

BLACKBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER
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Subpart A –Blackberry Promotion, Research, and Information Order

Definitions

§ 1.1 Act.

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

§ 1.2 Conflict of interest.

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

§ 1.3 Crop year.

Crop year means the 12-month period from January 1 to December 31 or such other period approved by the Secretary.

§ 1.4 Customs.

Customs means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

§ 1.5 Department.

Department means the United States Department of Agriculture.

§ 1.6 First handler.

First handler means any person (excluding a common or contract carrier) receiving blackberries from producers in a calendar year and who as owner or agent, ships or causes blackberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale, receiving, packing, grading, marketing, or distributing fresh blackberries in commercial quantities. This definition includes a retailer, except a retailer who purchases or acquires from, or handles on behalf of, any producer of blackberries. The term first handler includes a producer who handles or markets blackberries of the producer's own production.

§ 1.7 Fiscal period.

Fiscal period means a calendar year from January 1 to December 31, or such other period as approved by the Secretary.

§ 1.8 Foreign producer.

Foreign producer means any person:

- (a) Who is engaged in the production and sale of fresh blackberries outside of the United States and who owns, or shares the ownership and risk of loss of fresh blackberries for sale in the U.S. market; or
- (b) Who is engaged, outside of the United States, in the business of producing, or causing to be produced, fresh blackberries beyond the person's own family use and having value at first point of sale.

§ 1.9 Handle.

Handle means to pack, process, sell, transport, purchase, or in any other way to place or cause fresh blackberries to which one has title or possession in a channel of commerce. Such term shall not include the transportation or delivery of blackberries for processing by the producer thereof to a processor.

§ 1.10 Importer.

Importer means any person importing blackberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles blackberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blackberries.

§ 1.11 Information.

Information means information and programs that are designed to increase efficiency in production, and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blackberries on a national or international basis. These include:

- (a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blackberries.
- (b) *Food industry information*, which means any action taken to provide information to, and broaden the understanding of, the food industry regarding the consumption, use, nutritional attributes, and care of blackberries.
- (c) *Industry information*, which means any action taken to provide information to or collect information from, and broaden the understanding of, the blackberry industry

regarding the production, consumption, use, nutritional attributes, and care of blackberries.

§ 1.12 Market or marketing.

(a) *Marketing* means the sale or other disposition of blackberries in interstate, foreign or intrastate commerce.

(b) To *market* means to sell or otherwise dispose of blackberries in any channel of commerce.

§ 1.13 National Blackberry Council.

National Blackberry Council or such other name as recommended by the Council and approved by the Department means the administrative body established pursuant to § 2.1.

§ 1.14 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.

§ 1.15 Part and subpart.

Part means the Blackberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1.16 Person.

Person means any *individual*, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1.17 Fresh blackberries

Fresh blackberries means blackberries which have not been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes.

§ 1.18 Processed blackberries.

Processed blackberries means blackberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes.

§ 1.19 Processor.

Processor means a person engaged in the preparation of blackberries for processing for market who owns or who shares the ownership and risk of loss of such blackberries.

§ 1.20 Producer.

Producer means any person who grows 30,000 pounds or more of blackberries for fresh market sale or commerce in the United States, or a person who is engaged in the business of producing, or causing to be produced for any market, blackberries beyond the person's own family use and having value at the first point of sale.

§ 1.21 Promotion.

Promotion means any action taken to present a favorable image of fresh blackberries to the general public and the food industry for the purpose of improving the competitive position of fresh blackberries both in the United States and abroad and stimulating the sale of fresh blackberries including paid advertising and public relations.

§ 1.22 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to nominate importer and alternate importer members to the Council.

§ 1.23 Qualified organization representing foreign producer interests.

Qualified organization representing foreign producer interests means an organization that the Secretary certifies as being eligible to nominate foreign producer and alternate foreign producer members to the Council.

§ 1.24 Blackberries.

Blackberries mean and include all kinds, varieties, and hybrids of cultivated blackberry species of the genus "*Rubus ssp.*" grown in or imported into the United States.

§ 1.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of fresh blackberries, including but not limited to research relating to nutritional value, cost of production, new product development, variety development, pest and disease research, health research, food safety and marketing of fresh blackberries.

