

Agricultural Marketing Service, USDA

§ 1208.42

shall submit budgets for each succeeding fiscal year not less than 30 days before the beginning of such fiscal year.

(c) The Council is authorized to incur such expenses (including provision for a reasonable reserve for operating contingencies) as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to §1208.50, or other funds available to the Council.

(d) The Council shall reimburse the Secretary, from assessments collected pursuant to §1208.50, or from other funds available to the Council, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after December 29, 1994.

(e) The Council shall establish an interest-bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Council to be held in reserve for the payment of refunds pursuant to §1208.54.

(f) The Council may, with the approval of the Secretary, borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1208.42 Plans, projects, budgets, and contracts.

The Council shall develop and implement plans and projects for the promotion of, and the dissemination of information about, cut flowers and greens, as well as for research related to cut flowers and greens in accordance with the following:

(a) The Council shall develop, or contract for the development of, plans and projects for advertising, sales promotion, other promotion, and for dissemination of consumer information, with respect to cut flowers and greens, and may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary.

Any such plan or project shall be directed toward increasing the general demand for cut flowers and greens and shall not make reference to a private brand or trade name, point of origin, or source of supply, except that the Council may offer such plans and projects of the Council for use by commercial parties such as local, regional, State, or national floral industry organizations, and then only under terms and conditions prescribed by the Council and approved by the Secretary. No plan or project may make use of unfair or deceptive acts or practices with respect to quality or value.

(b) The Council shall develop, or contract for the development of, plans and projects for research on the development of both established and new markets for cut flowers and greens and for research with respect to postharvest physiology, distribution, sale, marketing, use, and promotion of cut flowers and greens, as well as the dissemination of consumer information concerning cut flowers and greens. The Council is authorized to develop, or contract for the development of, such plans and projects for other research with respect to the marketing, promotion, and dissemination of information about cut flowers and greens as it finds appropriate. The Council may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary.

(c) The Council shall submit to the Secretary, for approval before implementation, any contracts for development of plans and projects, as well as such plans and projects as may be developed by or approved by the Council for advertising, promotion, dissemination of information, and research. All such submissions to the Secretary shall be accompanied by a proposed budget showing the estimated expense to be incurred and the availability of revenue from which such expense may be paid. On approval of any such submission, the Council may proceed with the contract, plan or project and incur the expenses necessary to carry it out. Contracts or agreements to be submitted to the Secretary and entered into if approved by the Secretary shall,

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among such other matters as may be required, provide that:

(1) The contracting or agreeing party shall develop and submit to the Council a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

(2) The plan or project shall become effective on the approval of the Secretary; and

(3) The contracting or agreeing party shall:

(i) Keep accurate records of all of the transactions of the party;

(ii) Account for funds received and expenses;

(iii) Make periodic reports to the Council of activities conducted; and

(iv) Make such other reports as the Council or the Secretary may require.

(d) The Council, from time to time, may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the cut flowers and greens industry to assist in the development of promotion, consumer information, and related research plans and projects. For these purposes, the Council may appoint special committees composed of persons other than Council members. A committee so appointed may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government, and shall consult directly with the Council.

§ 1208.43 Other contracts and agreements.

The Council may enter into contracts or agreements for administrative services, including contracts of employment, as may be required to conduct its business in accordance with such fiscal period budgets as may have been approved by the Secretary. To the extent appropriate to the contract involved, contracts entered into by the Council under the authority of this section shall contain provisions comparable to those described in § 1208.42(c).

ASSESSMENTS

§ 1208.50 Assessments.

(a) Each qualified handler, as defined in § 1208.16, shall pay to the Council an assessment in an amount determined

in accordance with this subpart, on each sale of cut flowers and greens to a retailer or an exempt handler (as defined in § 1208.8) and on each non-sale transfer of cut flowers and greens to a retailer by a qualified handler that is a distribution center; as well as each direct sale of cut flowers and greens to a consumer by a producer that is a qualified handler, or by an importer that is a qualified handler. Such assessments shall be remitted by each qualified handler to the Council or its agent within 60 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place. Such assessments shall be paid at the following rates:

(1) During the first three years after December 29, 1994.

(i) Except as provided in paragraph (a)(1)(ii) of this section, the rate shall be one-half of 1 (0.5) percent of the gross sales price of the cut flowers and greens sold;

(ii) In the case of non-sale transfers to a retailer by a qualified handler that is a distribution center and in the case of direct sales by importers or producers, the rate shall be one-half of 1 (0.5) percent of the amount of each transaction's valuation for assessment as provided in paragraph (b);

(2) After the first three years from December 29, 1994, the uniform assessment rate may be increased or decreased annually by not more than one-quarter of 1 (0.25) percent of the gross sales price of a product sold; or in the case of other transactions the amount of such transactions, except that the assessment rate may not exceed 1 percent of the gross sales price or the transaction amount. Changes in the rate of assessment may only be made if such changes are adopted by a two-thirds majority vote of the Council and approved by the Secretary (after public notice and opportunity for comment as provided in the Act) as being necessary to carry out the objectives of the Act. Any such change so approved by the Secretary may be put into effect without a referendum but shall be announced not less than 30 days prior to the beginning of a fiscal year.

(b) Each non-sale transfer of cut flowers and greens to a retailer from a