

Therefore, paragraph (b) of § 982.57 should be amended by adding the clarification that mail order sales are not exempt sales under the order.

(11) A new paragraph (b) of § 982.61, Assessments, should be established to allow the Board to accept advance assessment payments, provide discounts for such advanced payments, and borrow funds. Also, a new § 982.63 Contributions, should be established to allow the Board to accept voluntary contributions for payment of research, promotion, and market development activities.

The marketing order's fiscal period begins July 1, which is three months before the hazelnut harvest and four months before receipt of assessment payments for the new marketing year. During the initial four months, the Board's access to funds is limited. The first proposed amendment is intended to increase the Board's ability to obtain funds on a temporary basis early in the marketing year. While marketing order reserve funds may be used to pay for planned research and promotion programs and other administrative obligations, record evidence indicates that the Board would prefer to accept advance assessment payments or borrow funds rather than draw from the order's reserve funds to pay for financial obligations that might occur prior to the accumulation of assessment funds.

The second amendment would allow the Board to increase funds—through contributions—to pay expenses incurred under § 982.58, Research, promotion and market development. A minor change would be added to § 982.52 to make that provision consistent with the proposed new paragraph. The record indicates that these amendments are not proposed in response to any specific program or current need.

Testimony indicates that with access to additional funds the Board would have the opportunity to enter into significant marketing or promotional programs in conjunction with other commodity groups. Likewise, the Board would have the ability to meet unforeseen increases in administrative obligations that may occur at the start of a marketing year. While such promotional opportunities or emergency needs have not occurred in the past, the Board believes it is important that the Board have the ability to accrue additional funds, if needed.

Record evidence does not provide guidelines or procedures as to how the Board would announce and collect advanced assessment payments or borrow funds. The record does indicate, however, that after approval of the proposed amendment, guidelines and

procedures to implement the amendment would be discussed by the Board in a public meeting and recommended to the Secretary for approval through informal rulemaking procedures.

To encourage advance payment, the Board recommended that advance assessment payments be discounted. Record evidence indicates that the amount of discount could be closely tied to prevailing commercial bank interest rates. A discount assessment rate based on commercial bank interest rates would encourage handlers who pay advanced assessments because they would not lose more money than they would accrue if their advanced assessment payment was held in a commercial bank interest bearing account. Discounted assessment payment opportunities should be available to all handlers throughout the production area.

The record confirms that a decision to accept advance assessment payments and offer discounts for such payments would be made at public meetings open to all industry members. Any additional administrative and operating procedures needed for the collection of advance assessment payments and the calculation of appropriate advance payment discounts should be recommended by the Board to the Secretary for approval. The record evidence indicates that the Board's administrative staff has the capability to assure that advance assessment payments and borrowed funds would be properly budgeted and expended for the authorized purposes for which they would be collected.

This recommendation would be established by designating the current assessment provision as paragraph (a) and adding a new paragraph (b) to provide that the Board should have the authority to offer handlers the opportunity to pay assessments in advance and receive a discount on such assessments paid. New paragraph (b) would provide the Board with authority, with Secretarial approval, to borrow funds early in the marketing year. Such borrowed funds would be used to meet program or fiscal needs as described above.

The record indicates that funds should be borrowed from lending institutions rather than from industry handlers. The Board would make the decision to borrow funds based on recommendations of the appropriate committee that establishes the need for the borrowed funds. For example, the Executive Promotion Committee and the Promotion Committee could recommend that the Board should

borrow funds for a specified promotion project or program. The record also suggests that borrowed funds should be paid back within the same marketing year, so as not to encumber future Boards with the financial obligations of its predecessors.

The Board proposes that a new § 982.63, Contributions, be established to provide the Board with the authority to accept contributions. Such contributions would be used only to pay for production research, market research and development, and market promotion programs, including paid advertising. Such research and development programs would be designed to improve or promote the marketing, distribution, consumption or efficient production of hazelnuts. The Board would not be able to accept contributions that might have stipulations or other provisos on the expenditure of contributed funds. Thus, the Board would have complete control over the expenditure of contributed funds. The record indicates that the Board has not received contribution offers but would like the authority to accept contributions in the future should they be offered.

The record also indicates that the proviso specifying contributions be free from any encumbrances by the donor is not intended to prevent the Board from entering into joint promotional programs with other agencies. However, funding for such joint programs may not come from donations which specify the intended use of the donated funds.

Therefore, § 982.61 should be amended by adding a new paragraph (b) that provides the Board with the authority to collect advance assessment payments, offer discounts for such payments, and borrow money to provide funds for administration of the order during the early months of the marketing period. Also, a new § 982.63, Contributions, should be established to provide the Board with the authority to accept contributions, provided that such contributions are used to pay expenses incurred pursuant to § 982.58 and are free of any encumbrances by the donor. A conforming change should be made to § 982.58, adding contributions as a source of funds that may only be used to pay research, promotion and market development expenses.

(12) The Department proposed in the public hearing to make such changes as are necessary to conform with any amendment that may result from the hearing. This proposal was supported at the hearing without opposition. Record evidence supports these changes.