§ 1.26 Secretary.

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

§ 1.27 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1.28 Suspend.

Suspend means to issue a rule under section 553 of title 5 U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1.29 Terminate.

Terminate means to issue a rule under section 553 of title 5 U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1.30 United States.

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

National Blackberry Council

§ 2.1 Establishment and membership.

(a) *Establishment of the National Blackberry Council.* There is hereby established a National Blackberry Council, or such other name as recommended by the Council and approved by the Department, hereinafter called Council, composed of 13 (thirteen) members and 13 (thirteen) alternate members, appointed by the Secretary from nominations as follows:

- (1) 5 (five) blackberry producer members and alternate members from the five largest producing States producing blackberries delivered for fresh market sale. Distribution of the seats among the eligible States shall be proportional to the percent determined by the average of the total pounds of blackberries produced and delivered for marketing over the previous three years divided by the average total pounds by all of the eligible States for the previous three years. Only States

whose producers deliver blackberries for fresh market sale and pay assessments are eligible for nomination and election to the Council. Average production will be based upon either State production figures or the Department data for the initial election, and production figures generated by either the Council or the Department thereafter;

(2) 2 (two) regional blackberry producer members and their alternates representing all other States producing blackberries delivered for fresh market sale. All other States producing blackberries delivered for fresh market sale will constitute a region from which one producer member and alternate will be nominated to the Council from those states east of the Mississippi River and one producer member and alternate from states west of the Mississippi River. Only States whose producers deliver blackberries for fresh market sale and pay assessments are eligible for nomination and election to the Council. Average production will be based upon either State production figures or the Department data for the initial election, and production figures generated by either the Council or the Department thereafter;

(3) 3 (three) blackberry importer members and their alternates;

(4) 2 (two) foreign producers and their alternate members from countries exporting blackberries for fresh market sale to the U.S.; and

(5) 1 (one) at-large member and their alternate recommended by the Council and submitted by the Council to the Secretary for approval. In recommending the at-large member(s) and alternate(s), the Council shall give consideration to individuals interested in the blackberry industry, such as an additional producer, importer, researcher, or consumer advocate. Nominations for the initial Council will be handled by the Department.

(b) *Adjustment of membership.* At least once every five years, but not more frequently than once every three years, the Council will review the geographic distribution of United States production of blackberries produced for the fresh market and the quantity and source of fresh blackberry imports. The review will be conducted through an audit of State crop production figures and Council assessment receipts. If warranted, the Council will recommend to the Secretary that membership on the Council be altered to reflect any changes in geographic distribution of domestic blackberry production and the quantity of imports. If the level of imports increases or decreases, importer members and alternates may be added or reduced on the Council, subject to recommendation by the Council and approval of the Secretary. However, the foreign producer seats will remain the same regardless of the volume of imports from importing countries.

(c) *Council's Ability to Serve the Diversity of the Industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the Council represents the diverse interests of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

§ 2.2 Nominations and appointments.

(a) Voting for regional and State producer representatives will be made by mail ballot.

(b) Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council.

(c) The nominations for the 5 (five) producer and alternate members from States producing a minimum three year average of 30,000 pounds of blackberries will be submitted to the Council in the following manner:

(1) For those States that have a State blackberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve. Nominations will be sent to the Council and placed on a ballot which will then be sent to producers in the State for a vote. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office; or

(2) For those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States who may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(3) The distribution of the 5 (five) producer and alternate seats will be proportional to the percentage determined by the average of the total pounds produced and delivered for fresh market sale or to processors for processing over the previous three years divided by the average total pounds produced over the previous three years.

(d) The nominee for the 2 (two) blackberry producer and alternate member seats who represents all other States producing blackberries delivered for fresh market sale will constitute one of two regions, east of the Mississippi river, or west of the Mississippi River, and the nominations will be submitted to the Council in the following manner:

(1) For those States that have a State blackberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve. The State commission or committee nominations will be sent to the Council and placed on a ballot which will then be sent to producers in the Region for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office; or

(2) For those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for the member and alternate from the specific States. The State

Departments of Agriculture would have the opportunity to participate in nomination caucuses and will directly submit as a group a single slate of nominations to the Department for the producer position and the producer alternate position on the Council for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(e) Only producers from States that deliver blackberries for fresh market sale and are covered under the program are eligible for nomination and election to the Council. Average production will be based upon Department production data for the initial nomination and production figures generated by either the Council or the Department thereafter.

