–2006 marketing year began July 1, 2005, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) the percentages make the full trade demand available so handlers can take advantage of inshell marketing opportunities; (3) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (4) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

#### 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. A new section 982.253 is added to read as follows:

[**Note:** This section will not be published in the annual Code of Federal Regulations.]

#### § 982.253 Free and restricted percentages—2005–2006 marketing year.

The final free and restricted percentages for merchantable hazelnuts for the 2005–2006 marketing year shall be 11.4388 and 88.5612 percent, respectively.

Dated: January 6, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-271 Filed 1-11-06; 8:45 am]

BILLING CODE 3410-02-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

RIN 3150-AH19

#### Medical Use of Byproduct Material—Recognition of Specialty Boards; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations which were published in the **Federal Register** of Wednesday, March 30, 2005 (70 FR 16336) amending the Commission's training and experience requirements in 10 CFR part 35. The regulations related to the requirements for recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, or authorized users. This action corrects the regulations by inserting a reference that was inadvertently omitted.

**EFFECTIVE DATE:** January 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-6233, e-mail [ant@nrc.gov](mailto:ant@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 30, 2005 (70 FR 16361), NRC published a final rule amending its regulations in part 35 regarding the medical use of byproduct material. In Section 35.50, "Training for Radiation Safety Officer," the reference to paragraph (c)(2) in paragraph (d) was inadvertently omitted.

Section 35.50 specifies that an individual fulfilling the responsibilities of Radiation Safety Officer must be:

(a) An individual who is certified by a specialty board recognized under this section,

(b) An individual who has completed a structured educational program,

(c)(1) A medical physicist who has been certified by a specialty board

recognized under § 35.51(a) and who has experience in radiation safety, or

(c)(2) An authorized user (AU), authorized medical physicist (AMP), or authorized nuclear pharmacist (ANP) who has experience in radiation safety.

Currently, § 35.50(d) requires an individual seeking radiation safety officer status to obtain written attestation that the individual has satisfactorily completed the requirements in paragraphs (a), (b), or (c)(1) of this section. However, reference to paragraph (c)(2) was inadvertently omitted. This rule inserts the reference to paragraph (c)(2) in paragraph (d).

#### List of Subjects for Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

■ Accordingly, 10 CFR part 35 is corrected by making the following correcting amendment:

#### PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 35 continues to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. In § 35.50, paragraph (d) is revised to read as follows:

#### § 35.50 Training for Radiation Safety Officer.

\* \* \* \* \*

(d) Has obtained written attestation, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (e) and in paragraphs (a)(1)(i) and (a)(1)(ii) or (a)(2)(i) and (a)(2)(ii) or (b)(1) or (c)(1) or (c)(2) of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; and

\* \* \* \* \*

Dated at Rockville, Maryland, this 6th day of January, 2006.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**  
Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE187; Special Conditions No. 23-127A-SC]

#### Special Conditions: Chelton Flight Systems, Inc.; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions: amendment.

**SUMMARY:** The FAA published a document in the **Federal Register** on August 30, 2002 (Volume 67, Number 169) regarding Special Condition 23-127-SC for Chelton Flight Systems, Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF). This amendment is being published to add several airplane models to the existing special condition to cover current and future amendments to the Approved Model List (AML) STC. These special conditions address HIRF certification requirements for digital systems not addressed by the current regulations. See the attached AML for the airplanes that are added by this amendment.

These airplanes, as modified by Chelton Flight Systems, will have a novel or unusual design feature(s) associated with the installation of an electronic flight instrument system. These special conditions address the protection of these systems from the effects of high intensity radiated field (HIRF) environments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these amended special conditions is December 22, 2005. Comments must be received on or before February 13, 2006.

**ADDRESSES:** Comments on these amended special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket CE187, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE187. Comments may be inspected in the Rules Docket