

Subpart A—Cut Flowers and Cut Greens Promotion, Research, and Information Order

Definitions

§1225.1 Act.

Act means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-7425), and any amendments thereto.

§1225.2 Board.

Board means the Cut Flowers and Cut Greens Promotion, Research, and Information Board established pursuant to §1225.29, or such other name as recommended by the Board and approved by the Department.

§1225.3 Conflict of Interest.

Conflict of Interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a Person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§1225.4 Cut Flowers.

Cut Flowers includes all cultivated or noncultivated flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations for the purpose of being sold or used in floral presentations, but not including foliage plants, floral supplies, tubers, bulbs, or flowering plants.

§1225.5 Cut Greens.

Cut Greens includes all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced or foraged under cover or in field operations for the purpose of being sold or used in floral presentations, but not including foliage plants, floral supplies, tubers, bulbs, or flowering plants.

§1225.6 Cut Flowers/Greens.

Cut Flowers/Greens means Cut Flowers and/or Cut Greens.

§1225.7 Department or USDA.

Department or USDA means the U.S. Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§1225.8 Domestic Producer.

A Domestic Producer (or “Producer”) means any Person that grows and/or harvests Cut Flowers/Greens in the United States for the purpose of selling such products to individuals, retailers, wholesalers, or distribution centers in the United States.

§1225.9 Eligible Domestic Producer.

Eligible Domestic Producer refers to any Person that, during the Representative Period, has qualified as eligible to vote in the Initial Referendum or Subsequent Referenda by: (1) growing and/or harvesting Cut Flowers/Greens in the United States for sale to individuals, retailers, wholesalers, event planners, supermarkets, mass markets, online, or distribution centers in the United States; and (2) earning a minimum of ~~\$100250~~,000.00 in gross sales of such Cut Flowers/Greens in the United States.

§1225.10 Eligible Importer.

Eligible Importer refers to any Person that, during the Representative Period, has qualified as eligible to vote in the Initial Referendum or Subsequent Referenda by: (1) importing Cut Flowers/Greens from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any Person or nation that produces Cut Flowers/Greens outside the United States for sale in the United States; (2) being listed in the import records as the importer of record for such Cut Flowers/Greens; and (3) earning a minimum of ~~\$100250~~,000.00 in gross sales of Cut Flowers/Greens imported into the United States.

§1225.11 Fiscal Year and Marketing Year.

Fiscal Year and Marketing Year means the 12-month period ending on December 31 or such other period as recommended by the Board and approved by the Secretary.

§1225.12 Importer.

Importer means any Person that imports Cut Flowers/Greens from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any Person or nation that produces Cut Flowers/Greens outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such Cut Flowers/Greens.

§1225.13 Information.

Information means information and programs for consumers, customers, city planners, and various industry participants and trades personnel, including educational activities, information, and programs designed to enhance and broaden the understanding of the use and attributes of Cut Flowers/Greens, increase efficiency in producing Cut Flowers/Greens, maintain and expand existing markets, and develop new markets and marketing strategies. These include:

- (a) Consumer education and information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding Cut Flowers/Greens; and
- (b) Industry information, which means information and Programs that would enhance the image of Cut Flowers/Greens.

§1225.14 Initial Referendum.

Initial Referendum refers to the referendum required to approve this Subpart as outlined in §1225.49.

§1225.15 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§1225.16 Part and Subpart.

Part means the Cut Flowers and Cut Greens Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Cut Flowers and Cut Greens Order shall be a Subpart of such Part.

§1225.17 Person.

Person means any individual, group of individuals, firm, partnership, corporation, association, society, cooperative, or any other legal entity. Each legal entity within a corporate structure that has a separate tax identification number (“TIN”) or employer identification number (“EIN”) is considered a separate Person for purposes of this Subpart.

§1225.18 Program.

Program means those Research, Promotion, and Information programs, plans, or projects established pursuant to the Order.

§1225.19 Promotion.

Promotion means any action, including paid advertising and the dissemination of Information, utilizing public relations or other means, to enhance and broaden the understanding of the use and attributes of Cut Flowers/Greens for the purpose of maintaining and expanding markets for Cut Flowers/Greens.

§1225.20 Quarterly Period.