(f) Nominations for the importer positions and their alternates will be made by qualified national organizations representing importers as follows:

(1) All qualified national organizations representing importers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the importer positions and the importer alternate positions on the Council. Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(2) If the Department determines that there are no qualified national organizations representing importers, individuals who have paid their assessments to the Council in the most recent fiscal year or for the initial Council, those that imported fresh market blackberries for sale into the U.S., may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(g) Nominations for the foreign producer positions and their alternates will be made by qualified organizations representing foreign producers as follows:

(1) All qualified organizations representing foreign producer interests will have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the foreign producer positions and the foreign producer alternate positions on the Council.

(2) If the Department determines that there are no qualified organizations representing foreign producer interests, individual foreign producers may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office. For the initial Council, persons that meet the definition of foreign producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(h) Nominations for the at-large member(s) and alternate(s) will be conducted at a Council meeting by the Council and shall be submitted by the Council to the Secretary for approval. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

(i) From the nominations, the Secretary shall select the members of the Council and alternates for each position on the Council. Members will serve until their replacements have been appointed by the Secretary.

(j) If there is an insufficient number of nominees from whom to appoint members to the Council, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(k) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

- (1) The organization must represent a substantial number of importers who market or produce a substantial volume of blackberries for fresh market sale;
- (2) The organization has a history of stability and permanency and has been in existence for more than one year;
- (3) The organization must promote blackberries for fresh market sale; and
- (4) The organization must derive a portion of its operating funds from importers.

(l) Qualified organization representing foreign producer interests. To be certified by the Secretary as a qualified organization representing foreign producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

- (1) The organization must represent a substantial number of foreign producers who produce a substantial volume of blackberries for fresh market sale;
- (2) The organization has a history of stability and permanency and has been in existence for more than one year;
- (3) The organization must promote foreign blackberry producers' welfare;
- (4) The organization must derive a portion of its operating funds from foreign producers; and
- (5) The organization must be located in a country exporting blackberries for fresh market sale to the U.S.

(m) Eligible organizations, foreign producers, or importers must submit nominations to the Secretary not less than 90 days prior to the expiration of the term of office. At least two nominees for each position to be filled must be submitted.

§ 2.3 Term of office. Note that these have been revised. See factsheet 1-11-2012

Council members and alternates will serve for a term of 3 (three) years and be able to serve a maximum of 2 (two) consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, 2 (two) producers, 1 (one) importer, 1 (one) foreign producer, and the 1(one) at-large member and their respective alternates will be assigned initial terms of 1(one) years. 2 (two) producers, 1 (one) importer, 1 (one) foreign producer, and 1(one) regional member and their respective alternates will be assigned initial terms of 2 (two) years. 1(one) remaining producer, 1 (one) remaining

importer, 1 (one) remaining foreign producer, and 1(one) remaining regional member and their respective alternates will be assigned initial terms of 3 (three) years. Members serving an initial term of 1 (one) or 2 (two) years will be eligible to serve a second full term of 3 (three) years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in all years. Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 2.4 Vacancies.

- (a) In the event that any member of the Council ceases to be a member of the category of membership from which the member was appointed to the Council, such position shall automatically become vacant.
- (b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary may remove such member from office.
- (c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in §§ 2.1 and 2.2, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 2.5 Alternate members.

An alternate member of the Council, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that a producer, importer, foreign producer, or at-large member of the Council and their alternate are unable to attend a meeting, the Council may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 2.6 Procedure.

- (a) At a Council meeting, it will be considered a quorum when a majority (one more than half) of the Council members is present. An alternate will be counted for the purpose of determining a quorum only if the member for whom the person is the alternate is absent or disqualified from participating.
- (b) At the start of each fiscal period, the Council will select a chairperson, vice chairperson, and other officers as appropriate, who will conduct meetings throughout that period.
- (c) The chairperson and the treasurer shall reside in the United States, and the Council office shall also be located in the United States.
- (d) All Council meetings shall be held in the United States.
- (e) All Council members and alternates will receive a minimum of 21 (twenty-one) days' advance notice of all Council and committee meetings.

