

terms of office to two years, limit the number of consecutive terms which may be held to three two-year terms, make conforming changes to the qualifications for nominating members, make a correction in the weighting of handler votes, and clarify voting procedures;

(4) whether Board telephone votes should remain unconfirmed in writing until the next public Board meeting;

(5) whether to remove the "verbatim" reporting requirement on Board marketing policy meetings;

(6) whether the Board should have additional flexibility in recommending final free and restricted percentages;

(7) whether to provide the Board with the authority, subject to the approval of the Secretary, to establish different identification standards for inspected and certified hazelnuts;

(8) whether to correct the factor used to convert kernel weight to inshell equivalent weight when calculating the volume of hazelnuts withheld for restricted credit;

(9) whether the Board should use the estimated value of restricted credits when establishing bonding rates, and whether to allow the Board to purchase restricted credits;

(10) whether to clarify that mail order sales are not exempt from order requirements;

(11) whether the Board should have authority to accept advance assessment payments, provide discounts for such payments, borrow money, and accept voluntary contributions; and

(12) whether any conforming changes should be made to the order if any or all of these proposals were to become effective.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence provided at the hearing and the record thereof, are:

(1) The terms "filberts" and "filberts/hazelnuts" should be revised to read "hazelnuts." Section 982.4 defines filberts to mean filberts or hazelnuts produced in the States of Oregon and Washington from trees of the genus *Corylus*.

Over the years, the use of the term "filberts" has lessened both within and outside the industry. "Hazelnuts" is widely used in the industry to describe the tree nut covered under the order and in international marketing efforts.

While some handlers continue to refer to the product as filberts, record evidence indicates that changing the name in the order will not have an adverse effect on those handlers who have traditionally referred to the product as "filberts" or use the term in

the company name or logo. Further, changing the term would be consistent with public practice because, in 1989, the hazelnut—not filbert—was declared the official state nut of Oregon. Record evidence indicates that, in the production area, the tree is generally referred to as a filbert tree while the nuts are referred to as hazelnuts.

In recognition of the more prominent use of the term "hazelnuts," the Board recommended that the tree nut defined as "filberts" in the order and the title of the Board, and the term "filbert/hazelnut" in the order's title be defined as "hazelnuts" throughout the order and the order's rules and regulations. Thus, the title of the order should be amended to read "Hazelnuts Grown in Oregon and Washington," the definition for filberts should be amended to read, "Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus *Corylus*," and the title "Filbert Control Board" should be changed to "Hazelnut Marketing Board." Wherever the term "filberts" appears in *Subpart—Order Regulating Handling* and *Subpart—Grade and Size Regulations*, it should be changed to "hazelnuts." Such changes should be made in the table of contents and the following sections: 982.4, 982.6, 982.7, 982.8, 982.11, 982.12, 982.13, 982.14, 982.15, 982.16, 982.18, 982.19, 982.20, 982.30, 982.32, 982.34, 982.39, 982.40, 982.41, 982.45, 982.46, 982.50, 982.51, 982.52, 982.53, 982.54, 982.55, 982.56, 982.57, 982.58, 982.61, 982.65, 982.66, 982.67, 982.69, 982.71, 982.86, and 982.101, including Exhibit A. Wherever the term "filberts/hazelnuts" appears in *Subpart—Administrative Rules and Regulations*, it should be changed to "hazelnuts." Such changes should be made in the following sections: 982.446, 982.450, 982.452, 982.453, 982.455, 982.456, 982.466, 982.468, and 982.471. Finally, references to "F/H Form * * *", followed by a letter or number, or both, should be changed to read "H Form", followed by a letter or number, or both sections 982.450, 982.452, 982.453, 982.454, 982.455, 982.456, 982.460, 982.466, and 982.468.

(2) In § 982.16, Inshell trade acquisitions, the inshell trade demand area should include all 50 states of the United States, and not just the continental United States, and the Board, with the Secretary's approval, should be authorized to make changes in the distribution area. Therefore, this amendment would make two changes in the order: (1) Include all 50 states of the United States in the trade demand area, thus, adding Hawaii, and (2) provide authority to the Board to make changes

to the trade demand area through informal rulemaking procedures. For the purposes of these findings and conclusions, trade demand area is synonymous with inshell trade acquisition distribution area.

Under the order's volume regulations, shipments of inshell hazelnuts to the continental U.S. are limited to a prescribed percentage of the industry's supply, subject to regulation each marketing year. Currently, the continental U.S. comprises the "domestic market" under the order. All markets outside the continental U.S., including Hawaii, are currently export markets to which handlers may ship inshell hazelnuts without regard to volume regulations established under the order. This amendment would expand the trade demand area to include Hawaii, thus, making that state part of the "domestic market."

Inshell trade acquisitions are defined as the quantity of inshell hazelnuts acquired by the trade (commercial buyers) from all handlers during a marketing year for distribution in the continental United States. The trade demand for any given year is based on inshell trade acquisitions during the preceding three years. The domestic inshell market volume is restricted under volume regulations. Restricted hazelnuts are shelled or exported inshell to other countries, or are held in satisfaction of the handler's restricted obligation.

The effect of the first change would be to add Hawaii to the trade demand area. When the order was promulgated in 1949, "trade demand" was defined as the quantity of filberts/hazelnuts acquired for "distribution in the continental U.S., Alaska, Hawaii, Puerto Rico and the Canal Zone; except that there may also be considered in the making of such computations such acquisitions for distribution in Canada or Cuba, whenever the Board is of the opinion that such distribution may be made to the particular country at prices to handlers approximating such prices on distribution in the Continental United States." (14 FR 5657, September 15, 1949.) This definition was amended in 1959 (24 FR 5305, June 30, 1959) to include only the continental U.S. because it was determined that the other areas would better serve the industry as export outlets for restricted hazelnuts. The Board now recommends that all 50 states be included in the trade demand area.

However, testimony presented at the hearing did not provide any economic analysis, data, or other persuasive reasons that would support adding Hawaii to the trade demand area. The