One of the four three (3)-month periods that are based upon a calendar year cycle (*i.e.*, January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31).

§1225.21 Representative Period.

Representative Period means the time period designated by the Secretary pursuant to §518 of the Act.

§1225.22 Research.

Research means any type of test, study, or analysis designed to enhance the image, desirability, use, marketability, production, environmental quality, or sustainability of Cut Flowers/Greens, including research directed to product characteristics and product development, including new products or improved technology in the production of Cut Flowers/Greens.

§1225.23 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§1225.24 State.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§1225.25 Subsequent Referenda.

Subsequent Referenda refers to any referendum conducted pursuant to §1225.49 of this Subpart after this Subpart becomes effective.

§1225.26 Suspend.

Suspend means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an Order or Part thereof during a particular period of time specified in the rule.

§1225.27 Terminate.

Terminate means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an Order or Part thereof beginning on a date certain specified in the rule.

§1225.28 United States.

United States means collectively the fifty (50) States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

Cut Flowers and Cut Greens Board

§1225.29 Establishment and membership.

(a) Establishment of the Board. There is hereby established a Board to administer the terms and provisions of this Part. The Board shall be composed of Domestic Producers and Importers of Cut Flowers/Greens that sell or import a minimum of \$~~100250~~100,000.00 of Cut Flowers/Greens during a calendar year. Seats on the Board shall be apportioned based on the geographical distribution of the quantity of Cut Flowers/Greens produced in the United States and the quantity of Cut Flowers/Greens imported to the United States.

(b) Composition. The Board shall be composed of twelve (12) members as follows:

(1) ~~SixFive~~ (65) members shall be Domestic Producers.

(2) Six (6) members shall be Importers.

(3) ~~One (1) member shall be an "at large" member that is not a Domestic Producer or Importer.~~

~~(4)~~ No two members shall be employed by a single corporation, company, partnership or any other legal entity.

(c) **Reapportionment.** At least once in every five-year period, but not more frequently than once in every three-year period, the Board will review the geographical distribution of the quantity of Cut Flowers/Greens produced and sold within the United States and imported and sold within the United States and, if warranted, recommend to the Secretary that the membership or size of the Board be adjusted to reflect changes. The Board shall conduct the review based upon the Board's annual assessment receipts and, if available, other reliable reports from the industry. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

§1225.30 Nominations and appointments.

(a) Initial nominations shall be submitted to the Secretary by Domestic Producers, Importers, and organizations representing Domestic Producers and/or Importers. Domestic Producers, Importers, and organizations representing Domestic Producers and/or Importers may use mail, online platforms, or other methods to elicit potential nominees. The Secretary shall select the initial members of the Board from the nominations submitted by the Domestic Producers, Importers, and organizations representing Domestic Producers and/or Importers.

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all known Domestic Producers and Importers of Cut Flowers/Greens that sell or import \$~~100250~~,000.00 of Cut Flowers/Greens in a calendar year. Individual Domestic Producers and Importers may submit nominations to the Board;

(2) Domestic Producers and Importer nominees shall provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees may seek nomination to the Board for all vacant seats for which the nominees are qualified;

(4) Nominees that are both a Domestic Producer and Importer may seek nomination to the Board as either a Domestic Producer or Importer so long as they meet the qualifications.

(5) The Board will issue the call for nominations to all known Domestic Producers and Importers, evaluate all the nominees, and submit at least two "recommended nominees" to the Secretary for each open seat. Any applicants interested in serving in the open Board seats who are not "recommended nominees" will be designated by the Board as "additional nominees" for consideration by the Secretary. All nominations submitted to the Secretary must include a background questionnaire,

(7) From the nominations made pursuant to this section, the Secretary shall appoint members of the Board;

(8) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modification shall be implemented through rulemaking by the Secretary.

§1225.31 Term of office.

(a) With the exception of the initial Board, each Board member shall serve for a term of three (3) years or until the Secretary selects his or her successor. Each term of office shall begin and end on dates determined by the Board. No member may serve more than two (2) full consecutive three-year terms, except as provided in paragraph (b) of this section.