(f) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by one (1) vote more than 50 percent of the total votes represented by the Council members present.

(g) It will be considered a quorum at a Council committee meeting when at least one more than half of those assigned to the Council committee are present. Alternates may also be assigned to Council committees as necessary. Council committees may consist of persons other than Council members and such persons may vote in Council committee meetings.

(h) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action if supported by one vote more than 50 percent of the members present, by mail, telephone, electronic mail, facsimile, or any other means of communication, with the results of all such votes promptly confirmed in writing. In the event that a vote by mail, telephone, electronic mail, facsimile, or any other means of communication is called by the chairperson, 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 a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(i) There shall be no voting by proxy.

(j) The chairperson shall be a voting member.

(k) The organization of the Council and the procedures for the conducting of meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

§ 2.7 Compensation and reimbursement.

The members of the Council, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

§ 2.8 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer the Order 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 Council, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Council a chairperson, other officers, committees, and subcommittees, as the Council determines to be appropriate;

(d) To employ persons, other than members, as the Council considers necessary to assist the Council in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop and carry out generic promotion, research, and information activities relating to blackberries;

(f) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the

payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Council shall develop and submit to the Council a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Council of activities conducted under the contract or agreement; and make such other reports available as the Council or the Secretary considers necessary. Any contract or agreement shall provide that:

- (1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;
 - (2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;
 - (3) The Secretary may audit the records of the contracting or agreeing party periodically;
 - (4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;
- (g) To prepare and submit for approval of the Secretary, before the beginning of each fiscal year, rates of assessment and a fiscal year budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Council in accordance with §3.1;
- (h) To borrow funds necessary for the startup expenses of the order;
- (i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may require and to make the records available to the Secretary for inspection and audit; 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 Council;
- (j) To cause its books to be audited by a 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 give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Council to the Secretary;
- (l) To act as intermediary between the Secretary and any producer, first handler, importer, or foreign producer;
- (m) To furnish to the Secretary any information or records that the Secretary may request;
- (n) To receive, investigate, and report to the Secretary complaints of violations of the Order;
- (o) To recommend to the Secretary such amendments to the Order as the Council considers appropriate;

- (p) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blackberry industry's position in the marketplace; maintain and expand existing markets and uses for blackberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blackberry industry; and
- (q) To pay the cost of the activities with assessments collected under § 3.3.

§ 2.9 Prohibited activities.

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

- (a) Any action that would be a conflict of interest;
- (b) Using funds collected by the Council 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, other than recommending to the Secretary amendments to the Order; and
- (c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that may be false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 3.1 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. The budget for research, promotion, or information may not be implemented prior to approval of the budget by the Secretary. No later than forty-five (45) days after the receipt of such budget, the Secretary shall notify the Council whether the Secretary approves or disapproves the budget. Each budget shall include:

- (1) A statement of objectives and strategy for each program, plan, or project;
- (2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget); and
- (3) A summary of proposed expenditures for each program, plan, or project;
- (4) Staff and administrative expense breakdowns, with comparative data for at least one preceding 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 Secretary, including shifting funds from one program, plan, or project to another. Shifts in funds which do not cause an increase in the Council's approved budget, and which are consistent with by laws, need not have prior approval by the Department.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, 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 the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

- (e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended for startup costs and capital outlays and are limited to the first year of operation of the Council.
- (f) The Council is authorized to repay startup costs associated with establishing a program and an initial referendum. If approved, these costs would be amortized and repaid over a maximum three (3) year period.
- (g) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use.
- (h) The Council may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.
- (i) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.
- (j) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending. First year start up costs incurred by the Council are also excluded from this limitation on spending.
- (k) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.
- (l) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Council may invest assessments and all other revenues collected under this section 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; or
 - (4) Obligations fully guaranteed as to principal interest by the United States.

§ 3.2 Financial statements.

- (a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. 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 Secretary within 30 days after the end of the time period to which it applies.
- (c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 3.3 Assessments.

- (a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers at a rate not to exceed \$0.01/pound with an initial rate of \$0.01/pound. Donations from any person not subject to assessments under this Order, and other funds available to the Council including those collected pursuant to § 3.7 are subject to the limitations contained therein.
- (b) The collection of assessments on domestic blackberries will be the responsibility of the first handler receiving the blackberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments. The rate of assessments shall be prescribed in regulations issued by the Secretary.
- (c) The Council may recommend to the Secretary an increase or decrease to the assessment rate. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department.
- (d) Each importer of blackberries shall pay an assessment to the Council on blackberries imported for marketing in the United States through Customs. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Council. The assessment rate for imported blackberries shall not exceed \$0.01/pound, with the initial rate being \$0.01/pound.
- (1) The assessment rate for imported blackberries shall be the same or equivalent to the rate for blackberries produced in the United States.
 - (2) The import assessment shall be uniformly applied to imported blackberries that are identified by the numbers 0810209040 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify blackberries.
 - (3) The assessments due on imported blackberries shall be paid when they enter into the United States or are withdrawn for consumption in the United States.
- (e) All assessment payments and reports will be submitted to the office of the Council. All final payments for a crop year are to be received no later than December 31 of that year for producers of blackberries within the United States. A late payment charge shall be imposed on any handler or importer who fails to remit to the Council, the total amount for which any such first handler or importer is liable on or before the due date established by the Council. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the first handler or importer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.
- (f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.
- (g) The Council may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.
- (h) The Council may provide credits of assessments for those persons who contribute to local, regional, or State organizations engaged in similar generic research, promotion, and information programs as partial fulfillment of assessment due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States.
- (1) No credit will be given for funds expended for administrative purposes.

- (2) No credit shall be given for research, promotion, and information program activity conducted outside of the United States.
- (3) The aggregate credit allowable in any one year shall be limited to an amount determined by the Council subject to the approval of the Secretary, and shall be equal to not more than the determined percentage rate of the total assessments paid by any individual in a year to any State, regional, or local program.
- (4) Credit shall only be given for generic research, promotion, and information program activities.
- (5) Credit of assessment may be obtained only by following the procedures prescribed in this section and any regulations recommended by the Council and prescribed by the Secretary. An individual owing assessment(s) shall make a written request to the Council and the request shall contain the assessment paying individual's signature and shall show:
- (i) The name and address of the assessment paying individual;
 - (ii) The name and address of the person who collected the assessment;
 - (iii) The quantity of blackberries on which a credit is requested;
 - (iv) The total amount of credit requested;
 - (v) The date or dates on which the assessment(s) were paid;
 - (vi) A certification that the assessment was not collected from another producer or documentation of assessments collected from local, State, or regional organizations; and
 - (vii) The individual's signature or properly witnessed mark.
- (6) The evidence of payment as required under § 4.2, or a copy thereof, or such other evidence deemed necessary to the Council shall accompany the individual's credit of assessment request.

§ 3.4 Exemption and reimbursement procedures.

- (a) Any producer who produces less than 30,000_pounds of blackberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 3.3 shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such producer shall certify that the producer's production of blackberries shall be less than 30,000 pounds for the fiscal year for which the exemption is claimed. If a producer determines at the end of the year that they did not meet the pounds minimum, the producer can request a reimbursement on the assessments paid to the Council by 60 days of the last day of the year. If, after a person has been exempt from paying assessments for any year pursuant to this section, and the person no longer meets the requirements of paragraph of this section for an exemption, the person shall file a report with the Council in the form and manner prescribed by the Council and pay an assessment on or before March 15 of the subsequent year on all blackberries produced during the year for which the person claimed the exemption.
- (b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council will then issue, if deemed appropriate, a certificate of exemption to the producer eligible to receive one. Each producer who is exempt from assessment must provide an exemption number as supplied by the Council to the first handler in order to be exempt from the collection of an assessment on blackberries. First handlers shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council.

(c) A producer who produces blackberries who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments.

(1) To obtain this exemption, an eligible producer shall submit a request for exemption to the Council—on a form provided by the Council—annually or before the beginning of the fiscal period as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Council and with the approval of the Secretary.

