

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 \$5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 20 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately \$36,500. This is computed by dividing NASS figures for the average value of production for 2000 and 2001 (\$27,369,500) 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 95 percent of the handlers ship under \$5,000,000 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 market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels. Based on Board records of average shipments for 1992–2001, the percentage going to each of these markets was 13 percent (domestic inshell), 41 percent (export inshell), and 46 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and 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. On average, 78 percent of domestic inshell hazelnut shipments occur from October 1 through November 30, primarily to supply holiday nut demand.

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 fully supply the domestic inshell market while preventing an oversupply of that market.

The estimated inshell trade demand (3,133 tons) and the high level of carryin (2,828 tons) were key market factors leading to the 18.4392 percent final free percentage. Hazelnut production in 2002 was only 2,500 tons more than in 1998, which was the shortest crop in the last ten years. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (i.e., average trade acquisitions of 3,563 tons) equals about 18 percent of the supply (19,887 tons subject to regulation). Although the domestic inshell market is a relatively small proportion of total sales (13 percent of average shipments over the last ten years, and 10 percent of average shipments for the last two years), 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.

Since high production years typically follow low production years (a consistent pattern for hazelnuts), higher production is expected in 2003.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1992 and 2001, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year was 48 percent and 153 percent, respectively, of the 10-year average tonnage of 32,240. 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 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower cost of production to grower revenue in recent years highlights the financial impacts on growers at varying production levels. A recent study from Oregon State University (OSU) estimated the cost of production per acre of hazelnuts 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 the OSU estimate twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Since 1995, the highest level of revenue per bearing acre was \$1,552 (1997) and the lowest was \$561 in 1996. 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 to 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 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 2002–2003 hazelnut crop. However, without any regulations in effect, the Board believed that the industry would oversupply the inshell domestic market. Although the 2002–2003 hazelnut crop is much smaller than last year, the release of 18,000 tons on the domestic inshell market would cause producer returns to decrease drastically, and completely disrupt the market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA the 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