

(Pub. L. 97-98, title XVII, §1705, Dec. 22, 1981, 95 Stat. 1350.)

#### § 4305. Finding and issuance of orders

After notice and opportunity for hearing as provided in section 4304 of this title, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 97-98, title XVII, §1706, Dec. 22, 1981, 95 Stat. 1350.)

#### § 4306. Required terms in orders

Orders issued pursuant to this chapter shall contain the following terms and conditions and, except as provided in section 4307 of this title, no others:

(1) Providing for the establishment and appointment by the Secretary of a board to be named "Floraboard", which shall consist of not more than seventy-five voting members, and defining its powers and duties, which shall include only the powers to (A) administer such order in accordance with its terms and provisions, (B) make rules and regulations to effectuate the terms and provisions of such order, (C) receive, investigate, and report to the Secretary complaints of violations of such order, and (D) recommend to the Secretary amendments of such order. The term of an appointment to the Floraboard shall be for three years with no member serving more than two consecutive three-year terms: *Provided*, That of the initial appointments, one-third shall be for a term of one year and one-third shall be for a term of two years. The Floraboard shall appoint from its members an executive committee, consisting of not more than fifteen members, whose membership shall, to the maximum extent practicable, reflect the membership composition of the Floraboard, and whose commodity group representation shall be proportional to that of the Floraboard. Such executive committee shall have the authority to employ a staff and conduct routine business within the policies determined by the Floraboard.

(2) Providing that the Floraboard shall be composed of producers and importers appointed by the Secretary from nominations submitted by organizations certified pursuant to section 4315 of this title or if the Secretary determines that a substantial number of producers or importers are not members of or their interests are not represented by any such certified organization then from nominations made by such producers or importers in a manner authorized by the Secretary. Certified organizations shall submit one nomination for each position on the Floraboard. Initially, the Floraboard shall be composed of one-third producers and importers of cut flowers, one-third producers and importers of potted flowering plants, and one-third producers and importers of foliage plants. Two years after assessment of funds commences pursuant to an order, and periodically thereafter, the Floraboard shall adjust the commodity group representation of these commodity groups

on the basis of the amount of assessments, less refunds, collected from each commodity group. There shall at all times be more producers representing a particular commodity group on the Floraboard than importers representing that commodity group. In addition to commodity group representation, the periodic adjustment of the membership of the Floraboard shall reflect, to the maximum extent practicable, the proportionate share of assessments, less refunds, collected from producers in each of several geographic areas of the United States to be defined by the Secretary, and the proportionate share of assessments, less refunds, collected from importers of flowers and plants imported into the United States from each country.

(3) Providing that the Floraboard shall, subject to the provisions of paragraph 8 of this section, develop and submit to the Secretary for approval advertising, sales promotion, consumer education, research, and development plans or projects and that any such plan or project must be approved by the Secretary before becoming effective.

(4) Providing that the Floraboard shall, subject to the provisions of paragraph 8 of this section, submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising, promotion, consumer education, research, and development projects.

(5) Providing that—

(A) For each sale of flowers and plants by a producer within the United States, such producer shall pay an assessment to the Floraboard based on the dollar value of such sales transaction minus the cost of plant material. If the producer is a retailer, the assessment will be based on the then current wholesale value of the flowers and plants less the cost of plant material. In the case of consignment sales, the assessment shall be paid by the producer based on the dollar value of the sale of flowers and plants less the sales commission, freight cost, and cost of plant material.

(B) For each sale of imported flowers and plants within the United States by the importer of such flowers and plants, such importer shall pay an assessment to the Floraboard based on the dollar value of such sales transaction, without deducting the cost of plant material. If the importer is a retailer, the assessment will be made on the purchase price. In the case of consignment sales, the assessment shall be paid by the importer and shall be based on the dollar value of the sale of flowers and plants less the sales commission and cost of transportation within the United States.

(C) The assessments provided for in this section shall be remitted to the Floraboard, at the time and in the manner prescribed in the order and regulations thereunder, and shall be used for such expenses and expenditures (including provision for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after an order has been promulgated under this chapter) as the Secretary finds are reasonable and likely to be

incurred by the Floraboard under the order during any period specified by the Secretary.

(6) Providing that the initial rate of assessment, which rate shall remain in effect for the first two years after an order is approved in a referendum, shall not exceed one-half of 1 per centum of the value of flowers and plants sold, as determined under the provisions of paragraph (5) of this section: *Provided*, That the Floraboard may thereafter increase or decrease the rate of assessment prescribed by the order by no more than one-quarter of 1 per centum of the value of flowers and plants sold per year: *Provided further*, That in no event shall the rate of assessment exceed 1½ per centum of the value of flowers and plants sold.

(7) Providing that the Floraboard shall maintain such books and records and shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and providing for appropriate accounting by the Floraboard with respect to the receipt and disbursement of all funds entrusted to it.

(8) Providing that the Floraboard, with the approval of the Secretary, may enter into contracts or agreements for development and carrying out of the activities authorized under the order pursuant to sections 4307(1) and (2) of this title and for the payment of the cost thereof with funds collected pursuant to the order. The Floraboard may contract with industry groups, profit or nonprofit companies, private and State colleges and universities, and governmental groups. Any such contract or agreement shall provide (A) that the contracting party shall develop and submit to the Floraboard a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, (B) that any such plan or project shall become effective upon the approval of the Secretary, and (C) that the contracting party shall keep accurate records of all its transactions and make periodic reports to the Floraboard of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require.

(9) Providing that the Floraboard may convene, from time to time, advisory panels drawn from the production, importation, wholesale, and retail segments of the flower and plant industry to assist in the development of marketing and research programs.

(10) Providing that no funds collected or received by the Floraboard shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by paragraph (1)(D) of this section.

(11) Providing that Floraboard members and members of any advisory panels convened shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Floraboard or advisory panel.

(Pub. L. 97-98, title XVII, §1707, Dec. 22, 1981, 95 Stat. 1350.)

#### § 4307. Permissive terms in orders

Orders issued pursuant to this chapter may contain one or more of the following terms and conditions:

(1) Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for advertising, sales promotion, urban beautification, and consumer education with respect to the use of flowers and plants, and for the disbursement of necessary funds for such purposes: *Provided*, That any such plan or project shall be directed toward increasing the general demand for flowers and plants and shall make no reference to a private brand or trade name: *Provided further*, That no such advertising, consumer education, urban beautification, or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(2) Providing for establishing and carrying on research, marketing, and development projects, and studies with respect to the sale, distribution, marketing, or utilization of flowers and plants, to the end that the marketing and utilization of flowers and plants may be encouraged, expanded, improved, or made more acceptable, for the dissemination of the data collected by such activities and for the disbursement of necessary funds for such purposes.

(3) Providing that producers, wholesalers, retailers, and importers of flowers and plants maintain and make available for inspection such books and records as are specified in the order and that such persons file reports at the time, in the manner, and having the content prescribed by the order, to the end that information and data shall be made available to the Floraboard and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of this chapter, or any order or regulation issued pursuant to this chapter: *Provided*, That all information so obtained shall be kept confidential by employees of the Department of Agriculture and the Floraboard, and only such information as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or in a suit or administrative hearing to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information to be disclosed was furnished or acquired. 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 an order, or statistical data collected therefrom, which statements do not identify the information furnished by any person, (B) the publication by the Floraboard of general statements relating to refunds made by the Floraboard during any specific period, including regional information on refunds, (C) the publication by the Floraboard of information on the amount of assessments collected from each commodity group and the rate of refund in each commodity group, or (D) the publication by direction of the Secretary of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such persons. No information obtained pursuant to the authority of this chapter may be made available to any agency or officer of the Federal Government for any purpose other than the im-