

than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$500,000.

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. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding. The record also indicates that a majority of handlers and producers would meet the SBA definitions of small agricultural service firms and small agricultural producers, respectively.

During the 1993-94 marketing year, approximately 25 handlers were regulated under the order. In addition, there were approximately 950 producers of hazelnuts in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the order are predominantly small businesses, the order itself is tailored to the size and nature of small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

For discussion of the anticipated impact on small businesses, the proposed amendments have been grouped into programmatic categories. Amendments concerning the order's marketing and volume control programs would: Change the name of the commodity to "hazelnuts" (§ 982.4); add the State of Hawaii to the trade demand area and allow the Board to make changes in the trade demand area, with the approval of the Secretary (§ 982.16); provide the Board the flexibility to release up to 15 percent of the average three year inshell trade acquisitions for desirable carryout (§ 982.40); correct the current language that determines handler credit for ungraded hazelnuts (§ 982.51); establish the bonding rate for deferred restricted obligations at the estimated value of restricted credits for the current marketing year and allow the Board to use defaulted bond payments to purchase excess restricted credits (§ 982.54); and clarify that mail order sales are not exempt from order requirements (new § 982.57). These

proposed amendments are designed to assist the Board in its domestic and export marketing efforts. The amendments would allow the Board to make program and management decisions that are more consistent with changing market conditions and better respond to changing marketing needs. Because the Board acts in the best interests of the industry, increased Board decision making flexibility should benefit the industry and, thus, small businesses in the industry.

Regarding nomination and Board membership, the proposed amendments would: Change from one to two years the length of Board member and alternate member terms of office (§ 982.33); limit the number of consecutive terms members and alternate members may hold to three two-year terms (§ 982.33); and make conforming changes and a correction in the qualifications for nominating members (§§ 982.30 and 982.32). The amendments are proposed to ease the burden of conducting nomination meetings every year and enhance the Board's efficiency. The amendments are administrative in nature and would not impose additional costs on small businesses.

Other recommended amendments to the order's administrative procedures and operations would: Allow Board telephone votes to remain unconfirmed in writing until the next public Board meeting (§ 982.37); remove the "verbatim" reporting requirement on Board marketing policy meetings (§ 982.39); allow the Board to accept advance assessment payments and provide discounts for such payments (§ 982.61); and allow the Board to accept voluntary contributions (new § 982.63). These proposed amendments are intended to improve the operations of the Board, lessen the administrative burden on Board members and staff, and improve management of the order's financial resources. As such, the proposed changes would have negligible, if any, economic impact on small entities.

Finally, one amendment would provide the Board with the authority to establish more up-to-date identification standards (§ 982.46), which would make order identification and certification provisions consistent with current industry practices and enable handlers more flexibility in meeting identification requirements.

All of these changes are designed to enhance the administration and functioning of the order and benefit the entire industry. Any added costs are not expected to be significant because the benefits of the proposed amendments

are expected to outweigh the costs. Finally, the proposed amendments would have no significant impact or burden on small businesses' recordkeeping and reporting requirements.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform and are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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 the Secretary 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 requesting 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), any additional reporting and recordkeeping requirements that might result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until after receiving OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether to change the name of the commodity from "filberts" to "hazelnuts;"

(2) whether the inshell trade acquisition (trade demand) distribution area should be expanded to include the entire United States; whether the Board, with the approval of the Secretary, should be allowed to make changes in the trade demand distribution area; and, whether inshell hazelnuts shipped to export markets should be restricted from importation into all trade demand distribution areas;

(3) whether to extend the length of Board members' and alternate members'