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.

The marketing order authority for regulating the quantity of hazelnuts marketed is intended to stabilize markets, in the interest of producers, handlers, and consumers. The restricted percentage limits the amount of the crop that goes into the primary market (domestic inshell market) so that this market is adequately supplied. Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The domestic inshell market is quite small and prone to oversupply in the absence of volume regulation. The excess that is not needed for the primary market is set aside and sold into noncompetitive market channels where such sales will not depress primary market prices. The quantity control authority provides the industry with a framework for softening the extremes in supply and prices that can occur with agricultural commodities, like hazelnuts, subject to the vagaries of nature.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of the high quality of U.S. hazelnuts. Europe, and Germany in particular, is the major export market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel (shelled) market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

The critical marketing problem confronting the hazelnut industry is that the available supply for the 1996–97 marketing year far exceeds domestic inshell market needs. The quantity needed for the domestic inshell market during the 1996–97 marketing year (4,724 tons) is less than one-fourth of the supply subject to regulation (20,306 tons). Hence, the Board determined that volume regulation was needed to stabilize supplies and prices. Without the supply correction fostered by regulation in 1996–97, the Board believed that weak marketing conditions and price cutting would cause the industry's economic condition to deteriorate.

In considering quantity control for the 1996–97 marketing year, the Board considered the estimated tonnage of merchantable hazelnuts expected to be produced during the 1996–97 marketing year, the estimated tonnage of inshell hazelnuts carried in from the previous marketing year available for marketing as inshell hazelnuts during 1996–97, all available information on possible markets for the crop taking into consideration anticipated imports, inventory in marketing channels, prices, competing nut supplies, and other economic conditions which could impact the marketing of the 1996–97 inshell hazelnut crop. This all resulted in the Board's recommendation to limit the amount of the 1996–97 crop going into the domestic inshell market and the marketing percentage computation table set forth earlier in this document.

No change has occurred in the relationship between supply and demand since the interim final rule was issued, and that rule made a sufficient volume of free hazelnuts available for the domestic inshell market. Hence, a release of additional supplies at this time of the season would make more hazelnuts available for this market than are needed, resulting in disorderly marketing conditions. Also, the additional supplies could adversely impact the marketing of the upcoming crop.

It is the Department's view that the marketing percentages recommended by the Board, and established by the Department, for the 1996–97 marketing year have provided all members of the industry, both large and small, with a means for stabilizing supplies and prices, and for maintaining and expanding markets for hazelnuts.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are the minimum necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

The interim final rule was issued by the Department on December 31, 1996; put on public display at the Office of the Federal Register on January 7, 1997; and published in the **Federal Register** (62 FR 1035, January 8, 1997), with an effective date of January 9, 1997. The Board manager mailed information concerning that action to all known industry members, and it was also made available through the Internet by the Office of the Federal Register. That rule provided a 30-day comment period which ended February 7, 1997. No comments were received concerning either the interim final rule or the initial regulatory flexibility analysis.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (62 FR 1035, January 8, 1997), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 62 FR 1035 on January 8, 1997, is adopted as a final rule without change.

Dated: April 8, 1997.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–9568 Filed 4–11–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV97–989–1IFR]

Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for the 1996–97 Crop Year for Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes final free and reserve percentages for 1996–97 crop Natural (sun-dried) Seedless raisins. The percentages are 86 percent free and 14 percent reserve. These percentages are intended to stabilize supplies and prices, and strengthen market conditions. This rule was recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective April 15, 1997, and applies to all Natural (sun-dried) Seedless raisins acquired from the beginning of the 1996–97 crop year. Comments received by May 14, 1997 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209–487–5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Natural (sun-dried) Seedless raisins for the 1996–97 crop year, beginning August 1, 1996, through July 31, 1997. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 exempt therefrom. Such 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 an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use or to replace part of the free raisins they exported; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule may restrict the amount of Natural (sun-dried) Seedless raisins that enter domestic markets, final free and reserve percentages are intended to promote stronger marketing conditions, to stabilize prices and supplies, and to improve grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under ''10 plus 10'' offers, and authorizing sales of reserve raisins under certain conditions, such as a national emergency, crop failure, change of economic or marketing conditions, or if free tonnage shipments during the current crop year exceed shipments of the prior crop year by more than 5 percent.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand and the additional release of reserve raisins to handlers under ''10 plus 10'' offers. The ''10 plus 10'' offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Approximately 59,000 tons of Natural (sun-dried) Seedless were purchased by handlers for free use pursuant to these offers. The quantity available for primary market under this rule would be about 406,000 tons natural condition raisins or 381,000 tons packed raisins. This is 129 percent of the quantity shipped in 1995.

