

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3515

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Received

NOVEMBER 23, 1993

Read twice and referred to the Committee on Agriculture, Nutrition, and  
Forestry

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## AN ACT

To amend the Egg Research and Consumer Information Act, the Watermelon Research and Promotion Act, and the Lime Research, Promotion, and Consumer Information Act of 1990 to revise the operation of these Acts and to authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Omnibus Agricultural  
5        Research and Promotion Improvement Act”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—EGG RESEARCH AND CONSUMER INFORMATION

- Sec. 101. Short title.
- Sec. 102. Rate of assessment.
- Sec. 103. Exempted egg producers.

TITLE II—WATERMELON RESEARCH AND PROMOTION

- Sec. 201. Short title.
- Sec. 202. Change to majority vote in referendum procedures.
- Sec. 203. Expansion of watermelon plans to entire United States.
- Sec. 204. Clarification of differences between producers and handlers.
- Sec. 205. Clarification of collection of assessments by the Board.
- Sec. 206. Changes to assessment rate not subject to formal rulemaking.
- Sec. 207. Elimination of watermelon assessment refund.
- Sec. 208. Equitable treatment of watermelon plans.
- Sec. 209. Separate consideration of watermelon plan amendments.

TITLE III—FRESH CUT FLOWERS AND FRESH CUT GREENS  
PROMOTION AND INFORMATION

- Sec. 301. Short title.
- Sec. 302. Findings and declaration of policy.
- Sec. 303. Definitions.
- Sec. 304. Issuance of orders.
- Sec. 305. Fresh Cut Flowers and Fresh Cut Greens Promotion Council  
(PromoFlor Council).
- Sec. 306. Assessments.
- Sec. 307. Miscellaneous requirements of order.
- Sec. 308. Referenda.
- Sec. 309. Petition and review.
- Sec. 310. Enforcement.
- Sec. 311. Investigations and power to subpoena.
- Sec. 312. Confidentiality.
- Sec. 313. Authority for Secretary to suspend or terminate order.
- Sec. 314. Construction.
- Sec. 315. Regulations.
- Sec. 316. Authorization of appropriations.
- Sec. 317. Separability.

TITLE IV—LIME RESEARCH, PROMOTION, AND CONSUMER  
INFORMATION

- Sec. 401. Short title.
- Sec. 402. Findings and purpose.
- Sec. 403. Definition of lime.
- Sec. 404. Required terms in orders.
- Sec. 405. Initial referendum.

1     **TITLE I—EGG RESEARCH AND**  
2             **CONSUMER INFORMATION**

3     **SEC. 101. SHORT TITLE.**

4             This title may be cited as the “Egg Research and  
5     Consumer Information Improvement Act”.

6     **SEC. 102. RATE OF ASSESSMENT.**

7             (a) ASSESSMENT TERMS AND CONDITIONS IN OR-  
8     DERS.—Section 8(e) of the Egg Research and Consumer  
9     Information Act (7 U.S.C. 2707(e)) is amended—

10             (1) by designating the first and second sen-  
11             tences as paragraph (1);

12             (2) by designating the fifth and sixth sentences  
13             as paragraph (3);

14             (3) by striking the third and fourth sentences  
15             and inserting the following new paragraph:

16             “(2)(A) The rate of assessment shall be prescribed  
17     by the order, except that the rate of assessment may not  
18     exceed 30 cents per case of commercial eggs or the equiva-  
19     lent thereof.

20             “(B) The Secretary may amend the order to increase  
21     the rate of assessment (subject to the limitation in sub-  
22     paragraph (A)) only if the increase is recommended by the  
23     Egg Board and approved by egg producers in a referen-  
24     dum conducted under section 9(b).

1       “(C) The Secretary may amend the order to decrease  
2 the rate of assessment only if the decrease is recommended  
3 by the Egg Board. A decrease in the rate of assessment  
4 shall take effect only after the Secretary provides public  
5 notice and an opportunity for comment in accordance with  
6 section 553 of title 5, United States Code. Sections 556  
7 and 557 of such title shall not apply with respect to de-  
8 creasing the rate of assessment.”; and

9           (4) by conforming the margins of paragraphs  
10 (1) and (3) (as so designated) to the margin of  
11 paragraph (2).

12       (b) REFERENDUM REQUIREMENTS.—Section 9 of the  
13 Egg Research and Consumer Information Act (7 U.S.C.  
14 2708) is amended—

15           (1) by designating the first two sentences as  
16 subsection (a);

17           (2) by designating the last sentence as sub-  
18 section (c);

19           (3) by inserting after subsection (a) (as so des-  
20 ignated) the following new subsection:

21       “(b)(1) Whenever the Egg Board determines, based  
22 on scientific studies, marketing analysis, or other similar  
23 competent evidence, that an increase in assessment rate  
24 is needed to ensure that assessments under the order are  
25 set at an appropriate level to effectuate the declared policy

1 of this Act, the Egg Board may request that the Secretary  
2 conduct a referendum, as provided in paragraph (2).

3       “(2) When requested by the Egg Board under para-  
4 graph (1) or (3), the Secretary shall conduct a referendum  
5 among egg producers not exempt hereunder who, during  
6 a representative period determined by the Secretary, have  
7 been engaged in the production of commercial eggs, for  
8 the purpose of ascertaining whether such producers ap-  
9 prove the increase in the assessment rate proposed by the  
10 Egg Board. The increase in the assessment rate shall take  
11 effect if approved or favored by not less than two-thirds  
12 of the producers voting in such referendum, or by a major-  
13 ity of the producers voting in such referendum if such ma-  
14 jority produced not less than two-thirds of all the commer-  
15 cial eggs produced by those voting during a representative  
16 period defined by the Secretary.

17       “(3) With respect to the order in effect on the date  
18 of the enactment of this subsection, the Egg Board shall  
19 undertake to determine under paragraph (1), as soon as  
20 practicable after such date of enactment, whether to re-  
21 quest that the Secretary conduct a referendum under  
22 paragraph (2). If the Egg Board makes such a request  
23 on competent evidence, as provided in paragraph (1), the  
24 Secretary shall conduct such referendum as soon as prac-

1 ticable, but not later than 120 days after receipt of the  
2 request from the Egg Board.

3 “(4) Notwithstanding any other provision of this Act,  
4 whenever an increase in the assessment rate and the au-  
5 thority for additional increases is approved by producers  
6 in a referendum under this subsection, the Secretary shall  
7 amend the order as appropriate to reflect such vote of pro-  
8 ducers. The amendment to the order shall become effective  
9 on the date it is issued.”; and

10 (4) by conforming the margins of subsections  
11 (a) and (c) (as so designated) to the margin of sub-  
12 section (b).

13 **SEC. 103. EXEMPTED EGG PRODUCERS.**

14 (a) INCREASE IN EXEMPTION AMOUNT.—Section  
15 12(a)(1) of the Egg Research and Consumer Information  
16 Act (7 U.S.C. 2711(a)(1)) is amended by striking “30,000  
17 laying hens” and inserting “75,000 laying hens”.

18 (b) ISSUANCE OF AMENDMENT TO ORDER.—To im-  
19 plement the amendment made by subsection (a) to the  
20 Egg Research and Consumer Information Act, the Sec-  
21 retary of Agriculture shall issue an amendment to the egg  
22 promotion and research order issued under such Act. The  
23 amendment to the order shall be issued after public notice  
24 and opportunity for comment in accordance with section  
25 553 of title 5, United States Code. Sections 556 and 557

1 of such title shall not apply with respect to the amendment  
2 to the order. The Secretary shall issue the proposed  
3 amendment to the order not later than 30 days after the  
4 date of the enactment of this title.

5 (c) EFFECTIVE DATE.—The amendment to the egg  
6 promotion and research order required by subsection (b)  
7 shall become effective not later than 120 days after the  
8 date of the enactment of this Act. The amendment shall  
9 not be subject to a referendum under the Egg Research  
10 and Consumer Information Act.

## 11 **TITLE II—WATERMELON**

## 12 **RESEARCH AND PROMOTION**

### 13 **SEC. 201. SHORT TITLE.**

14 (a) SHORT TITLE.—This title may be cited as the  
15 “Watermelon Research and Promotion Improvement Act”.

### 16 **SEC. 202. CHANGE TO MAJORITY VOTE IN REFERENDUM** 17 **PROCEDURES.**

18 Section 1653 of the Watermelon Research and Pro-  
19 motion Act (7 U.S.C. 4912) is amended—

20 (1) by inserting “(a)” after “SEC. 1653.”;

21 (2) by striking the third sentence; and

22 (3) inserting at the end the following new sub-  
23 section:

24 “(b) A plan issued under this subtitle shall not take  
25 effect unless the Secretary determines that the issuance

1 of the plan is approved or favored by a majority of the  
2 producers and handlers (and importers if subject to the  
3 plan) voting in the referendum.”.

4 **SEC. 203. EXPANSION OF WATERMELON PLANS TO ENTIRE**  
5 **UNITED STATES.**

6 (a) DEFINITIONS.—Section 1643 of the Watermelon  
7 Research and Promotion Act (7 U.S.C. 4902(3)) is  
8 amended—

9 (1) in paragraph (3), by striking “the forty-  
10 eight contiguous States of”; and

11 (2) by adding at the end the following new  
12 paragraph:

13 “(10) The term ‘United States’ means each of  
14 the several States and the District of Columbia.”.

15 (b) ISSUANCE OF PLANS.—The last sentence of sec-  
16 tion 1644 of such Act (7 U.S.C. 4903) is amended by  
17 striking “the forty-eight contiguous States of”.

18 **SEC. 204. CLARIFICATION OF DIFFERENCES BETWEEN PRO-**  
19 **DUCERS AND HANDLERS.**

20 Section 1647(c) of the Watermelon Research and  
21 Promotion Act (7 U.S.C. 4906(c)) is amended by adding  
22 at the end the following:

23 “(3) If a producer purchases watermelons from other  
24 producers, in a combined total volume that is equal to 25  
25 percent or more of the producer’s own production, the pro-



1 ducer shall be eligible to serve on the Board only as a  
2 representative of handlers and not as a representative of  
3 producers. In addition, if the combined total volume of wa-  
4 termelons handled by a producer from the producer's own  
5 production and purchases from other producers' produc-  
6 tion is more than 50 percent of the producer's own produc-  
7 tion, the producer shall be eligible to serve on the Board  
8 only as a representative of handlers and not as a rep-  
9 resentative of producers.''.