(b) For the initial Board, the terms of the Board members shall be staggered for one (1), two (2) and three (3) years. There shall be two (2) Domestic Producer members who serve two (2)-year terms and three (3) Domestic Producer members who serve three (3)-year terms. There shall be two (2) Importer members who serve two (2)-year terms and three (3) Importer members who serve three (3)-year terms. The remaining Domestic Producer member and Importer member ~~and~~ the “at large” member shall both serve a one (1)-year term. The Secretary shall determine which of the initial members shall serve a term of one (1), two (2), or three (3) years.

(c) Members serving the initial terms of all durations will be eligible to serve a second term of three (3) years. Members who are appointed to serve the remainder of a term are eligible to serve two (2) additional three-year terms.

§1225.31 Removal.

The Board may recommend to the Secretary that a member be removed from office if the member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or willful misconduct, which removal is subject to the Secretary’s approval. A Person appointed under this Subpart may be removed by the Secretary if the Secretary determines that the Person's continued service would be detrimental to the purposes of the Act.

§1225.32 Vacancies.

(a) If a member is removed from office, resigns, becomes disqualified for ceasing to be a Domestic Producer or Importer, or in the event of death of any member, such position shall automatically become vacant.

(b) If a position becomes vacant, nominations to fill the vacancy will be conducted using the nominations process set forth in this Subpart or the Board may recommend to the Secretary that he or she appoint a successor from the most recent list of nominations for the position.

(c) A vacancy will not be required to be filled if the unexpired term is less than six months.

§1225.33 Procedure.

(a) The Board shall publicly announce all scheduled Board meetings through a direct communication, press release, or other means and give the Secretary the same notice of meetings of the Board (including committees, subcommittees, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings.

(b) A majority (50% plus one) of the Board members shall constitute a quorum at any meeting of the Board.

(c) Each member of the Board shall be entitled to one (1) vote on any matter put to the Board and the motion will carry if supported by a majority (50% plus one vote) of Board members, except for recommendations to change the assessment rate, adopt a budget, or call for a referendum, which require affirmation by two-thirds (2/3) of the total number of Board members.

(d) At an assembled meeting, all votes shall be cast in person. A meeting that is held via an internet service, video-conference, or teleconference may be deemed an assembled meeting, in which case all votes shall be cast in person using available technology according to procedures that shall be established by the Board.

(e) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a majority of members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at an assembled meeting. All votes shall be recorded in Board minutes.

(f) There shall be no proxy voting.

§1225.34 Reimbursement and attendance.

Board members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

§1225.35 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Subpart in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules and regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate. The committees and subcommittees may include persons other than Board members, including representatives of Domestic Producers and Importers, as the Board deems necessary and appropriate, provided Board members constitute a majority of all committees and subcommittees;

(d) To employ or contract with Persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the Persons;

(e) To develop and submit Programs to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such Programs, which must be approved by the Secretary

before becoming effective, for the development and carrying out of Programs of Promotion, Research, and Information. The payment of costs for such activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide that:

- (1) The contractor or agreeing party shall develop and submit to the Board a Program together with a budget or budgets that shall show the estimated cost to be incurred for such Program;
 - (2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;
 - (3) The Secretary may audit the records of the contracting or agreeing party periodically; and
 - (4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor; and
 - (5) Any other provisions required by the Secretary.
- (f) To prepare and submit for the approval of the Secretary Fiscal Year budgets in accordance with §1225.37.
 - (g) To borrow funds necessary for startup expenses or other capital outlays of the Board as set forth in this Subpart;
 - (h) To invest assessments collected and other funds received pursuant to this Subpart and use earnings from invested assessments to pay for activities carried out pursuant to this Subpart;
 - (i) To recommend changes to the assessment rates as provided in this Subpart;
 - (j) To cause its books to be audited by an independent auditor at the end of each Fiscal Year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;
 - (k) To periodically prepare and make public reports of Program activities and, at least once each Fiscal Year, to make public an accounting of funds received and expended;
 - (l) To maintain such minutes, books and records, and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;
 - (m) To act as an intermediary between the Secretary and any Domestic Producer or Importer;
 - (n) To receive, investigate, and report to the Secretary complaints of violations of this Subpart;
 - (o) To recommend to the Secretary such amendments to this Subpart as the Board considers appropriate; and

(p) To work to achieve an effective, continuous, and coordinated Program of Promotion, Research, and Information and to carry out Programs designed to provide maximum benefits to the Cut Flowers and Cut Greens industry.