Pursuant to section 989.54(a) of the order, the Committee met on August 15, 1996, to review shipment data, inventory data, and the 1995 crop conditions for raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carrying of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free

tonnage raisins of the prior crop year during the months of August and September. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a 1996–97 trade demand of 232,765 tons for Natural (sun-dried) Seedless raisins.

As required under section 989.54(b) of the order, the Committee met on October 3, 1996, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins which released 85 percent of the trade demand. On October 3, 1996, the Committee's crop estimate and preliminary free and reserve percentages were as follows: 272,034 tons, and 73 percent free and 27 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Zante Currant, Sultana, Muscat, Monukka, and Other Seedless raisins. The Committee determined, however, that volume control percentages only were warranted for Natural (sun-dried) Seedless raisins. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietal types. These varietal types are produced in much smaller quantities than Natural (sun-dried) Seedless raisins. In view of these factors, volume control percentages either would not be necessary to maintain market stability or would not be economically practical for the other variety types.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for Natural (sun-dried) Seedless raisins of 85.75 percent free and 14.25 percent reserve were announced by the Committee on February 3, 1997. The Committee considered its final estimate of 270,999 tons of 1966–97 production of Natural (sun-dried) Seedless raisins when it established the interim percentages. That action released most, but not all, of the computed trade demand for Natural (sun-dried) Seedless raisins.

In addition, under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type. The Committee met on February 3, 1997, for this purpose.

The computed trade demand (232,765 tons) is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets (282,289 tons), adjusted by subtracting the carrying of each varietal type on August 1 of the current crop year (113,697 tons) and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year (64,173 tons). No information was presented between the August 15, 1996, meeting and the February 3, 1997, meeting to cause the Committee to make any change to the computed trade demand. Thus, the Committee divided the computed trade demand of 232,765 tons by the final production estimate (270,999 tons) and recommended a final free percentage of 86 percent and a final reserve percentage of 14 percent.

The free and reserve percentages established by this interim final rule will apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial 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 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.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order and approximately 4,500 producers of raisins in the regulated area. Small agricultural service firms, which includes handlers, have been denied by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume control procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

In discussing the possibility of marketing percentages for the 1996–97 crop year, the Committee considered: (1) The estimated tonnage held by producers, handlers, and for the account of the Committee at the beginning of the crop year (113,697 tons); (2) the estimated tonnage of standard raisins which will be produced in 1996–97 (270,999 tons); (3) the trade demand for raisins in free tonnage outlets in 1996–97 (232,765 tons); (4) the estimated desirable carryout at the end of the 1996–97 crop year for free tonnage (64,173 tons); (5) the estimated world raisin supply and demand situation; (6) the current prices being received and the probable level of prices to be received for raisins by producers and handlers; and (7) the trend and level of consumer income.

The Committee's review of the factors resulted in the computation and announcement in October 1997 of preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins. This varietal type is the major commercial varietal type produced in California. Although the 1996–97 crop was estimated to be down from previous crop years, the total supply available for

marketing (270,999 tons) exceeded the computed trade demand (232,765 tons) by a large enough quantity (38,234 tons) to support limiting the quantity available for sale in free tonnage markets by placing a portion of the crop aside to be sold when demand improved in the current or subsequent season.

This rule establishes free and reserve percentages for Natural (sun-dried) Seedless raisins in accordance with the volume control provisions in section 989.54. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use or to replace part of the free use raisins they exported: used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic market. That market is available to all handlers, regardless of handler size.

Raisin variety grapes can be marketed as fresh grapes, crushed for use in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets cause fluctuations in raisin supply. These supply fluctuations can cause producer price instability and disorderly market conditions. Volume control is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. Industry statistics show that Natural (sun-dried) Seedless raisin receipts have varied widely over the last ten years, from a low of 325,911 tons in 1995 to a high of 395,501 tons in 1989. Average receipts for the last 10 years have been around 365,000 tons. As crop size has fluctuated, volume regulations have contributed toward orderly marketing and market stability, and have helped moderate the variation in returns for all growers and handlers, both large and small. For instance, handler receipts in the shortest crop year (1995) were 89 percent of the ten-year average (1986–1995). Handler receipts in the biggest crop year (1989) were 108 percent of the ten-year average.