10 **SEC. 205. CLARIFICATION OF COLLECTION OF ASSESS-**  
11 **MENTS BY THE BOARD.**

12 Section 1647 of the Watermelon Research and Pro-  
13 motion Act (7 U.S.C. 4906) is amended—

14 (1) in subsection (f), by striking “collection of  
15 the assessments by the Board.” and inserting “pay-  
16 ment of the assessments to the Board.”; and

17 (2) in paragraphs (1) and (3) of subsection (g),  
18 by striking “collected” and inserting “received”.

19 **SEC. 206. CHANGES TO ASSESSMENT RATE NOT SUBJECT**  
20 **TO FORMAL RULEMAKING.**

21 Section 1647(f) of the Watermelon Research and  
22 Promotion Act (7 U.S.C. 4906(f)), as amended by section  
23 205(1), is further amended by adding at the end the fol-  
24 lowing new sentences: “In fixing or changing the rate of  
25 assessment pursuant to the plan, the Secretary shall com-

1 ply with the notice and comment procedures established  
2 under section 553 of title 5, United States Code. Sections  
3 556 and 557 of such title shall not apply with respect to  
4 fixing or changing the rate of assessment.”.

5 **SEC. 207. ELIMINATION OF WATERMELON ASSESSMENT RE-**  
6 **FUND.**

7 Section 1647(h) of the Watermelon Research and  
8 Promotion Act (7 U.S.C. 4906(h)) is amended—

9 (1) by striking “The plan” in the first sentence  
10 and inserting “(1) Except as provided in paragraph  
11 (2), the plan”; and

12 (3) by adding at the end the following new  
13 paragraphs:

14 “(2) If approved in the referendum required by sec-  
15 tion 1655(b) relating to the elimination of the assessment  
16 refund under paragraph (1), the Secretary shall amend  
17 the plan that is in effect on the day before the date of  
18 the enactment of the Watermelon Research and Promotion  
19 Improvement Act to eliminate such refund provision.

20 “(3) Notwithstanding paragraph (2), if importers are  
21 subject to the plan, the plan shall provide that importers  
22 of less than 75,000 pounds of watermelons per year shall  
23 be entitled to apply for a refund of the equivalent of the  
24 rate of assessment paid by domestic producers. The Sec-  
25 retary may adjust the weight exemption contained in this

1 paragraph to reflect significant changes in the average  
2 yield per acre of watermelons in the United States for the  
3 5-year period immediately preceding the year in which the  
4 adjustment is made. An adjustment in the weight exemp-  
5 tion under this paragraph may be made only upon the rec-  
6 ommendation of the Board and after the Secretary pro-  
7 vides an opportunity for notice and comment on the pro-  
8 posed adjustment.”.

9 **SEC. 208. EQUITABLE TREATMENT OF WATERMELON**  
10 **PLANS.**

11 (a) DEFINITIONS.—Section 1643 of the Watermelon  
12 Research and Promotion Act (7 U.S.C. 4902), as amended  
13 by section 203(a), is further amended—

14 (1) in paragraph (3), by striking the semicolon  
15 at the end and inserting the following: “or imported  
16 into the United States.”;

17 (2) by redesignating paragraphs (6) and (7) as  
18 paragraphs (8) and (9), respectively; and

19 (3) by inserting after paragraph (5) the follow-  
20 ing new paragraphs:

21 “(6) The term ‘importer’ means any person  
22 who imports watermelons into the United States.

23 “(7) The term ‘plan’ means an order issued by  
24 the Secretary under this subtitle.”.

1 (b) ISSUANCE OF PLANS.—Section 1644 of such Act  
2 (7 U.S.C. 4903), as amended by section 203(b), is further  
3 amended—

4 (1) in the first sentence, by striking “and han-  
5 dlers” and inserting “, handlers, and importers”;

6 (2) by striking the second sentence; and

7 (3) in the last sentence, by inserting “or im-  
8 ported into the United States” before the period.

9 (c) NOTICE AND HEARINGS.—Section 1645(a) of  
10 such Act (7 U.S.C. 4904(a)) is amended—

11 (1) in the first sentence, by striking “and han-  
12 dlers” and inserting “, handlers, and importers”;  
13 and

14 (2) in the last sentence, by striking “or han-  
15 dlers” and inserting “, handlers, or importers”.

16 (d) MEMBERSHIP OF BOARD.—Section 1647(c) of  
17 such Act (7 U.S.C. 4906(c)), as amended by section 204,  
18 is further amended—

19 (1) by inserting “(1)” after “(c)”;

20 (2) in the second sentence, by striking “pro-  
21 ducer and handler members” and inserting “other  
22 members”; and

23 (3) by adding at the end the following new  
24 paragraph:

1       “(2) If importers are subject to the plan, the Board  
2 shall also include one or more representatives of importers  
3 who shall be appointed by the Secretary from nominations  
4 submitted by importers in such manner as may be pre-  
5 scribed by the Secretary. Importer representation on the  
6 Board shall be proportionate to the percentage of assess-  
7 ments paid by importers to the Board, except that there  
8 shall always be at least one representative of importers  
9 on the Board. If importers are subject to the plan and  
10 fail to select nominees for appointment to the Board, the  
11 Secretary may appoint any importers as the representa-  
12 tives of importers. Every 5 years, the Secretary shall  
13 evaluate the average annual percentage of assessments  
14 paid by importers during the most recent 3-year period  
15 and adjust, to the extent possible, the number of importer  
16 representatives on the Board.”.

17       (e) ASSESSMENTS.—Section 1647(g) of such Act (7  
18 U.S.C. 4906(g)), as amended by section 205(2), is further  
19 amended—

20               (1) in paragraph (4)—

21                       (A) by striking “(4) assessments” and in-  
22                       serting “(4) Assessments”; and

23                       (B) by inserting “in the case of producers  
24                       and handlers” after “such assessments”; and

1           (2) by adding at the end the following new  
2 paragraph:

3           “(5) If importers are subject to the plan, an as-  
4 sessment shall also be made on watermelons im-  
5 ported into the United States by such importers.  
6 The rate of assessment for importers (if subject to  
7 the plan) shall be equal to the combined rate for  
8 producers and handlers.”.

9           (f) REFUNDS.—Section 1647(h) of such Act (7  
10 U.S.C. 4906(h)), as amended by section 207, is further  
11 amended—

12           (1) by inserting after “or handler” the first two  
13 places it appears the following: “(or importer if sub-  
14 ject to the plan)”; and

15           (2) by striking “or handler” the last place it  
16 appears and inserting “, handler, or importer”.

17           (g) ASSESSMENT PROCEDURES.—Section 1649 of  
18 such Act (7 U.S.C. 4908) is amended—

19           (1) in subsection (a)—

20                   (A) by inserting “(1)” after “(a)”; and

21                   (B) by adding at the end the following new  
22 paragraph:

23           “(2) If importers are subject to the plan, each im-  
24 porter required to pay assessments under the plan shall  
25 be responsible for payment of the assessments to the

1 Board, as the Board may direct. The assessment on im-  
2 ported watermelons shall be paid by the importer to the  
3 Board at the time of the entry of the watermelons into  
4 the United States. Each such importer shall maintain a  
5 separate record specifying the total quantity of water-  
6 melons imported into the United States that are included  
7 under the terms of the plan, as well as those that are ex-  
8 empt under such plan, and containing such other informa-  
9 tion as may be prescribed by the Board. No more than  
10 one assessment shall be made on any imported water-  
11 melons.”;

12 (2) in subsection (b), by inserting “and import-  
13 ers” after “Handlers”; and

14 (3) in subsection (c)(1), by inserting “or im-  
15 porters” after “handlers”.

16 (h) INVESTIGATIONS.—Section 1652(a) of such Act  
17 (7 U.S.C. 4911(a)) is amended—

18 (1) in the first sentence, by striking “a handler  
19 or any other person” and inserting “a person”;

20 (2) in the fourth sentence, by inserting “(or an  
21 importer if subject to the plan)” after “a handler”;  
22 and

23 (3) in the last sentence, by striking “the han-  
24 dler or other person” and inserting “the person”.

1 (i) REFERENDUM.—Section 1653 of such Act (7  
2 U.S.C. 4912), as amended by section 202, is further  
3 amended—

4 (1) in the first sentence—

5 (A) by striking “and handlers” both places  
6 it appears and inserting “, handlers, and im-  
7 porters”; and

8 (B) by striking “or handling” and insert-  
9 ing “, handling, or importing”;

10 (2) by striking the second sentence; and

11 (3) in the sentence beginning “The ballots”—

12 (A) by striking “or handler” and inserting  
13 “, handler, or importer”; and

14 (B) by striking “or handled” and inserting  
15 “, handled, or imported”.

16 (j) TERMINATION OF PLANS.—Section 1654(b) of  
17 such Act (7 U.S.C. 4913(b)) is amended—

18 (1) in the first sentence—

19 (A) by striking “10 per centum or more”  
20 and inserting “at least 10 percent of the com-  
21 bined total”; and

22 (B) by striking “and handlers” both places  
23 it appears and inserting “, handlers, and im-  
24 porters”;

25 (2) in the second sentence—



1 (A) by striking “or handle” and inserting  
2 “, handle, or import”;

3 (B) by striking “50 per centum” and in-  
4 serting “50 percent of the combined total”; and

5 (C) by striking “or handled by the han-  
6 dlers” and inserting “, handled by the handlers,  
7 and imported by the importers”; and

8 (3) by striking the last sentence.