§1225.36 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

- (a) Any action that would be a Conflict of Interest;
- (b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, State, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to this Subpart; and
- (c) Any Program or advertising that is false, misleading, or disparaging to another agricultural commodity.

Expenses and Assessments

§1225.37 Budget and expenses.

(a) At least sixty (60) calendar days prior to the beginning of each Fiscal Year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the Fiscal Year covering its anticipated expenses and disbursements in administering this Part. The budget for Research, Promotion or Information may not be implemented prior to approval by the Secretary. Each such budget shall include:

- (1) A statement of objectives and strategy for each Program;
 - (2) A summary of anticipated revenue, with comparative data for at least one preceding Fiscal Year, except for the initial budget;
 - (3) A summary of proposed expenditures for each Program; and
 - (4) Staff and administrative expense breakdowns, with comparative data for at least one preceding Fiscal Year, except for the initial budget.
- (b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this Subpart.
- (c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department. Shifts of funds that do not result in an increase in the Board's approved budget and are consistent with governing bylaws need not have prior approval by the Department.
- (d) The Board is authorized to incur such expenses, including provision for a reserve, as the Secretary finds reasonable and likely to be incurred by the Board for its maintenance and

functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this Subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval from the Department, the Board may borrow funds necessary for startup expenses or other capital outlays of the Board as set forth in the Subpart, which funds shall be subject to the same fiscal, budget, and audit controls as other funds of the Board.

(f) The Board may accept voluntary contributions. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use. The Board may receive funds from outside sources with approval of the Secretary for specific authorized projects.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement and supervision of this Subpart, including all referendum costs in connection with this Subpart.

(h) For Fiscal Years beginning three (3) years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 10 percent (10%) of the assessment and other income received by and available to the Board for the Fiscal Year. For purposes of this limitation, reimbursements to the Secretary and other Board expenses outlined in guidance provided by the Secretary shall not be considered administrative costs.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent Fiscal Years excess funds in any reserve so established; provided that, the funds in the reserve do not exceed two (2) Fiscal Year's budget of expenses. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this Subpart.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this Subpart in:

- (1) Obligations of the United States or any agency of the United States;
- (2) General obligations of any State or any political subdivision of a State;
- (3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System;
- (4) Obligations fully guaranteed as to principal interest by the United States; or
- (5) Other investments as authorized by the Secretary.

§1225.38 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a quarterly basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The

expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within thirty (30) calendar days after the end of the time period to which it applies.

(c) The Board shall submit to the Department an annual financial statement within ninety (90) calendar days after the end of the Fiscal Year to which it applies.

§1225.39 Assessments.

(a) The Board's Programs and expenses shall be paid by assessments on Domestic Producer and Importers of Cut Flowers/Greens in the United States, other income of the Board, and other funds available to the Board.

(b) Subject to the exemption set forth in §1225.40, each Domestic Producer shall be required to pay an assessment to the Board in the amount of one-half percent (½ %) of the gross sales price of their Cut Flowers/Greens sold in the United States and each Importer shall be required to pay an assessment to the Board in the amount of one percent (1%) of the gross sales price of their Cut Flowers/Greens ~~either sold or~~ imported for sale in the United States.

(c) Any change in the rate of assessment may be made only if approved by referendum in accordance with the procedures outlined in this Subpart.

(d) After each Quarterly Period, or such other time period set by the Board, Domestic Producers shall calculate the amount of assessments they owe the Board and remit such payment to the Board no later than thirty (30) days after the end of the Quarterly Period in which the sale took place, or such other time period set by the Board, in which the Cut Flowers/Greens were sold.

(e) Each Importer shall pay an assessment to the Board on the Cut Flowers/Greens imported for sale in the United States through U.S. Customs. The import assessment shall be uniformly applied to imported Cut Flowers/Greens identified by the numbers [0603, XXXX] listed in the Harmonized Tariff Schedule of the United States (HTSUS). The assessments due on imported Cut Flowers/Greens shall be paid when such products are released from custody by Customs and introduced into the stream of commerce in the United States. If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(f) Upon the effective date of this Subpart, all Domestic Producers and Importers shall be responsible for maintaining proper and sufficient sales receipts and records in order to accurately calculate their assessments owed to the Board pursuant to this Subpart.

(g) All assessment payments and reports will be submitted to the Board. A late payment charge may be imposed on any Domestic Producer or Importer who fails to remit to the Board the total amount for which any such Domestic Producer or Importer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge may be imposed on the outstanding amount for which the Domestic Producer or Importer is liable. The rate for late payment and interest charges shall be specified by the Secretary through rulemaking. Persons failing to remit total assessments due in a timely manner may also be subject to actions

under federal debt collection procedures or other means as the Board recommends to the Secretary.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The Board may accept advance payment of assessments from any Domestic Producer or Importer that will be credited toward any amount for which that Person may become liable. The Board may not pay interest on any advance payment.

(j) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

§1225.40 Exemption from Assessment.

(a) Any Domestic Producer or Importers that has earned less than \$~~100250~~,000.00 on the sale or import of Cut Flowers/Greens in the United States during the prior calendar year shall be exempt from paying assessments. In order to receive a certificate of exemption, eligible Domestic Producers and Importers must submit an application to the Board on an annual basis using a form to be provided by the Board. Upon receipt of an application for exemption, the Board shall make a determination of whether an exemption shall be granted or request sales data to support the exemption request.

(b) Domestic Producers and Importers that do not apply for an exemption certificate and who pay assessments, but earn less than \$~~100250~~,000.00 on the sale of Cut Flowers/Greens during the current calendar year shall be eligible for a refund from the Board for applicable assessments.

(c) If an entity is both a Domestic Producer and an Importer, such entity's earnings on Cut Flowers/Greens sold in the United States shall be combined with such entity's earnings on Cut Flowers/Greens imported for sale in the United States during a calendar year for purposes of determining whether the entity qualifies for the exemption.

(d) Domestic Producers and Importers that receive an exemption certificate, but exceed the \$~~100250~~,000.00 threshold during a calendar year shall pay the Board the applicable assessments owed on the quantity sold and/or imported within thirty (30) days after the end of the calendar year.

(e) The Board may develop additional procedures to administer this exemption as appropriate, which shall be implemented through rulemaking by the Secretary.

Promotion, Research, and Information

§1225.41 Programs.

(a) The Board shall develop and submit to the Secretary for approval Programs authorized by this Subpart. Such Programs shall provide for Promotion, Research, Information and other activities including consumer and industry information and advertising.

(b) No Program shall be implemented prior to its approval by the Secretary. Once a Program is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must evaluate each Program authorized under this Subpart to ensure that it contributes to an effective and coordinated Program of Research, Promotion, and Information. The Board must submit the evaluations to the Secretary. If the Board finds that a Program does not contribute to an effective Program of Promotion, Research, or Information, then the Board shall terminate such Program.

§1225.42 Independent evaluation.

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of this Subpart and the Programs conducted by the Board pursuant to the Part. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§1225.43 Patents, copyrights, trademarks, inventions, product formulations, and publications.

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this Subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this Subpart, §1225.51 shall apply to determine disposition of all such property.

Reports, Books, and Records

§1225.44 Reports.

(a) Domestic Producers and Importers will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

- (1) The name and contact information of the Domestic Producer or Importer; and
- (2) The quantity of Cut Flowers/Greens sold by type.

(b) Such information shall be reported to the Board no later than the 30th calendar day of the month following the end of the Quarterly Period in which the Cut Flowers/Greens were sold and shall accompany the collected payment of assessments as specified in §1225.39. First quarter data (January-March) shall be reported to the Board no later than the April 30th; second quarter data (April-June) shall be reported no later than July 31st; third quarter data (July-September)

shall be reported no later than October 31st; and fourth quarter data (October-December) shall be reported no later than January 31st of the following Marketing Year.

§1225.45 Books and records.

Each Domestic Producer and Importer shall maintain any books and records necessary to carry out the provisions of this Subpart and regulations issued thereunder, including such records as are necessary to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Domestic Producers and Importers must maintain the books and records for three (3) years beyond the Fiscal Year to which they apply.

§1225.46 Confidential treatment.

All information obtained from books, records, or reports under the Act, this Subpart and the regulations issued thereunder shall be kept confidential by all Persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Domestic Producers or Importers, but shall be available only to those Persons, including Board members, having a specific need for such information solely to effectively administer the provisions of this Subpart. Only such information so obtained as the Secretary deemed relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Subpart. Nothing in this section shall be deemed to prohibit:

- (a) The issuance of general statements based upon the reports of the number of Persons subject to this Subpart or statistical data collected therefrom, which statements do not identify the information furnished by any Person; and
- (b) The publication, by direction of the Secretary, of the name of any Person who has been adjudged to have violated this Part, together with a statement of the particular provisions of this Part or Subpart violated by such Person.

§1225.47 Allocation to Domestic Organization(s).

- (a) The Board will allocate annually an amount from the total assessments collected on all Cut Flowers/Greens during the prior calendar year, which amount shall be between two percent (2%) and three percent (3%) of the projected total assessments collected, to one or more domestic organizations to be used for local, regional, State, and/or national programs that promote Cut Flowers/Greens. Amounts allocated by the Board for such programs will be based on requests submitted to the Board by domestic organizations that the Board determines meet the goals and objectives stated in the Act and Order. Each such request must include detailed programs, plans, or projects with budgets.

(b) A domestic organization that receives an allocation of funds from the Board shall use such funds and any proceeds from the investment of such funds to finance promotion, consumer information, and industry information programs, plans, and projects that promote Cut Flowers/Greens, which may include the promotion of geographic origin or of varietal Cut Flowers/Greens produced in a specific geographic region in the United States. However, no such funds shall be used for any administrative expenses incurred by the domestic organization.

Miscellaneous

§1225.48 Right of the Secretary.

All fiscal matters, Programs, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§1225.49 Referenda.

(a) **Initial Referendum.** The Order shall not become effective unless the Order is approved by a simple majority (50% + one vote) of Eligible Domestic Producers and a simple majority (50% + one vote) Eligible Importers voting in the Initial Referendum that collectively represent a majority of the volume of Cut Flowers/Greens sold in the United States during a Representative Period. Each Eligible Domestic Producer and Eligible Importer may cast one vote in the Initial Referendum.

(b) **Subsequent Referenda.** The Secretary shall conduct Subsequent Referenda:

(1) Not later than four (4) years after this Order becomes effective and every seven years thereafter, to determine whether Domestic Producers and Importers favor the continuation of this Subpart. This Subpart shall continue if it is approved by a simple majority (50% + one vote) of Eligible Domestic Producers and a simple majority (50% + one vote) Eligible Importers voting in the Subsequent Referendum that collectively represent a majority of the volume of Cut Flowers/Greens sold in the United States during a Representative Period . Each Eligible Domestic Producer and Eligible Importer may cast one vote in Subsequent Referenda;

(2) At the request of the two-thirds of the members of the Board established in this Subpart;

(3) At the request of ten percent (10%) or more of the total number of Eligible Domestic Producers and Eligible Importers; or

(4) At any time as determined by the Secretary.

(c) The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct the Initial Referendum and all Subsequent Referenda.

(d) The Initial Referendum and all Subsequent Referenda shall be conducted pursuant to the procedures outlined in Subpart B.

§1225.50 Suspension or termination.

(a) The Secretary shall Suspend or Terminate this Part or Subpart or a provision thereof, if the Secretary finds that this Part or Subpart or a provision thereof obstructs or does not tend to

effectuate the purposes of the Act, or if the Secretary determines that this Subpart or a provision thereof is not favored by Eligible Domestic Producers and Eligible Importers in a Subsequent Referendum.

(b) The Secretary shall Suspend or Terminate this Subpart at the end of the Fiscal Year whenever the Secretary determines that its suspension or termination is favored by a simple majority of Eligible Domestic Producers and Importers voting in a Subsequent Referendum.

(c) If, as a result of a Subsequent Referendum, the Secretary determines that this Subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) calendar days after making the determination, Suspend or Terminate, as the case may be, the collection of assessments under this Subpart.

(2) As soon as practical, Suspend or Terminate, as the case may be, activities under this Subpart in an orderly manner.

§1225.51 Proceedings after termination.

(a) Upon termination of this Subpart, the Board shall recommend to the Secretary up to five (5) of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other existing claim at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to this Subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and trustees, to such Person or Persons as the Secretary directs; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person's title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this Subpart.