Free and reserve percentages are established by variety, and only in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume control is necessary to maintain market stability. Accordingly, in assessing whether to apply volume control regulation or, as an alternative, not to apply such regulation, the Committee recommended only one of the 9 raisin varietal types defined under the marketing order for volume control regulation this season.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 129 percent of the quantity shipped in 1995.

The free and reserve percentages established by this rule release the full trade demand and apply uniformly to all handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their raisins will generate.

While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though raisin supplies fluctuate widely from season to season.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

A 30-day comment period is provided to allow interested persons to respond to this rule. All written comments received within the comment period regarding this action or its effect on small business entities will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1996–97 crop year apply to all Natural (sun-dried) Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1996–97 crop raisins of the Natural (sun-dried) Seedless varietal type and this action should be taken promptly to achieve the intended purpose of making the full trade demand quantity computed by the Committee available to handlers; (3) handlers are aware of this action, which the Committee unanimously recommended at an open meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 30-day comment period and any comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.250 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 989.250 Final free and reserve percentages for the 1996–97 crop year.

The final percentages for standard Natural (sun-dried) Seedless raisins

acquired by handlers during the crop year beginning on August 1, 1996, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	86	14

Dated: April 7, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–9476 Filed 4–11–97; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[FV–97–701FR]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides procedures that the Department of Agriculture (Department) will use in conducting the referendum to determine whether to continue the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order). In order to continue, the program must be approved by a simple majority of the qualified handlers voting in the referendum.

EFFECTIVE DATE: This rule is effective from May 14, 1997 through August 15, 1997.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9916 or (888) 720–9917.

SUPPLEMENTARY INFORMATION: This rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (7 U.S.C. 6801 *et seq.*), hereinafter referred to as the Act, and the Order.

This rule provides the procedures under which the referendum will be conducted.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or 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 an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of this rule on small entities. Accordingly, we have performed this Final Regulatory Flexibility Analysis.

The Act, which authorizes the creation of a generic program of promotion and information for fresh cut flowers and greens, became effective on December 14, 1993.

Section 7 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum not later than 3 years after the issuance of an order to ascertain whether the order then in effect shall be continued. The Order was issued on December 29, 1994. Paragraph (a)(2) of section 7 of the Act requires that the Order be approved by a simple majority of all votes cast in the referendum. In addition, paragraph (b) of section 7 of the Act specifies that each qualified handler eligible to vote in the referendum shall be entitled to cast one vote for each separate facility of the person that is an eligible separate facility. Eligible separate facility is defined in paragraph (b)(2) of section 7 of the Act as a handling or marketing facility of a qualified handler that is physically located away from other facilities of the qualified handler or that the business function of the separate facility is substantially different from the functions of other facilities owned or operated by the qualified handler and the annual sales of cut flowers and cut greens to retailers and exempt handlers from the facility are $750,000 or more annually.

Only those wholesale handlers (including but not limited to, wholesale jobbers, bouquet and floral article manufacturers, auction houses that clear the sale of cut flowers and greens, and retail distribution centers), producers and importers who have annual sales of $750,000 or more of fresh cut flowers and greens and who sell those products to exempt handlers, retailers, or consumers are considered qualified handlers and assessed under the Order.

The referendum procedures provide definitions of who is eligible to vote and instructions for referendum agents regarding subagents, publicity for the referendum and the results, ballots, voting, ballot handling and tabulation, reporting, and confidentiality of referendum materials. The representative period for establishing voter eligibility for the referendum will be announced by the Secretary in a separate referendum order published later in the **Federal Register**.

There are approximately 525 wholesale handlers, 84 importers, and 83 producers who are qualified handlers. Small agricultural service firms, which include the qualified handlers covered under the Order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5 million. Only 127 qualified handlers have been identified to have $5 million in annual sales.

It is concluded that the majority of qualified handlers may be classified as small entities.

Statistics reported by the National Agricultural Statistics Service show that in 1995 sales of domestic cut flowers and cut greens totaled approximately $521.3 million at the wholesale level. The leading producing states by wholesale value are California, with about 49 percent of the total of flower and cut green production, followed by Florida, Colorado and Hawaii. Sales information for 1996 will not be available until after publication of this rule.

Exports in 1996 of U.S. cut flowers were valued at $29.4 million, with about 52 percent of the value from exports to Canada, and 16 percent from exports to the Netherlands, about 14 percent from exports to Germany, and 13 percent