9 (k) CONFORMING AND TECHNICAL AMENDMENTS.—  
10 Such Act is further amended—

11 (1) in section 1642(a)(5) (7 U.S.C.  
12 4901(a)(5)), by striking “and handling” and insert-  
13 ing “handling, and importing”;

14 (2) in the first sentence of section 1642(b) (7  
15 U.S.C. 4901(b))—

16 (A) by inserting “, or imported into the  
17 United States,” after “harvested in the United  
18 States”; and

19 (B) by striking “produced in the United  
20 States”;

21 (3) in section 1643 (7 U.S.C. 4902), as amend-  
22 ed by subsection (a) and section 203—

23 (A) by striking “subtitle—” and inserting  
24 “subtitle:”;

1 (B) in paragraphs (1), (2), (3), (4), and  
2 (5), by striking “the term” and inserting “The  
3 term”;

4 (C) in paragraphs (1), (2), (4), and (5), by  
5 striking the semicolon at the end and inserting  
6 a period;

7 (D) in paragraph (8), as redesignated by  
8 subsection (a)(2)—

9 (i) by striking “the term” and insert-  
10 ing “The term”; and

11 (ii) by striking “; and” and inserting  
12 a period; and

13 (E) in paragraph (9), as redesignated by  
14 subsection (a)(2)—

15 (i) by striking “the term” and insert-  
16 ing “The term”; and

17 (ii) by striking “1644” and inserting  
18 “1647”; and

19 (4) in section 1647(g) (7 U.S.C. 4906(g)), as  
20 amended by subsection (e) and section 205(2)—

21 (A) by striking “that—” and inserting  
22 “the following:”;

23 (B) in paragraph (1)—

24 (i) by striking “(1) funds” and insert-  
25 ing “(1) Funds”; and

1 (ii) by striking the semicolon at the  
2 end and inserting a period;

3 (C) in paragraph (2)—

4 (i) by striking “(2) no” and inserting  
5 “(2) No”; and

6 (ii) by striking the semicolon at the  
7 end and inserting a period;

8 (D) in paragraph (3)—

9 (i) by striking “(3) no” and inserting  
10 “(3) No”; and

11 (ii) by striking “; and” and inserting  
12 a period.

13 **SEC. 209. SEPARATE CONSIDERATION OF WATERMELON**  
14 **PLAN AMENDMENTS.**

15 Section 1655 of the Watermelon Research and Pro-  
16 motion Act (7 U.S.C. 4914) is amended—

17 (1) by striking “The provisions” and inserting  
18 “(a) Except as provided in section 1647(f), the pro-  
19 visions”; and

20 (2) by adding at the end the following new sub-  
21 sections:

22 “(b) The amendments described in subsection (c)  
23 that are required to be made by the Secretary to a plan  
24 as a result of the amendments made by the Watermelon  
25 Research and Promotion Improvement Act shall be subject

1 to separate line item voting and approval in a referendum  
2 conducted pursuant to section 1653 before the Secretary  
3 alters the plan as in effect on the day before the date of  
4 the enactment of such Act.

5 “(c) The amendments referred to in subsection (b)  
6 are those amendments required under—

7 “(1) section 207 of the Watermelon Research  
8 and Promotion Improvement Act relating to the  
9 elimination of the assessment refund; and

10 “(2) section 208 of such Act relating to subject-  
11 ing importers to the terms and conditions of the  
12 plan.

13 “(d) When conducting the referendum relating to  
14 subjecting importers to the terms and conditions of a plan,  
15 the Secretary shall include as eligible voters in the referen-  
16 dum producers, handlers, and importers who would be  
17 subject to the plan if the amendments are approved.”.

18 **TITLE III—FRESH CUT FLOWERS**  
19 **AND FRESH CUT GREENS**  
20 **PROMOTION AND INFORMA-**  
21 **TION**

22 **SEC. 301. SHORT TITLE.**

23 This title may be cited as the “Fresh Cut Flowers  
24 and Fresh Cut Greens Promotion and Information Act”.

1 **SEC. 302. FINDINGS AND DECLARATION OF POLICY.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Fresh cut flowers and fresh cut greens are  
4 an integral part of life in the United States, are en-  
5 joyed by millions of persons every year for a mul-  
6 titude of special purposes (especially important per-  
7 sonal events), and contribute a natural and beautiful  
8 element to the human environment.

9 (2) Cut flowers and cut greens are produced by  
10 many individual producers throughout the United  
11 States as well as in other countries, and are handled  
12 and marketed by thousands of small-sized and me-  
13 dium-sized businesses, and such production, han-  
14 dling, and marketing constitute a key segment of the  
15 United States horticultural industry and thus a sig-  
16 nificant part of the overall agricultural economy of  
17 the United States.

18 (3) Handlers play a vital role in the marketing  
19 of cut flowers and cut greens in that they purchase  
20 most of the cut flowers and cut greens marketed by  
21 producers, prepare the cut flowers and cut greens  
22 for retail consumption, serve as intermediary be-  
23 tween source of product and retailer, otherwise fa-  
24 cilitate the entry of cut flowers and cut greens into  
25 the current of domestic commerce, and add effi-  
26 ciencies to the market process that ensure the avail-

1 ability of a much greater variety of product to retail-  
2 ers and consumers.

3 (4) It is widely recognized that it is in the pub-  
4 lic interest and important to the agricultural econ-  
5 omy of the United States to provide an adequate,  
6 steady supply of cut flowers and cut greens at rea-  
7 sonable prices to consumers in the United States.

8 (5) Cut flowers and cut greens move in inter-  
9 state and foreign commerce, and cut flowers and cut  
10 greens that do not move in such channels of com-  
11 merce, but only in intrastate commerce, directly af-  
12 fect interstate commerce in cut flowers and cut  
13 greens.

14 (6) The maintenance and expansion of existing  
15 markets and the development of new or improved  
16 markets or uses for cut flowers and cut greens are  
17 needed to preserve and strengthen the economic via-  
18 bility of the domestic cut flowers and cut greens in-  
19 dustry for the benefit of producers, handlers, retail-  
20 ers, and the entire floral industry.

21 (7) Generic programs of promotion and  
22 consumer information can be effective in maintain-  
23 ing and developing markets for cut flowers and cut  
24 greens, and have the advantage of equally enhancing

1 the market position for all cut flowers and cut  
2 greens marketed.

3 (8) Because cut flowers and cut greens produc-  
4 ers are primarily agriculture-oriented rather than  
5 promotion-oriented, and because the floral marketing  
6 industry within the United States is comprised  
7 mainly of small-sized and medium-sized businesses,  
8 the development and implementation of an adequate  
9 and coordinated national program of generic pro-  
10 motion and consumer information necessary for the  
11 maintenance of existing markets and the develop-  
12 ment of new markets for cut flowers and cut greens  
13 have been prevented.

14 (9) There exist established State and commod-  
15 ity-specific producer-funded programs of promotion  
16 and research that are valuable efforts to expand  
17 markets for domestic producers of cut flowers and  
18 cut greens and that will be able to take advantage  
19 of the promotion and consumer information program  
20 authorized by this title to enhance their market de-  
21 velopment efforts for domestic producers.

22 (10) An effective and coordinated method for  
23 ensuring cooperative and collective action in provid-  
24 ing for and financing a nationwide program of ge-  
25 neric promotion and consumer information is needed

1 to ensure that the cut flowers and cut greens indus-  
2 try will be able to provide, obtain, and implement  
3 programs of promotion and consumer information  
4 necessary to maintain, expand, and develop markets  
5 for these articles.

6 (11) The most efficient method of financing a  
7 nationwide program of generic promotion and  
8 consumer information regarding cut flowers and cut  
9 greens is to assess cut flowers and cut greens at the  
10 point they are sold by handlers into the retail mar-  
11 ket.

12 (b) POLICY AND PURPOSE.—It is declared to be the  
13 policy of Congress that it is in the public interest, and  
14 it is the purpose of this title, to authorize the establish-  
15 ment pursuant to this title of an orderly procedure for  
16 the development and financing (through an adequate as-  
17 sessment on cut flowers and cut greens sold by handlers  
18 to retailers and related entities in the United States) of  
19 an effective and coordinated program of generic pro-  
20 motion, consumer information, and related research de-  
21 signed to strengthen the position of the cut flowers and  
22 cut greens industry in the marketplace and to maintain,  
23 develop, and expand markets for cut flowers and cut  
24 greens.



1 **SEC. 303. DEFINITIONS.**

2 For purposes of this title:

3 (1) CONSUMER INFORMATION.—The term  
4 “consumer information” means any action or pro-  
5 gram to provide information to consumers and other  
6 persons regarding—

7 (A) appropriate uses of cut flowers or cut  
8 greens under varied circumstances; and

9 (B) the care and handling of cut flowers or  
10 cut greens.

11 (2) CUT FLOWERS AND CUT GREENS.—

12 (A) IN GENERAL.—The term “cut flowers”  
13 includes all flowers cut from growing plants and  
14 used as fresh-cut flowers, produced either under  
15 cover or in field operations. The term “cut  
16 greens” includes all cultivated or noncultivated  
17 decorative foliage cut from growing plants and  
18 used as fresh-cut decorative foliage, produced  
19 either under cover or in field operations. The  
20 term “cut greens” does not include Christmas  
21 trees, and neither term includes foliage plants,  
22 floral supplies, or flowering plants.

23 (B) SUBSTANTIAL PORTION.—In any case  
24 in which a handler packages cut flowers or cut  
25 greens with hard goods in an article, such as a  
26 gift basket or similar presentation, for sale to

1           retailers, the PromoFlor Council may deter-  
2           mine, under procedures set out in the order,  
3           that the cut flowers or cut greens in the article  
4           do not constitute a substantial portion of the  
5           value of the article. Based on such a determina-  
6           tion, the article containing the cut flowers or  
7           cut greens shall not be treated as an article of  
8           cut flowers or cut greens for purposes of—

9                   (i) determining the annual sales of cut  
10                  flowers and cut greens of a handler under  
11                  paragraph (4)(C); or

12                  (ii) imposing an assessment under  
13                  section 306.

14           (3) GROSS SALES PRICE.—The term “gross  
15           sales price” means the total amount of the trans-  
16           action in a sale of cut flowers or cut greens by a  
17           handler.

18           (4) HANDLER DEFINITIONS.—

19                   (A) QUALIFIED HANDLER.—

20                   (i) IN GENERAL.—The term “qualified  
21                  handler” means a person (including a co-  
22                  operative) operating in the cut flowers or  
23                  cut greens industry that sells domestic or  
24                  imported cut flowers or cut greens to re-  
25                  tailers and exempt handlers and whose an-

1 nual sales of cut flowers and cut greens to  
2 retailers and exempt handlers are  
3 \$750,000 or more.

4 (ii) INCLUSIONS.—The term “quali-  
5 fied handler” includes the following:

6 (I) Bouquet manufacturers.

7 (II) Auction houses that clear  
8 sales of cut flowers and cut greens to  
9 retailers and exempt handlers through  
10 a central clearinghouse.

11 (III) Any distribution center that  
12 is owned or controlled by a retailer if  
13 the predominant retail business activ-  
14 ity of the retailer is floral sales. For  
15 purposes of determining sales of cut  
16 flowers and cut greens to retailers  
17 from any such distribution center,  
18 each non-sale transfer to a retailer  
19 shall be treated as a sale in an  
20 amount calculated as provided in sub-  
21 paragraph (C)(ii).

22 (iii) EXCLUSIONS.—The term “quali-  
23 fied handler” does not include a person  
24 who merely physically transports or deliv-  
25 ers cut flowers or cut greens.

