

fresh cut flowers and greens with sales of \$750,000 or more annually. In accordance with paragraph (h)(4) of § 6804 of the Act and paragraph (e) of § 1208.41 of the Order, the Council retained 10 percent of the assessment funds collected in an interest-bearing escrow account.

Paragraph (a)(1) of § 6806 of the Act requires USDA to conduct a referendum not later than three years after the issuance of the Order to ascertain whether the Order should be continued. Paragraph (a)(2) of that section requires that the Order be approved by a simple majority of all votes cast in the referendum in order to continue. The referendum was conducted from June 2 through 20, 1997.

In the referendum, only 42 percent of the voters voted to continue the program. Paragraph (d) of § 6806 of the Act and § 1208.60 of the Order, provide that, if the Department determines that termination of the Order is favored by a majority of all votes cast in the referendum, the Department shall terminate the collection of assessments under the Order not later than 180 days after the referendum results are announced. Therefore, the Department published a termination order in the **Federal Register** on July 28, 1997 [62 FR 40255], stating that termination of the Order was favored by a majority of the qualified handlers voting in the referendum and that the Order should therefore be terminated. The termination order eliminated the requirement for handlers to pay assessments as of July 29, 1997. The Act requires the Department to terminate activities under the Order as soon as practicable and in an orderly manner. The other provisions of the Order remained in effect in order to facilitate the collection of past-due assessments from 14 handlers.

In addition, in accordance with § 1208.61 of the Order, the Department appointed five members of the Council to serve as trustees for the purpose of liquidating the assets of the Council.

Paragraph (h)(4) of § 6804 of the Act provides that refunds of assessments shall be made out of the escrow account to those qualified handlers who apply for refunds prior to the conduct of the referendum and submitted satisfactory proof that they paid the assessment for which a refund is requested. If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded, the amount of all such refunds shall be prorated among all eligible qualified handlers that demand the refunds. Section 1208.61 of the Order provides that refunds are to be made within 30 days

of the date the results of the referendum are released by the Department. Due to the number of refund requests, handlers received refunds of about 12 cents for each dollar in assessments paid to the Council. After the refunds were made and the Council's assets were liquidated, a final audit of the Council's books was conducted.

As of July 29, 1997, 14 handlers owed a total of \$433,483.50 in past-due assessments. To date, USDA has collected \$283,130.00 in past-due assessments, \$38,932.98 in late fees, and \$4,500.00 in civil penalties from these handlers pursuant to final decisions by the Secretary of Agriculture in 14 administrative proceedings brought by the Agricultural Marketing Service (AMS). In accordance with instructions from the trustees, the past-due assessments and late fees were distributed to three floral industry groups. In accordance with the Act, the civil penalties were forwarded to the U.S. Department of the Treasury.

Collection efforts have been exhausted. Therefore, this action terminates all provisions of the Order and its rules and regulations.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of 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. The Order is unique in that it was brought about through group action of essentially small entities acting on their own behalf. Thus, both the Act and the RFA have small entity orientation and compatibility.

The Order covered approximately 650 wholesale handlers (qualified handlers). Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$5 million dollars. A majority of the qualified handlers may be classified as small entities.

This final rule terminates the Order covering fresh cut flowers and greens. Assessment obligations were terminated on July 29, 1997. The program has been inoperative since that time.

The floral industry has been operating without a promotion program since assessments were terminated. Reestablishing the Order would mean additional cost to the industry stemming from assessments to operate the Order

(the last assessment was 0.5 percent of the gross sales price of the cut flowers and greens sold), reports to the Council, and recordkeeping. By not reinstating the Order, the industry benefits from avoiding these costs. Because the industry has been operating without the Order for five years, termination of the Order will have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection requirements under the Order were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581-0096 and 0505-0001. When assessment collections were terminated on July 29, 1997, these information collection requirements were also suspended. Now that the Order is being terminated, these requirements are eliminated.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this final rule.

Termination Order

Termination of the Order was favored by a majority of the qualified handlers voting in a referendum conducted in 1997. The Act requires that, upon such a determination by referendum, the Department shall terminate the Order. The Order has been inoperative for five years, and assessment collection efforts have been exhausted. In addition, the assets of the Council have been liquidated, and a final audit of the Council's books has been conducted.

It is therefore ordered, that pursuant to section 6806 of the Act, the Order, and its rules and regulations [7 CFR Part 1208] are hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) termination of the Order was favored by a majority of qualified handlers voting in a referendum in 1997; (2) the Order has been inoperative for five years and assessment collection efforts have been exhausted; and (3) the assets of the Council have been liquidated and a final audit of the Council's books has been conducted.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion,