

premium for the largest sizes of hazelnuts. Thus, restricted disposition credits earned by exporting inshell hazelnuts may reflect little or no loss compared to the domestic inshell market.

The order authorizes the transfer of restricted disposition credits between handlers, and some handlers use this authority.

The record shows that members of the Board, particularly its handler members, have knowledge of the marketing opportunities in various restricted outlets and knowledge of the transfer of restricted disposition credits. Thus, the Board should be capable of using these factors to calculate an appropriate bonding rate that is financially acceptable but not so low as to encourage handlers to default on their bonds.

The proposed amendments would change the method by which the Board determines the rate of the bond. Paragraphs (b), (c), (d), (e) and (f) of § 982.54 would be amended to replace terminology that ties bonding rates to the value of quantities handled or certified for handling. Instead, bonding rates would be tied to the estimated value of restricted credits as established by the Board. A bonding rate based on the value of restricted disposition credits should provide adequate protection against default and would be much less burdensome.

Paragraph (b) provides that the bonding value for each handler be established by multiplying the deferred restricted obligation poundage bearing the lowest bonding rate by the applicable bonding rate. Under the proposed amended paragraph (b), the bonding value would be determined by multiplying the deferred restricted obligation poundage by the applicable bonding rate.

Paragraph (c) provides for a bonding rate for each pack withheld which is the amount per pound as established by the Board. Under the proposed amended paragraph (c), the Board would establish the bonding rate based on the Board's estimated value of restricted credits. Record evidence indicates that the value of credits should be based on the value of hazelnuts in all markets—restricted as well as free. Because restricted market hazelnuts usually have less market value than free hazelnuts, the credit value usually is less than the actual market value of free hazelnuts. Thus, a bond based on credit value would lower the value of the bond, making it a more acceptable burden for handlers. The record also indicates that a bond value based on credits would be high enough to discourage handlers

from voluntarily defaulting on their bond.

Paragraph (d) requires the Board to use the funds collected from defaulted bond payments to purchase quantities of certified merchantable hazelnuts on which the restricted obligations have been met. To make paragraph (d) consistent with amended paragraph (c), the Board would use defaulted bond funds to purchase restricted credits from handlers.

Paragraph (e) provides that unexpended funds resulting from defaulted bond payments remaining at the end of the marketing year would be used by the Board to pay its expenses and in the purchase of hazelnuts as provided in paragraph (d). Consistent with amended paragraph (d), a conforming change would be made in amended paragraph (e) to provide that unexpended funds resulting from defaulted bond payments remaining at the end of the marketing year could be used by the Board to purchase restricted credits, rather than merchantable hazelnuts, on which the restricted obligation has been met.

The last sentence in paragraph (e) provides that any balance of funds collected from defaulted bond obligations remaining at the end of the marketing year after payment of Board expenses, including administrative costs and the purchase of hazelnuts, would be returned pro-rata to all handlers. However, experience indicates that no such unused funds have remained at the end of recent marketing years to be refunded to handlers. Bond payments based on restricted credit values are expected to result in fewer defaults and less default funds collected. Thus, a marketing year that would produce an excess of defaulted bond funds is not likely to occur. In addition, paragraph (b) of § 982.62 provides Board authority to return excess funds at the end of each marketing year.

Paragraph (f) currently provides that merchantable hazelnuts purchased by the Board as provided in paragraph (d) shall be turned over to handlers who have defaulted on their bonds for disposal by the handlers as restricted hazelnuts. A conforming change would be made in amended paragraph (f) to provide that the restricted credits purchased by the Board under amended paragraph (d) would be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation.

The record indicates that some small handlers only shell hazelnuts and have no need to use the bonding authority. This proposed amendment would have no effect on these handlers. All handlers

who use the bonding authority would benefit from the reduced cost of the lower bonding rates.

Therefore, paragraphs (b), (c) and (d) of § 982.54 should be amended to provide, respectively, that: the bonding value be determined by multiplying the deferred restricted obligation poundage by the applicable bonding rate; the bonding rate be based on the estimated value of restricted credits; and the Board use handlers' defaulted bond funds to purchase restricted credits. Conforming changes should also be made to paragraphs (e) unexpended sums and (f) transfer of purchases.

(10) Section 982.57, Exemptions, should be amended to clarify that mail order sales are not exempt from order requirements.

This provision was amended in 1986 to clarify that hazelnuts sold directly to end users (consumers) at a grower's ranch or orchard, or at roadside stands and farmers markets are exempt from regulatory and assessment provisions of the order. No testimony was provided at the amendment hearing in 1985 to suggest that mail order sales should be exempt from order regulations. However, some growers and handlers in the industry believe that the exemption provision applies also to mail order sales.

To help correct this misinterpretation, the Board proposed that § 982.57 be amended by adding a sentence at the end of paragraph (b) to clarify that mail order sales are not considered exempt from order requirements.

The added sentence that appeared in the Notice of hearing for this rulemaking (59 FR 9428; February 28, 1994) included a phrase that could cause further confusion among industry members. The proposed sentence in the Notice of hearing reads, "Mail order sales to destinations outside the area of production are not considered to be exempt sales under this part." The phrase "to destinations outside the area of production" could be interpreted to mean that mail order sales to destinations inside the States of Oregon and Washington would be exempt from order requirements. However, this is not consistent with Board policy.

It is current Board policy that no exemptions are authorized for mail order sales, regardless of destination. Hearing testimony indicated that the Board has always considered that no mail order sales are exempt from order regulations. Testimony further indicates that this amendment is not a change in policy. Thus, the proposed clarifying sentence should read: "Mail order sales are not exempt sales under this part."