1 (iv) RULES OF CONSTRUCTION FOR  
2 DIRECT TO CONSUMER SALES.—The term  
3 “qualified handler” includes an importer  
4 that sells directly to consumers cut flowers  
5 or cut greens that it has imported into the  
6 United States and whose sales of such cut  
7 flowers or cut greens (as calculated under  
8 subparagraph (C)), along with sales of cut  
9 flowers and cut greens to retailers or ex-  
10 empt handlers, annually are \$750,000 or  
11 more. The term “qualified handler” also  
12 includes a producer that sells directly to  
13 consumers cut flowers or cut greens that it  
14 has produced and whose sales of such cut  
15 flowers or cut greens (as calculated under  
16 subparagraph (C)), along with sales of cut  
17 flowers and cut greens to retailers or ex-  
18 empt handlers, annually are \$750,000 or  
19 more. Each direct sale to consumers by an  
20 importer or producer described in this  
21 clause shall be treated as a sale to a re-  
22 tailer or exempt handler in an amount cal-  
23 culated as provided in clause (iii) or (iv) of  
24 subparagraph (C).

1 (B) EXEMPT HANDLER.—The term “ex-  
2 empt handler” means a person that would oth-  
3 erwise be considered to be a qualified handler,  
4 except that its annual sales of cut flowers and  
5 cut greens to retailers and other exempt han-  
6 dlers are less than \$750,000.

7 (C) ANNUAL SALES DETERMINED.—

8 (i) IN GENERAL.—For purposes of de-  
9 termining the amount of annual sales of  
10 cut flowers and cut greens under subpara-  
11 graphs (A) and (B), the amount of a sale  
12 shall be determined on the basis of the  
13 gross sales price of product sold.

14 (ii) SPECIAL RULE FOR DISTRIBUTION  
15 CENTERS.—In the case of a non-sale trans-  
16 fer of cut flowers or cut greens from a dis-  
17 tribution center, as described in subpara-  
18 graph (A)(ii)(III), the amount of the sale  
19 shall be—

20 (I) the price paid by the distribu-  
21 tion center to acquire the cut flowers  
22 or cut greens; plus

23 (II) an amount determined by  
24 multiplying the acquisition price de-  
25 termined under subclause (I) by a

1 uniform percentage established by the  
2 order to represent a wholesale han-  
3 dler's mark-up on a sale to a retailer.

4 (iii) SPECIAL RULE FOR DIRECT  
5 SALES BY IMPORTERS.—In the case of a  
6 direct sale by an importer to a consumer,  
7 as described in subparagraph (A)(iv), the  
8 amount of the sale shall be—

9 (I) the price paid by the importer  
10 to acquire the cut flowers or cut  
11 greens; plus

12 (II) an amount determined by  
13 multiplying the acquisition price de-  
14 termined under subclause (I) by a  
15 uniform percentage established by the  
16 order to represent a wholesale han-  
17 dler's mark-up on a sale to a retailer.

18 (iv) SPECIAL RULE FOR DIRECT  
19 SALES BY PRODUCERS.—In the case of a  
20 direct sale by a producer to a consumer, as  
21 described in subparagraph (A)(iv), the  
22 amount of the sale shall be an amount de-  
23 termined by applying to the price paid by  
24 the consumer a uniform percentage estab-  
25 lished by the order to represent the cost of

1 producing the article and a wholesale han-  
2 dler’s mark-up on a sale to a retailer.

3 (D) REFERENCE TO OTHER DEFINI-  
4 TIONS.—For purposes of this paragraph, the  
5 term “producer” has the meaning given the  
6 term “producers that are qualified handlers” in  
7 section 305(a)(2)(D)(ii), and the term “im-  
8 porter” has the meaning given the term “im-  
9 porters that are qualified handlers” in section  
10 305(a)(2)(D)(iii).

11 (5) PERSON.—The term “person” means any  
12 individual, group of individuals, firm, partnership,  
13 corporation, joint stock company, association, soci-  
14 ety, cooperative, or other legal entity.

15 (6) PROMOFLOL COUNCIL.—The term  
16 “PromoFlor Council” means the Fresh Cut Flowers  
17 and Fresh Cut Greens Promotion Council estab-  
18 lished under section 305(a).

19 (7) PROMOTION.—The term “promotion”  
20 means any action determined by the Secretary to ad-  
21 vance the image, desirability, or marketability of cut  
22 flowers or cut greens, including paid advertising.

23 (8) RESEARCH.—The term “research” means  
24 market research and studies limited to the support  
25 of advertising, market development, and other pro-

1 motion efforts and consumer information efforts re-  
2 lating to cut flowers or cut greens, including edu-  
3 cational activities.

4 (9) RETAILER.—The term “retailer” means a  
5 person (such as a retail florist, supermarket, mass  
6 market retail outlet, or other end-use seller as de-  
7 scribed in an order issued under this title) that sells  
8 cut flowers or cut greens to consumers. The term  
9 shall include any distribution center—

10 (A) owned or controlled by such person, or  
11 owned or controlled cooperatively by a group of  
12 such persons, if the predominant retail business  
13 activity of such person is not floral sales; or

14 (B) independently owned but operated pri-  
15 marily to provide food products to retail stores.

16 An independently owned distribution center covered  
17 by subparagraph (B) that is also an importer or pro-  
18 ducer of cut flowers or cut greens shall be subject  
19 to the rules of construction set out in paragraph  
20 (4)(A)(iv) and, for such purposes only, shall be  
21 deemed to be the seller of cut flowers or cut greens  
22 directly to the consumer.

23 (10) SECRETARY.—The term “Secretary”  
24 means the Secretary of Agriculture.



1           (11) UNITED STATES; STATE.—The terms  
2           “United States” and “State” include the fifty States  
3           of the United States, the District of Columbia, and  
4           all the territories and possessions of the United  
5           States.

6 **SEC. 304. ISSUANCE OF ORDERS.**

7           (a) IN GENERAL.—To effectuate the declared policy  
8           of section 302(b), the Secretary shall issue an order under  
9           this title applicable to qualified handlers of cut flowers and  
10          cut greens. Any such order shall be national in scope. Not  
11          more than one order shall be in effect under this title at  
12          any one time.

13          (b) PROCEDURES.—

14               (1) PROPOSAL FOR AN ORDER.—The Secretary  
15               may propose the issuance of an order under this  
16               title. In addition, an industry group that represents  
17               a substantial number of the industry members who  
18               are to be assessed under the order, or any other per-  
19               son that will be affected by this title, may request  
20               the issuance of, and submit a proposal for, such an  
21               order.

22               (2) PUBLICATION OF PROPOSAL.—The Sec-  
23               retary shall publish the proposed order and give due  
24               notice and opportunity for public comment on the

1 proposed order not later than 60 days after the ear-  
2 lier of—

3 (A) the date on which the Secretary re-  
4 ceives the proposal for the order from an indus-  
5 try group or interested person, as provided in  
6 paragraph (1); or

7 (B) the date on which the Secretary deter-  
8 mines to propose the order.

9 (3) ISSUANCE OF ORDER.—After notice and op-  
10 portunity for public comment are provided, the Sec-  
11 retary shall issue the order, taking into consider-  
12 ation the comments received and including in the  
13 order provisions necessary to ensure that the order  
14 is in conformity with the requirements of this title.  
15 The order shall be issued and become effective not  
16 later than 180 days after publication of the proposed  
17 order.

18 (c) AMENDMENTS.—From time to time, the Sec-  
19 retary may amend an order issued under this title. The  
20 provisions of this title applicable to the issuance of an  
21 order shall be applicable to amendments to the order.

22 **SEC. 305. FRESH CUT FLOWERS AND FRESH CUT GREENS**  
23 **PROMOTION COUNCIL (PROMOFLOR COUN-**  
24 **CIL).**

25 (a) ESTABLISHMENT OF PROMOFLOR COUNCIL.—

1           (1) ESTABLISHMENT.—The order issued under  
2 this title shall provide for the establishment of a  
3 Fresh Cut Flowers and Fresh Cut Greens Pro-  
4 motion Council to administer the order. The Sec-  
5 retary shall appoint the members of the PromoFlor  
6 Council in the manner provided in paragraphs (2)  
7 and (3).

8           (2) APPOINTMENT OF MEMBERS.—

9           (A) DISTRIBUTION OF APPOINTMENTS.—

10           The order shall provide that the membership of  
11 the PromoFlor Council shall consist of 23 mem-  
12 bers as follows:

13           (i) Fourteen members selected from  
14 among qualified wholesale handlers of do-  
15 mestic or imported cut flowers and cut  
16 greens.

17           (ii) Three members selected from  
18 among producers that are qualified han-  
19 dlers of cut flowers and cut greens.

20           (iii) Three members selected from  
21 among importers that are qualified han-  
22 dlers of cut flowers and cut greens.

23           (iv) One member selected from among  
24 retailers of cut flowers and cut greens.

1           (v) Two members selected from  
2           among producers of cut flowers and cut  
3           greens that are not qualified handlers or  
4           exempt handlers.

5           (B) APPOINTMENT FROM NOMINEES.—The  
6           Secretary shall appoint the producer members  
7           of the PromoFlor Council required by subpara-  
8           graph (A)(v) from nominees submitted by pro-  
9           ducers of cut flowers and cut greens described  
10          in such paragraph. With respect to the other  
11          appointments to the PromoFlor Council re-  
12          quired by subparagraph (A), two nominees shall  
13          be submitted for each appointment pursuant to  
14          the nomination process provided for in para-  
15          graph (3). If nominees are not submitted for an  
16          appointment, the Secretary may make the ap-  
17          pointment on a basis to be provided in the  
18          order or other regulations of the Secretary.

19          (C) GEOGRAPHICAL CONSIDERATIONS.—In  
20          making appointments of qualified wholesale  
21          handlers to the PromoFlor Council under sub-  
22          paragraph (A)(i), the Secretary shall take into  
23          account the geographical distribution of cut  
24          flowers and cut greens markets in the United  
25          States. In making appointments of producers of

1 cut flowers and cut greens to the PromoFlor  
2 Council under subparagraph (A)(v), the Sec-  
3 retary shall ensure that one member is selected  
4 from among producers located east of the Mis-  
5 sissippi River and one member is selected from  
6 among producers located west of the Mississippi  
7 River.