(c) Any Person to whom funds, property, or claims have been transferred or delivered pursuant to this Subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more organizations in the United States whose mission is generic promotion, Research, and Information programs.

§1225.52 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

- (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Subpart or any regulation issued thereunder;
- (b) Release or extinguish any violation of this Subpart or any regulation issued thereunder; or
- (c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§1225.53 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§1225.54 Separability.

If any provision of this Subpart is declared invalid or the applicability of it to any person or circumstances is held invalid, the validity of the remainder of this Subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§1225.55 Amendments.

Amendments to this Subpart may be proposed from time to time by the Board or any interested Person affected by the provisions of the Act, including the Secretary.

§1225.56 OMB control number.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number XXXXXX (Board nominee background statement) and OMB control number XXXXXXXX.

Subpart B—Referendum Procedures

§1225.100 General.

The Initial Referendum and Subsequent Referenda shall be conducted in accordance with this Subpart B.

§1225.101 Definitions.

For purposes of this Subpart B, all defined terms shall have the same meaning as set forth in Subpart A of §1225. In addition, the following terms shall have the meanings set forth below:

- (a) **Administrator** means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.
- (b) **Referenda** refers, collectively, to the Initial Referendum and any Subsequent Referenda.
- (c) **Referendum** refers, individually, to the Initial Referendum or a Subsequent Referendum.
- (d) **Referendum Agent or Agent** means the individual or individuals designated by the Secretary to conduct the referendum.

§1225.102 Voting.

- (a) Each Eligible Domestic Producer and Eligible Importer shall be entitled to cast only one ballot in any Referenda.
- (b) Proxy voting is not authorized, but an officer or employee of an Eligible Domestic Producer or Eligible Importer, or an administrator, executor, or trustee of an Eligible Domestic Producer or Eligible Importer may cast a ballot on behalf of such entity. Any individual so voting in a Referendum shall certify that such individual is an officer or employee of the Eligible Domestic Producer or Eligible Importer, or an administrator, executive, or trustee of the Eligible Domestic Producer or Eligible Importer and that such individual has the authority to take such action. Upon request of the Referendum Agent, the individual shall submit adequate evidence of such authority.
- (c) All ballots are to be cast by mail or by any other means set forth by the Department.

§1225.103 Instructions.

The Referendum Agent shall conduct the Referendum, in the manner provided in this Subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, consistent with the provisions of this Subpart, to govern the procedure to be followed by the Referendum Agent. Such Agent shall:

- (a) Determine the time period during which ballots may be cast;
- (b) Provide ballots and related material to be used in the Referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the Person

voting, or on whose behalf the vote is cast, is an Eligible Domestic Producer or Eligible Importer;

(c) Give reasonable public notice of the Referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print, radio, email communications, and social media; and

(2) By such other means as the Agent may deem advisable.

(d) Distribute to Eligible Domestic Producers and Eligible Importers whose names and contact information are known to the Referendum Agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Cut Flowers and Cut Greens Promotion, Research, and Information Order or the continuance of the Cut Flowers and Cut Greens Promotion, Research, and Information Order, as the case may be. No Person who claims to be an Eligible Domestic Producer or Eligible Importer shall be refused a ballot;

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the Referendum process;

(f) Prepare a report on the Referendum; and

(g) Announce the results to the public.

§1225.104 Subagents.

The Referendum Agent may appoint any individual or individuals necessary or desirable to assist the Agent in performing such Agent's functions of this Subpart. Each individual so appointed may be authorized by the Agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the Agent.

§1225.105 Ballots.

The Referendum Agent and subagents shall accept all ballots cast. However, if an Agent or subagent deems that a ballot should be challenged for any reason, the Agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots deemed invalid under this Subpart shall not be counted.

§1225.106 Referendum report.

Except as otherwise directed, the Referendum Agent shall prepare and submit to the Administrator a report on the results of the Referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the Referendum and its results.

§1225.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any Eligible Domestic Producer or Eligible Importer and the voter list shall be strictly confidential and shall not be disclosed.

§1225.108 OMB control number.

The control number assigned to the information collection requirement in this Subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is OMB control number XXXXXXXX.

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