(3) If the producer complies with the requirements of paragraph (c) of this section, the Council will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. The Council will have 60 days to approve the exemption request. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(4) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Council on a form provided by the Council and request an exemption from assessment on 100 percent organic blackberries annually or before the beginning of the fiscal period as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (c) (3) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic blackberries bearing this HTS classification assigned by the Council will not be subject to assessments.

(e) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(f) The Council, with the Secretary's approval, may request that persons claiming an exemption from assessments under § 3.4 must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of the exempted commodity.

(g) The exemption will apply immediately following the issuance of the certificate of exemption.

§ 3.5 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such a program, plan, or project shall provide for:

- (1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer industry information, with respect to blackberries; and
- (2) The establishment and conduct of research with respect to the use, nutritional value, production, health, sale, distribution, and marketing of blackberries, and the creation of new products or product development, thereof, to the end that the marketing and use of blackberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of blackberries.

(b) A program, plan, or project may not be implemented prior to approval of the program, plan, or project by the Secretary. No later than forty-five (45) days after the receipt of such program, plan, or project, the Secretary shall notify the Council whether the Secretary approves or disapproves the program, plan, or project. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Council shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading, or disparage another agricultural commodity. Blackberries of all origins shall be treated equally.

§ 3.6 Independent evaluation.

The Council shall, not less often than once every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 3.7 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Council under this subpart shall be the property of the U.S. Government as represented by the Council 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, information, publications, or product formulations, inure to the benefit of the Council, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 5.4 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 4.1 Reports.

(a) Each first handler subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

- (1) Number of pounds of blackberries handled;
- (2) Number of pounds on which an assessment was collected;
- (3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and
- (4) Date collection was made on each pound handled. All reports are due to the Council 30 days after the end of the crop year.

(b) Each importer subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

- (1) Number of pounds blackberries imported;
- (2) Number of pounds on which an assessment was paid;
- (3) Name and address of the importer;
- (4) Date collection was made on each pound of blackberries imported. All reports are due to the Council 30 days after the end of the crop year.

§ 4.2 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two (2) years beyond the fiscal period of their applicability.

§ 4.3 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 Council, 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 Council members, producers, importers, exporters, foreign producers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on 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 subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 5.1 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed or prepared by the Council shall be submitted to the Secretary for approval.

§ 5.2 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a 51 (fifty-one) percent by number of blackberry producers and importers who represent no less than 65 (sixty-five) percent by produced and imported volume voting for approval in the initial referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blackberries.

(b) *Subsequent referenda.* Every 5 (five) years thereafter, the Secretary shall hold a referendum to determine whether producers of blackberries delivered for fresh market sale and importers of fresh market blackberries favor the continuation of the Order. The Order shall continue if it is favored by the same majority of producers and importers voting for approval in the initial referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blackberries for fresh market. The Secretary will also conduct a subsequent referendum if 10 percent or more of all eligible producers of blackberries for fresh market sale and/or importers of blackberries for fresh market request the Secretary to hold a referendum or if the Council established under §2.1 requests that the Secretary hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 5.3 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the 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 persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who, during a representative period determined by the Secretary, have been engaged in the production or importation of fresh market blackberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) days after making the determination, suspend or terminate, as the case may be, 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.

§ 5.4 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. 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 Council, including claims for any funds unpaid or property not delivered, or any other claim existing 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 Council under any contracts or agreements entered into pursuant to the Order.

(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 Council and the trustees, to such person or persons as the Secretary may direct.

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

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Council 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 domestic blackberry industry organizations in the interest of continuing blackberry promotion, research, and information programs.

§ 5.5 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.

(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.

§ 5.6 Personal liability.

No member, alternate member, or employee of the Council 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, alternate, or employee, except for acts of dishonesty or willful misconduct.

§ 5.7 Separability.

If any provision of this subpart is declared invalid or the applicability thereof 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.

§ 5.8 Amendments.

Amendments to this subpart may be proposed from time to time by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 5.9 OMB control numbers.

The control number 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, is OMB control number XXXXXXXX.

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