8 (D) DEFINITIONS.—For purposes of this  
9 subsection:

10 (i) QUALIFIED WHOLESAL HAN-  
11 DLERS.—The term “qualified wholesale  
12 handler” means a person in business as a  
13 floral wholesale jobber or floral supplier  
14 and that is subject to assessments as a  
15 qualified handler under the order. For pur-  
16 poses of this clause, the term “floral  
17 wholesale jobber” means a person that  
18 conducts a commission or other wholesale  
19 business in buying and selling cut flowers  
20 or cut greens, and the term “floral sup-  
21 plier” means a person engaged in acquir-  
22 ing cut flowers or cut greens to be manu-  
23 factured into floral articles or otherwise  
24 processed for resale.

1 (ii) PRODUCERS THAT ARE QUALIFIED  
2 HANDLERS.—The term “producers that  
3 are qualified handlers” means those per-  
4 sons that are subject to assessments as a  
5 qualified handler under the order and are  
6 engaged—

7 (I) in the domestic production,  
8 for sale in commerce, of cut flowers or  
9 cut greens if the persons own or share  
10 in the ownership and risk of loss of  
11 the cut flowers or cut greens; or

12 (II) as a first processor of  
13 noncultivated cut greens, in receiving  
14 the cut greens from the persons that  
15 gather them for handling.

16 (iii) IMPORTERS THAT ARE QUALIFIED  
17 HANDLERS.—The term “importers that are  
18 qualified handlers” means those persons—

19 (I) whose principal activity is the  
20 importation of cut flowers or cut  
21 greens into the United States (either  
22 directly or as an agent, broker, or  
23 consignee of any person or nation that  
24 produces or handles cut flowers or cut

1 greens outside the United States for  
2 sale in the United States); and

3 (II) that are subject to assess-  
4 ments as a qualified handler under  
5 the order.

6 (3) NOMINATION PROCESS.—

7 (A) QUALIFIED HANDLERS.—Nominations  
8 for the appointment to the PromoFlor Council  
9 of qualified wholesale handlers, producers that  
10 are qualified handlers, or importers that are  
11 qualified handlers shall be made by qualified  
12 wholesale handlers, producers that are qualified  
13 handlers, or importers that are qualified han-  
14 dlers, whichever applies, through an election  
15 process under regulations prescribed by the  
16 Secretary;

17 (B) RETAILERS.—Nominations for the re-  
18 tailer appointment under paragraph (2)(A)(iv)  
19 shall be made by the American Floral Market-  
20 ing Council, or successor entity.

21 (4) ALTERNATES.—The order shall provide for  
22 the selection of alternate members of the PromoFlor  
23 Council by the Secretary under procedures specified  
24 in the order.

1           (5) TERMS.—The order shall provide that each  
2 member of the PromoFlor Council shall serve a term  
3 of three years. However, of the initial appointments,  
4 seven members shall be appointed for a term of two  
5 years, eight members shall be appointed for a term  
6 of three years, and eight members shall be appointed  
7 for a term of four years, as designated by the Sec-  
8 retary at the time of appointment. No member of  
9 the PromoFlor Council may serve more than two  
10 consecutive terms of three years, except that any  
11 member serving an initial term of four years may  
12 serve an additional term of three years.

13           (6) COMPENSATION.—Members of the  
14 PromoFlor Council shall serve without compensa-  
15 tion, but shall be reimbursed for their expenses in-  
16 curred in performing their duties as members of the  
17 PromoFlor Council.

18           (7) EXECUTIVE COMMITTEE.—

19           (A) ESTABLISHMENT.—The order shall au-  
20 thorize the PromoFlor Council to appoint from  
21 among its members an executive committee of  
22 not more than nine members. The membership  
23 of the executive committee initially shall be  
24 composed of four members appointed pursuant  
25 to clause (i) of subparagraph (2)(A), two mem-



1           bers appointed pursuant to clause (ii) of such  
2           subparagraph, two members appointed pursu-  
3           ant to clause (iii) of such subparagraph, and  
4           one member appointed pursuant to clause (iv)  
5           of such subparagraph. Thereafter, appoint-  
6           ments to the executive committee shall be made  
7           so as to ensure that the committee reflects, to  
8           the maximum extent practicable, the member-  
9           ship composition of the PromoFlor Council as a  
10          whole. The initial appointments to the executive  
11          committee shall be for a term of two years.  
12          Thereafter, appointments to the executive com-  
13          mittee shall be for a term of one year.

14                 (B) DELEGATION OF AUTHORITY.—The  
15          PromoFlor Council may delegate to the execu-  
16          tive committee its authority under the order to  
17          hire and manage staff and conduct the routine  
18          business of the PromoFlor Council within the  
19          policies determined by the PromoFlor Council.

20          (b) RESPONSIBILITIES OF THE PROMOFLOL COUN-  
21          CIL.—

22                 (1) IN GENERAL.—The order shall define the  
23          responsibilities of the PromoFlor Council, which  
24          shall include the general responsibilities described in  
25          this subsection.

1           (2) ADMINISTRATION.—The PromoFlor Council  
2 shall administer the order in accordance with its  
3 terms and provisions and may prescribe such rules  
4 and regulations to effectuate the terms and provi-  
5 sions of the order as the PromoFlor Council consid-  
6 ers appropriate.

7           (3) STAFF.—The PromoFlor Council may em-  
8 ploy such persons as the PromoFlor Council deter-  
9 mines are necessary and set the compensation and  
10 define the duties of such persons.

11           (4) MISCELLANEOUS.—The PromoFlor Council  
12 may receive complaints regarding violations of the  
13 order and shall investigate and report to the Sec-  
14 retary regarding such complaints. The PromoFlor  
15 Council may recommend to the Secretary amend-  
16 ments to the order. The PromoFlor Council shall  
17 furnish the Secretary with such information as the  
18 Secretary may require.

19           (c) BUDGETS.—

20           (1) SUBMISSION OF BUDGETS.—The order shall  
21 require the PromoFlor Council to prepare and sub-  
22 mit to the Secretary on a fiscal year basis a budget  
23 of the anticipated expenses and disbursements of the  
24 Board to implement the order. The budget shall in-  
25 clude projected costs of cut flowers and cut greens

1 promotion, consumer information, and related re-  
2 search plans and projects.

3 (2) APPROVAL BY SECRETARY REQUIRED.—The  
4 PromoFlor Council may not implement a budget  
5 submitted under paragraph (1) before the budget is  
6 approved by the Secretary.

7 (3) INVESTMENT AUTHORITY.—The order shall  
8 provide the PromoFlor Council with the authority to  
9 invest, pending disbursement under a plan or  
10 project, funds collected through assessments author-  
11 ized under this title. Income from invested funds  
12 shall be used only for a purpose for which the in-  
13 vested funds may be used. The investment of such  
14 funds shall be made only in—

15 (A) obligations of the United States or any  
16 agency thereof;

17 (B) general obligations of any State or any  
18 political subdivision thereof;

19 (C) any interest-bearing account or certifi-  
20 cate of deposit of a bank that is a member of  
21 the Federal Reserve System; or

22 (D) obligations fully guaranteed as to prin-  
23 cipal and interest by the United States.

24 (4) CONTROL OF ADMINISTRATIVE COSTS.—The  
25 order shall provide that, as soon as practicable after

1 the date the order becomes effective and after con-  
2 sultation with the Secretary and other appropriate  
3 persons, the PromoFlor Council shall implement a  
4 system of cost controls based on normally accepted  
5 business practices to ensure that the PromoFlor  
6 Council's annual budgets only include amounts for  
7 administrative expenses that cover the minimum ad-  
8 ministrative activities and personnel needed to prop-  
9 erly administer and enforce the order and conduct,  
10 supervise, and evaluate plans and projects under the  
11 order.

12 (d) PLANS AND PROJECTS.—

13 (1) PROMOTION AND CONSUMER INFORMA-  
14 TION.—The order shall provide for the establish-  
15 ment, implementation, administration, and evalua-  
16 tion by the PromoFlor Council of appropriate plans  
17 and projects for advertising, sales promotion, other  
18 promotion, and consumer information with respect  
19 to cut flowers and cut greens. A plan or project  
20 under this paragraph shall be directed toward in-  
21 creasing the general demand for cut flowers or cut  
22 greens.

23 (2) RESEARCH.—The order shall provide for  
24 the establishment, implementation, administration,  
25 and evaluation by the PromoFlor Council of plans

1 and projects for market development research, re-  
2 search with respect to the sale, distribution, market-  
3 ing, or use of cut flowers or cut greens, and other  
4 research with respect to cut flowers or cut greens  
5 marketing, promotion, or consumer information. The  
6 PromoFlor Council shall provide for the dissemina-  
7 tion of information resulting from research plans  
8 and projects under this paragraph.

9 (3) DISBURSEMENT OF FUNDS.—The order  
10 shall also provide authority for the disbursement by  
11 the PromoFlor Council of necessary funds to carry  
12 out the plans and projects under this subsection.

13 (4) SUBMISSION TO SECRETARY.—The order  
14 shall provide that the PromoFlor Council shall sub-  
15 mit to the Secretary for approval any proposed plan  
16 or project for cut flowers or cut greens promotion,  
17 consumer information, or related research under this  
18 subsection.

19 (5) APPROVAL BY SECRETARY REQUIRED.—The  
20 PromoFlor Council may not implement a plan or  
21 project for cut flowers or cut greens promotion,  
22 consumer information, or related research before the  
23 plan or project is approved by the Secretary.

24 (6) LIMITATIONS.—A plan or project under this  
25 subsection may not make a reference to a private

1 brand or trade name, point of origin, or source of  
2 supply, except that these limitations shall not pre-  
3 clude the PromoFlor Council from offering its plans  
4 and projects for use by commercial parties, under  
5 terms and conditions prescribed by the PromoFlor  
6 Council and approved by the Secretary. A plan or  
7 project may not make use of unfair or deceptive acts  
8 or practices with respect to quality or value.

9 (e) CONTRACTS AND AGREEMENTS.—

10 (1) PROMOTION, CONSUMER INFORMATION, AND  
11 RELATED RESEARCH PLANS AND PROJECTS.—To en-  
12 sure the efficient use of funds, the order shall pro-  
13 vide that, subject to the approval of the Secretary,  
14 the PromoFlor Council may—

15 (A) enter into contracts or agreements for  
16 the implementation of any plan or project under  
17 subsection (d) for promotion, consumer infor-  
18 mation, or related research with respect to cut  
19 flowers or cut greens; and

20 (B) pay costs related to the plan or project  
21 with funds received by the PromoFlor Council  
22 under the order.

23 (2) REQUIREMENTS OF CONTRACTS AND  
24 AGREEMENTS.—The order shall provide that any

1 contract or agreement under paragraph (1) shall  
2 provide that—

3 (A) the contracting or agreeing party shall  
4 develop and submit to the PromoFlor Council a  
5 plan or project together with a budget or budg-  
6 ets that shall show estimated costs to be in-  
7 curred under the plan or project;

8 (B) the plan or project shall become effec-  
9 tive only upon the approval of the Secretary;  
10 and

11 (C) the contracting or agreeing party shall  
12 keep accurate records of all of its transactions,  
13 account for funds received and expended, make  
14 periodic reports to the PromoFlor Council of  
15 activities conducted, and make such other re-  
16 ports as the PromoFlor Council or the Sec-  
17 retary may require.

18 (3) OTHER CONTRACTS AND AGREEMENTS.—  
19 The order shall provide that the PromoFlor Council  
20 also may enter into contracts or agreements for ad-  
21 ministrative services. Any such contract or agree-  
22 ment shall include provisions comparable to those  
23 provided in paragraph (2).

24 (f) BOOKS AND RECORDS OF THE PROMOFLOR  
25 COUNCIL.—

1           (1) IN GENERAL.—The order shall require the  
2           PromoFlor Council to maintain such books and  
3           records (which shall be available to the Secretary for  
4           inspection and audit) as the Secretary may pre-  
5           scribe. The PromoFlor Council shall also prepare  
6           and submit to the Secretary such reports as the Sec-  
7           retary may require and account for the receipt and  
8           disbursement of all funds entrusted to the  
9           PromoFlor Council.

10           (2) AUDITS.—The PromoFlor Council shall  
11           cause its books and records to be audited by an  
12           independent auditor at the end of each fiscal year.  
13           A report of each such audit shall be submitted to the  
14           Secretary.

15           (3) LISTS OF IMPORTERS.—The order shall re-  
16           quire the staff of the PromoFlor Council to periodi-  
17           cally review lists of importers of cut flowers and cut  
18           greens to determine whether persons included in the  
19           lists are subject to the order. At the request of the  
20           PromoFlor Council, the United States Customs  
21           Service shall provide to the PromoFlor Council lists  
22           of importers of cut flowers and cut greens.

23           (g) PROHIBITION ON LOBBYING.—The order shall  
24           prohibit the use of any funds received by the PromoFlor  
25           Council in any manner for the purpose of influencing legis-



1 lation or government action or policy, except that funds  
2 may be used by the PromoFlor Council for the develop-  
3 ment and recommendation to the Secretary of amend-  
4 ments to the order.

5 (h) CONSULTATIONS WITH INDUSTRY EXPERTS.—

6 The order shall provide that the PromoFlor Council may  
7 seek advice from and consult with experts from the pro-  
8 duction, import, wholesale, and retail segments of the cut  
9 flowers and cut greens industry to assist in the develop-  
10 ment of promotion, consumer information, and related re-  
11 search plans and projects. For such purpose, the order  
12 also shall authorize the appointment of special committees  
13 composed of persons other than PromoFlor Council mem-  
14 bers. A committee appointed pursuant to the authority  
15 provided in this subsection may not provide advice or rec-  
16 ommendations to an agency or officer of the Federal Gov-  
17 ernment, but shall consult directly with the PromoFlor  
18 Council.

19 **SEC. 306. ASSESSMENTS.**

20 (a) AUTHORITY TO IMPOSE ASSESSMENT.—

21 (1) IN GENERAL.—An order issued under this  
22 title shall provide that each qualified handler shall  
23 pay to the PromoFlor Council, in the manner pre-  
24 scribed by the order, an assessment on each sale of  
25 cut flowers or cut greens (other than a sale de-

1 scribed in subsection (g)) to a retailer or an exempt  
2 handler. This assessment requirement shall also  
3 apply to each transaction described in paragraph  
4 (4).

5 (2) DETERMINATION OF QUALIFIED HANDLER  
6 OR EXEMPT HANDLER STATUS.—The order shall  
7 contain provisions regarding the making of deter-  
8 minations to determine status as a qualified handler  
9 or exempt handler that include the rules and re-  
10 quirements set out in section 303(4) and subsections  
11 (a) and (b) of section 307.

12 (3) PUBLISHED LISTS OF HANDLERS.—To fa-  
13 cilitate the payment of assessments under this sec-  
14 tion, the PromoFlor Council shall publish lists of  
15 qualified handlers required to pay assessments under  
16 the order and exempt handlers.

17 (4) CERTAIN COVERED TRANSACTIONS.—

18 (A) IN GENERAL.—The order shall provide  
19 that each non-sale transfer of cut flowers or cut  
20 greens to a retailer from a qualified handler  
21 that is a distribution center, as described in  
22 section 303(4)(A)(ii)(III), and each direct sale  
23 of cut flowers or cut greens to a consumer by  
24 a qualified handler that is an importer or pro-  
25 ducer, as described in section 303(4)(A)(iv),

1 shall be treated as a sale of cut flowers or cut  
2 greens to a retailer subject to assessments  
3 under this subsection.

4 (B) DETERMINATION OF SALE AMOUNT  
5 FOR DISTRIBUTION CENTERS.—In the case of a  
6 non-sale transfer of cut flowers or cut greens  
7 from a distribution center, the amount of the  
8 sale shall be considered to be—

9 (i) the price paid by the distribution  
10 center to acquire the cut flowers or cut  
11 greens; plus

12 (ii) an amount determined by mul-  
13 tiplying acquisition price determined under  
14 clause (i) by a uniform percentage estab-  
15 lished by the order to represent a wholesale  
16 handler's mark-up on a sale to a retailer.

17 (C) DETERMINATION OF SALE AMOUNT  
18 FOR DIRECT SALES BY IMPORTERS.—In the  
19 case of a direct sale by an importer to a  
20 consumer, the amount of the sale shall be con-  
21 sidered to be—

22 (i) the price paid by the importer to  
23 acquire the cut flowers or cut greens; plus

24 (ii) an amount determined by mul-  
25 tiplying the acquisition price determined

1 under clause (i) by a uniform percentage  
2 established by the order to represent a  
3 wholesale handler's mark-up on a sale to a  
4 retailer.

5 (D) DETERMINATION OF SALE AMOUNT  
6 FOR DIRECT SALES BY PRODUCERS.—In the  
7 case of a direct sale by a producer to a  
8 consumer, the amount of the sale shall be con-  
9 sidered to be an amount determined by apply-  
10 ing to the price paid by the consumer a uniform  
11 percentage established by the order to represent  
12 the cost of producing the article and a whole-  
13 sale handler's mark-up on a sale to a retailer.

14 (E) ADJUSTMENT OF UNIFORM PERCENT-  
15 AGE.—The PromoFlor Council may recommend  
16 to the Secretary changes to the uniform per-  
17 centage established by the order and used to  
18 determine the amount of annual sales of han-  
19 dlers under section 303(4) and sale amounts  
20 under this paragraph. The Secretary may make  
21 a change in the uniform percentage based on  
22 such a recommendation only after providing an  
23 opportunity for notice and comment regarding  
24 the proposed change.

1 (b) ASSESSMENT RATES.—The order shall comply  
2 with the following assessment requirements:

3 (1) INITIAL ASSESSMENT RATE.—The rate of  
4 assessment on each sale or transfer of cut flowers or  
5 cut greens, for the first three years the order is in  
6 effect, shall be one-half of one percent of—

7 (A) the gross sales price of product sold; or

8 (B) in the case of transactions described in  
9 subsection (a)(4), the amount of the transaction  
10 calculated as provided in such subsection.

11 (2) CHANGES IN ASSESSMENT RATE.—

12 (A) AUTHORIZED AMOUNT OF CHANGE.—

13 Subject to subparagraph (B), after the first  
14 three years the order is in effect, the uniform  
15 assessment rate may be increased or decreased  
16 annually by not more than .25 percent of—

17 (i) the gross sales price of product  
18 sold; or

19 (ii) in the case of transactions de-  
20 scribed in subsection (a)(4), the amount of  
21 the transaction calculated as provided in  
22 such subsection.

23 (B) LIMITATION.—The assessment rate  
24 may not exceed one percent of gross sales price  
25 or transaction amount.

1           (C) METHOD OF CHANGING ASSESSMENT  
2           AMOUNT.—Any change in the rate of assess-  
3           ment may be made only if adopted by the  
4           PromoFlor Council by a two-thirds majority  
5           vote and approved by the Secretary as nec-  
6           essary to achieve the objectives of this title. The  
7           Secretary may make the change only after pro-  
8           viding an opportunity for notice and comment  
9           regarding the proposed change, and the change  
10          in the rate of assessment shall be announced by  
11          the PromoFlor Council at least 30 days prior to  
12          going into effect. A change in the rate of as-  
13          sessment shall not be subject to a vote in a ref-  
14          erendum under section 308.

15          (c) SUBMISSION OF ASSESSMENTS.—The order shall  
16          provide that each person required to pay assessments  
17          under this section shall remit, to the PromoFlor Council,  
18          the assessment due from each sale by that person of cut  
19          flowers or cut greens that is subject to an assessment  
20          within such time period after the sale (not to exceed 60  
21          days from the end of the month in which the sale took  
22          place) as specified in the order.

23          (d) REFUNDS FROM ESCROW ACCOUNT.—

1 (1) ESTABLISHMENT OF ESCROW ACCOUNT.—

2 The order shall provide that the PromoFlor Council  
3 shall—

4 (A) establish an escrow account to be used  
5 for assessment refunds as needed; and

6 (B) place into the escrow account an  
7 amount equal to 10 percent of the total amount  
8 of assessments collected during the period be-  
9 ginning on the date the order goes into effect,  
10 as provided in section 304(b)(3), and ending on  
11 the date the initial referendum on the order  
12 provided for in section 308(a) is completed.

13 (2) RIGHT TO RECEIVE REFUND.—

14 (A) IN GENERAL.—The order shall provide  
15 that, subject to paragraph (3) and the condi-  
16 tions specified in subparagraph (B), any quali-  
17 fied handler shall have the right to demand and  
18 receive from the PromoFlor Council out of the  
19 escrow account a one-time refund of any assess-  
20 ments paid by or on behalf of the qualified han-  
21 dler during the time period specified in para-  
22 graph (1)(B), if—

23 (i) the qualified handler is required to  
24 pay such assessments;

1 (ii) the qualified handler does not sup-  
2 port the program established under this  
3 title;

4 (iii) the qualified handler demands a  
5 refund prior to the conduct of the referen-  
6 dum on the order under section 308(a);  
7 and

8 (iv) the order is not approved by  
9 qualified handlers in the referendum.

