

of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 6805. Exclusion; determinations

#### (a) Exclusion

An order shall exclude from assessments under the order any sale of cut flowers or cut greens for export from the United States.

#### (b) Making determinations

##### (1) In general

For the purpose of applying the \$750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler under section 6802(4) of this title, or to a specific facility in order to determine the status of the facility as an eligible separate facility under section 6806(b)(2) of this title, an order issued under this chapter shall provide that—

(A) a determination of the annual sales volume of a person or facility shall be based on the sales of cut flowers and cut greens by the person or facility during the most recently-completed calendar year, except as provided in subparagraph (B); and

(B) in the case of a new business or other operation for which complete data on sales during all or part of the most recently-completed calendar year are not available to the PromoFlor Council, the determination may be made using an alternative time period or other alternative procedure specified in the order.

##### (2) Rule of attribution

###### (A) In general

For the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include—

(i) in the case of an individual, sales attributable to the spouse, children, grandchildren, parents, and grandparents of the person;

(ii) in the case of a partnership or member of a partnership, sales attributable to the partnership and other partners of the partnership;

(iii) in the case of an individual or a partnership, sales attributable to any corporation or other entity in which the individual or partnership owns more than 50 percent of the stock or (if the entity is not a corporation) that the individual or partnership controls; and

(iv) in the case of a corporation, sales attributable to any corporate subsidiary or other corporation or entity in which the corporation owns more than 50 percent of the stock or (if the entity is not a corporation) that the corporation controls.

###### (B) Stock and ownership interest

For the purpose of this paragraph, stock or an ownership interest in an entity that is owned by the spouse, children, grandchildren, parents, grandparents, or partners of an individual, or by a partnership in which a person is a partner, or by a corpora-

tion more than 50 percent of the stock of which is owned by a person, shall be treated as owned by the individual or person.

#### (3) Reports

For the purpose of this subsection, the order may require a person who sells cut flowers or cut greens to retailers to submit reports to the PromoFlor Council on annual sales by the person.

(Pub. L. 103-190, §6, Dec. 14, 1993, 107 Stat. 2283.)

### § 6806. Referenda

#### (a) Requirement for initial referendum

##### (1) In general

Not later than 3 years after the issuance of an order under section 6803(b)(3) of this title, the Secretary shall conduct a referendum among qualified handlers required to pay assessments under the order, as provided in section 6804(h)(1) of this title, subject to the voting requirements of subsection (b) of this section, to ascertain whether the order then in effect shall be continued.

##### (2) Approval of order needed

The order shall be continued only if the Secretary determines that the order has been approved by a simple majority of all votes cast in the referendum. If the order is not approved, the Secretary shall terminate the order as provided in subsection (d) of this section.

#### (b) Votes permitted

##### (1) In general

Each qualified handler eligible to vote in a referendum conducted under this section shall be entitled to cast 1 vote for each separate facility of the person that is an eligible separate facility, as defined in paragraph (2).

##### (2) Eligible separate facility

For the purpose of paragraph (1):

###### (A) Separate facility

A handling or marketing facility of a qualified handler shall be considered to be a separate facility if the facility is physically located away from other facilities of the qualified handler or the business function of the facility is substantially different from the functions of other facilities owned or operated by the qualified handler.

###### (B) Eligibility

A separate facility of a qualified handler shall be considered to be an eligible separate facility if the annual sales of cut flowers and cut greens to retailers and exempt handlers from the facility are \$750,000 or more.

###### (C) Annual sales determined

For the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraph (B), subparagraphs (A) and (C) of section 6802(4) of this title shall apply.

#### (c) Suspension or termination referenda

If an order is approved in a referendum conducted under subsection (a) of this section, ef-