10 (B) CONDITIONS.—The right of any quali-  
11 fied handler to receive refunds under subpara-  
12 graph (A) shall be subject to the following con-  
13 ditions:

14 (i) The demand shall be made in ac-  
15 cordance with regulations, on a form, and  
16 within a time period prescribed by the  
17 PromoFlor Council.

18 (ii) The refund shall be made only on  
19 submission of proof satisfactory to the  
20 PromoFlor Council that the qualified han-  
21 dler paid the assessment for which refund  
22 is demanded.

23 (iii) If the amount in the escrow ac-  
24 count required under paragraph (1) is not  
25 sufficient to refund the total amount of as-



1            assessments demanded by all qualified han-  
2            dlers determined eligible for refunds and  
3            the order is not approved in the referen-  
4            dum on the order under section 308(a),  
5            the PromoFlor Council shall prorate the  
6            amount of all such refunds among all eligi-  
7            ble qualified handlers that demand a re-  
8            fund.

9            (3) PROGRAM APPROVED.—The order shall pro-  
10          vide that, if the order is approved in the referendum  
11          under section 308(a), there shall be no refunds made  
12          and all funds in the escrow account shall be re-  
13          turned to the PromoFlor Council for use by the  
14          PromoFlor Council in accordance with the other pro-  
15          visions of the order.

16          (e) USE OF ASSESSMENT FUNDS.—The order shall  
17          provide that assessment funds (net of any refunds paid  
18          out under the terms of the order contained in subsection  
19          (d)) shall be used for payment of costs incurred in imple-  
20          menting and administering the order, with provision for  
21          a reasonable reserve, and to cover those administrative  
22          costs incurred by the Secretary in implementing and ad-  
23          ministering this title, except for the salaries of Govern-  
24          ment employees incurred in conducting referenda.

25          (f) POSTPONEMENT OF COLLECTIONS.—

1           (1) AUTHORITY.—Notwithstanding any other  
2 provision of this title, the PromoFlor Council may  
3 grant a postponement of the payment of assessments  
4 under this section for any qualified handler that es-  
5 tablishes that it is financially unable to make the  
6 payment. The granting of such a postponement shall  
7 be considered under application and documentation  
8 requirements and review procedures established  
9 under rules recommended by the PromoFlor Council,  
10 approved by the Secretary, and issued after provid-  
11 ing public notice and an opportunity to comment on  
12 the proposed rules.

13           (2) CRITERIA AND RESPONSIBILITY FOR DE-  
14 TERMINATIONS.—To establish that it is financially  
15 unable to pay assessments, an applicant for a post-  
16 ponement shall demonstrate that it is insolvent and  
17 will be unable to continue to operate if it is required  
18 to pay assessments when they are otherwise due. As  
19 part of making such a demonstration, the applicant  
20 shall submit an opinion of an independent certified  
21 pubic accountant and any other documentation re-  
22 quired under rules prescribed under paragraph (1).  
23 All books, records, and other documentation submit-  
24 ted by a qualified handler under this paragraph shall

1 be subject to the confidentiality requirements of sec-  
2 tion 307(d).

3 (3) PERIOD OF POSTPONEMENT.—The time pe-  
4 riod of any postponement and the terms and condi-  
5 tions of payment of assessments that are postponed  
6 under this subsection shall be established by the  
7 PromoFlor Council, in accordance with rules pre-  
8 scribed under paragraph (1), so as to appropriately  
9 reflect the proven needs of the qualified handler.  
10 Postponements may be extended under the require-  
11 ments and procedures established pursuant to para-  
12 graph (1) for the grant of initial postponements.

13 (g) EXCLUSION FROM ASSESSMENTS.—The order  
14 shall exclude from assessments under the order any sale  
15 of cut flowers or cut greens for export from the United  
16 States.

17 **SEC. 307. MISCELLANEOUS REQUIREMENTS OF ORDER.**

18 (a) DETERMINATION OF ANNUAL SALES.—

19 (1) IN GENERAL.—For purposes of applying the  
20 \$750,000 annual sales limitation to specific persons  
21 in order to determine status as a qualified handler  
22 or an exempt handler under section 303(4), or to  
23 specific facilities in order to determine status as an  
24 eligible separate facility under section 308(b)(2), any  
25 order issued under this title shall provide that a de-

1 termination of a person's or facility's annual sales  
2 volume shall be based on the sales of cut flowers and  
3 cut greens by the person or facility during the most  
4 recently-completed calendar year.

5 (2) SPECIAL RULE FOR NEW BUSINESSES.—  
6 With respect to new businesses and other operations  
7 for which complete data on sales during all or part  
8 of the most recently-completed calendar year are not  
9 available to the PromoFlor Council, the determina-  
10 tion under paragraph (1) may be made using an al-  
11 ternative time period or other alternative procedures  
12 specified in the order.

13 (3) REPORTS.—For purposes of this section,  
14 the order may require each person that sells cut  
15 flowers or cut greens to retailers to submit reports  
16 to the PromoFlor Council on annual sales by the  
17 person. A report under this subsection shall be sub-  
18 ject to the confidentiality requirements provided in  
19 subsection (d).

20 (b) RULE OF ATTRIBUTION.—

21 (1) IN GENERAL.—For purposes of determining  
22 the annual sales volume of a person or a separate  
23 facility of a person, sales attributable to a person  
24 shall include—

1           (A) in those cases in which the person is  
2           an individual, sales attributable to such per-  
3           son's spouse, children, grandchildren, parents,  
4           and grandparents;

5           (B) in those cases in which the person is  
6           a partnership or member of a partnership, sales  
7           attributable to the partnership and other part-  
8           ners of the partnership;

9           (C) for both individuals and partnerships,  
10          sales attributable to any corporation or other  
11          entity in which the person owns more than 50  
12          percent of the stock or (if the entity is not a  
13          corporation) that the person controls; and

14          (D) in those cases in which the person is  
15          a corporation, sales attributable to any cor-  
16          porate subsidiary or other corporation or entity  
17          in which the corporation owns more than 50  
18          percent of the stock or (if the entity is not a  
19          corporation) that the corporation controls.

20          (2) TREATMENT OF CERTAIN STOCK AND OWN-  
21          ERSHIP INTERESTS.—For purposes of this sub-  
22          section, stock or an ownership interest in an entity  
23          that is owned by the spouse, children, grandchildren,  
24          parents, grandparents, or partners of an individual,  
25          or by a partnership in which a person is a partner,

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

4 (c) BOOKS, RECORDS, AND REPORTS.—So that infor-  
5 mation is available to the Secretary and the PromoFlor  
6 Council for the administration and enforcement of this  
7 title, the order, or any regulation issued under this title,  
8 the order shall provide that each qualified handler shall—

9 (1) maintain, and make available for inspection,  
10 such books and records as may be required by the  
11 order; and

12 (2) file reports at the time, in the manner, and  
13 having the content prescribed by the order, to the  
14 end that information is made available to the Sec-  
15 retary and the PromoFlor Council as is appropriate  
16 for the administration or enforcement of this title,  
17 the order, or any regulation issued under this title.

18 (d) CONFIDENTIALITY REQUIRED.—

19 (1) IN GENERAL.—Information obtained by the  
20 PromoFlor Council from books, records, or reports  
21 required to be maintained under this section shall be  
22 kept confidential by all officers and employees of the  
23 Department of Agriculture and by the staff and  
24 agents of the PromoFlor Council. Such information  
25 may be disclosed to the public only in a suit or ad-

1       ministrative hearing involving the order that is  
2       brought at the request of the Secretary (or to which  
3       the Secretary or any officer of the United States is  
4       a party), and then, only to the extent the Secretary  
5       considers relevant.

6           (2) RULE OF CONSTRUCTION.—Nothing in  
7       paragraph (1) prohibits—

8           (A) the issuance of general statements,  
9           based on the reports, of the number of persons  
10          subject to the order or statistical data collected  
11          therefrom, which statements do not identify the  
12          information furnished by any person; or

13          (B) the publication, by direction of the  
14          Secretary, of the name of any person violating  
15          the order, together with a statement of the par-  
16          ticular provisions of the order violated by the  
17          person.

18          (e) OTHER TERMS OF ORDER.—The order shall con-  
19       tain such other terms and provisions, not inconsistent with  
20       this title, as are necessary to effectuate this title, including  
21       provision for the assessment of interest and a charge for  
22       each late payment of assessments under this section.

23       **SEC. 308. REFERENDA.**

24          (a) REQUIREMENT FOR INITIAL REFERENDUM.—

1           (1) CONDUCT.—Not later than 36 months after  
2 the issuance of an order under section 304(b)(3),  
3 the Secretary shall conduct a referendum among  
4 qualified handlers required to pay assessments under  
5 the order to ascertain whether or not the order then  
6 in effect shall be continued.

7           (2) APPROVAL OF ORDER NEEDED.—The order  
8 shall be continued only if the Secretary determines  
9 that the order has been approved by a simple major-  
10 ity of all votes cast in the referendum. If the order  
11 is not approved, the Secretary shall terminate the  
12 order as provided in subsection (d).

13       (b) VOTES PERMITTED.—

14           (1) IN GENERAL.—Each qualified handler eligi-  
15 ble to vote in a referendum under this section may  
16 cast one vote for each separate facility of the person  
17 that is an eligible separate facility, as determined  
18 under paragraph (2).

19           (2) ELIGIBLE SEPARATE FACILITY.—

20           (A) SEPARATE FACILITY.—A handling or  
21 marketing facility of a qualified handler shall be  
22 considered a separate facility if it is physically  
23 located away from other facilities of the quali-  
24 fied handler or its business function is substan-  
25 tially different than the functions of other fa-



1 cilities owned or operated by the qualified han-  
2 dler.

3 (B) ELIGIBILITY.—A separate facility of a  
4 qualified handler shall be considered to be an  
5 eligible separate facility if the annual sales of  
6 cut flowers and cut greens to retailers and ex-  
7 empt handlers from the facility are \$750,000 or  
8 more.

9 (C) ANNUAL SALES DETERMINED.—Sub-  
10 paragraphs (A) and (C) of section 303(4) shall  
11 apply for purposes of determining the amount  
12 of annual sales of cut flowers and cut greens  
13 under subparagraph (B).

14 (c) SUSPENSION OR TERMINATION REFERENDA.—  
15 Effective beginning three years after the date on which  
16 an order issued under this title is approved in a referen-  
17 dum conducted under subsection (a), the Secretary—

18 (1) at the Secretary's discretion, may conduct  
19 at any time a referendum of qualified handlers re-  
20 quired to pay assessments under the order to ascer-  
21 tain whether or not qualified handlers favor suspen-  
22 sion or termination of the order; and

23 (2) whenever requested by the PromoFlor  
24 Council or by a representative group comprising 30  
25 percent or more of all qualified handlers required to

1 pay assessments under the order, shall conduct a  
2 referendum of all qualified handlers required to pay  
3 such assessments to ascertain whether or not quali-  
4 fied handlers favor suspension or termination of the  
5 order.

6 (d) **SUSPENSION OR TERMINATION.**—If, as a result  
7 of the referendum conducted under subsection (a), the  
8 Secretary determines that the order has not been approved  
9 by a simple majority of all votes cast in the referendum,  
10 or as a result of a referendum conducted under subsection  
11 (c), the Secretary determines that suspension or termi-  
12 nation of the order is favored by a simple majority of all  
13 votes cast in the referendum, the Secretary shall—

14 (1) within six months after the referendum,  
15 suspend or terminate, as appropriate, collection of  
16 assessments under the order; and

17 (2) suspend or terminate, as appropriate, activi-  
18 ties under the order in an orderly manner as soon  
19 as practicable.

20 (e) **MANNER OF CONDUCTING REFERENDA.**—  
21 Referenda under this section shall be conducted in such  
22 manner as is determined appropriate by the Secretary.

23 **SEC. 309. PETITION AND REVIEW.**

24 (a) **PETITION AND HEARING.**—

1           (1) PETITION.—A person subject to an order  
2 issued under this title may file with the Secretary a  
3 petition—

4           (A) stating that the order, any provision of  
5 the order, or any obligation imposed in connec-  
6 tion with the order is not in accordance with  
7 law; and

8           (B) requesting a modification of the order  
9 or an exemption from the order.

10          (2) HEARING.—The petitioner shall be given  
11 the opportunity for a hearing on a petition filed  
12 under paragraph (1), in accordance with regulations  
13 issued by the Secretary. Any such hearing shall be  
14 conducted in accordance with section 311(b)(2) and  
15 be held within the United States judicial district in  
16 which the person’s residence or principal place of  
17 business is located.

18          (3) RULING.—After a hearing under paragraph  
19 (2), the Secretary shall make a ruling on the peti-  
20 tion, which shall be final if in accordance with law.

21          (b) REVIEW.—

22           (1) COMMENCEMENT OF ACTION.—The district  
23 courts of the United States in any district in which  
24 a person that is a petitioner under subsection (a) re-  
25 sides or carries on business are hereby vested with

1 jurisdiction to review the Secretary's ruling on the  
2 person's petition, if a complaint for that purpose is  
3 filed within 20 days after the date of the entry of  
4 the ruling by the Secretary.

5 (2) PROCESS.—Service of process in proceed-  
6 ings under this subsection shall be conducted in ac-  
7 cordance with the Federal Rules of Civil Procedure.

8 (3) REMAND.—If the court in a proceeding  
9 under this subsection determines that the Sec-  
10 retary's ruling on the person's petition is not in ac-  
11 cordance with law, the court shall remand the mat-  
12 ter to the Secretary with directions either—

13 (A) to make such ruling as the court shall  
14 determine to be in accordance with law; or

15 (B) to take such further action as, in the  
16 opinion of the court, the law requires.

17 (c) ENFORCEMENT UNDER SECTION 310.—The  
18 pendency of proceedings instituted under this section shall  
19 not impede, hinder, or delay the Attorney General or the  
20 Secretary from obtaining relief under section 310.

21 **SEC. 310. ENFORCEMENT.**

22 (a) JURISDICTION.—The several district courts of the  
23 United States are vested with jurisdiction specifically to  
24 enforce, and to prevent and restrain any person from vio-

1 lating, this title or an order or regulation made or issued  
2 by the Secretary under this title.

3 (b) REFERRAL TO ATTORNEY GENERAL.—The Sec-  
4 retary shall refer to the Attorney General for appropriate  
5 action all cases of a violation of this title or an order or  
6 regulation made or issued by the Secretary under this  
7 title, except that the Secretary is not required to refer to  
8 the Attorney General such a violation if the Secretary be-  
9 lieves that the administration and enforcement of this title  
10 would be adequately served by administrative action under  
11 subsection (c) or suitable written notice or warning to the  
12 person who committed or is committing the violation.

13 (c) CIVIL PENALTIES AND ORDERS.—

14 (1) CIVIL PENALTIES.—A person that violates a  
15 provision of this title, or an order or regulation is-  
16 sued by the Secretary under this title, or who fails  
17 or refuses to pay, collect, or remit any assessment  
18 or fee duly required of the person under an order or  
19 regulation issued under this title, may be assessed  
20 by the Secretary—

21 (A) a civil penalty of not less than \$500  
22 nor more than \$5,000 for each such violation;  
23 and

24 (B) in the case of a willful failure to remit  
25 an assessment as required by an order or regu-

1           lation, an additional penalty equal to the  
2           amount of the assessment.

3           (2) TREATMENT AS SEPARATE OFFENSES.—  
4           Each violation described in paragraph (1) shall be  
5           treated as a separate offense.

6           (3) CEASE AND DESIST ORDERS.—In addition  
7           to or in lieu of a civil penalty under paragraph (1),  
8           the Secretary may issue an order requiring a person  
9           to cease and desist from continuing a violation of  
10          this title or an order or regulation issued under this  
11          title.

12          (4) NOTICE AND HEARING.—No penalty shall  
13          be assessed or cease and desist order issued by the  
14          Secretary under this subsection unless the Secretary  
15          gives the person against whom the penalty is as-  
16          sessed or the order is issued notice and opportunity  
17          for a hearing before the Secretary with respect to  
18          the violation. The hearing shall be conducted in ac-  
19          cordance with section 311(b)(2) and be held within  
20          the United States judicial district in which the per-  
21          son's residence or principal place of business is lo-  
22          cated.

23          (5) FINALITY.—The penalty assessed or cease  
24          and desist order issued under this subsection shall  
25          be final and conclusive unless the person against

1 whom the penalty is assessed or the order is issued  
2 files an appeal with the appropriate district court of  
3 the United States in accordance with subsection (d).

4 (d) REVIEW BY DISTRICT COURT.—

5 (1) COMMENCEMENT OF ACTION.—Any person  
6 against whom a violation is found and a civil penalty  
7 assessed or cease and desist order issued under sub-  
8 section (c) may obtain review of the penalty or order  
9 by—

10 (A) filing, within the 30-day period begin-  
11 ning on the date the penalty is assessed or  
12 order issued, a notice of appeal in the district  
13 court of the United States for the district in  
14 which the person resides or carries on business,  
15 or in the United States district court for the  
16 District of Columbia; and

17 (B) simultaneously sending a copy of the  
18 notice by certified mail to the Secretary.

19 (2) FILING OF RECORD.—Upon the filing of a  
20 notice of appeal under paragraph (1), the Secretary  
21 shall promptly file in the district court in which the  
22 notice of appeal is filed a certified copy of the record  
23 on which the Secretary found that the person had  
24 committed a violation.

1           (3) STANDARD OF REVIEW.—A finding of the  
2       Secretary shall be set aside under this subsection  
3       only if the finding is found to be unsupported by  
4       substantial evidence.

5           (e) FAILURE TO OBEY AN ORDER.—A person that  
6       fails to obey a cease and desist order issued under sub-  
7       section (c) after the order has become final and  
8       unappealable, or after the appropriate United States dis-  
9       trict court has entered a final judgment in favor of the  
10      Secretary, shall be subject to a civil penalty assessed by  
11      the Secretary of not more than \$5,000 for each offense,  
12      after opportunity for a hearing and for judicial review  
13      under the procedures specified in subsections (c) and (d).  
14      Each day during which the failure continues shall be con-  
15      sidered as a separate violation of the order.

16          (f) FAILURE TO PAY A PENALTY.—If a person fails  
17      to pay a civil penalty assessed under subsection (c) or (e)  
18      after the penalty has become final and unappealable, or  
19      after the appropriate United States district court has en-  
20      tered final judgment in favor of the Secretary, the Sec-  
21      retary shall refer the matter to the Attorney General for  
22      recovery of the amount assessed in any United States dis-  
23      trict court in which the person resides or carries on busi-  
24      ness. In such action, the validity and appropriateness of  
25      the civil penalty shall not be subject to review.



1 (g) ADDITIONAL REMEDIES.—The remedies provided  
2 in this title shall be in addition to, and not exclusive of,  
3 other remedies that may be available.

4 **SEC. 311. INVESTIGATIONS AND POWER TO SUBPOENA.**

5 (a) INVESTIGATIONS.—The Secretary may make such  
6 investigations as the Secretary considers necessary for the  
7 effective administration of this title, or to determine  
8 whether any person has engaged or is engaging in any  
9 act that constitutes a violation of this title, or any order  
10 or regulation issued under this title.

11 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

12 (1) INVESTIGATIONS.—For the purpose of an  
13 investigation under subsection (a), the Secretary  
14 may administer oaths and affirmations, and issue  
15 subpoenas to require the production of any records  
16 that are relevant to the inquiry. The production of  
17 any such records may be required from any place in  
18 the United States.

19 (2) ADMINISTRATIVE HEARINGS.—For the pur-  
20 pose of an administrative hearing held under section  
21 309(a)(2) or 310(c)(4), the presiding officer may ad-  
22 minister oaths and affirmations, subpoena witnesses,  
23 compel their attendance, take evidence, and require  
24 the production of any records that are relevant to  
25 the inquiry. The attendance of witnesses and the

1 production of any such records may be required  
2 from any place in the United States.

3 (c) AID OF COURTS.—

4 (1) IN GENERAL.—In the case of contumacy by,  
5 or refusal to obey a subpoena issued to, any person,  
6 the Secretary may invoke the aid of any court of the  
7 United States within the jurisdiction of which the in-  
8 vestigation or proceeding is carried on, or where the  
9 person resides or carries on business, in order to en-  
10 force a subpoena issued under subsection (b). The  
11 court may issue an order requiring the person to  
12 comply with such a subpoena. Any failure to obey  
13 the order of the court may be punished by the court  
14 as a contempt thereof.

15 (2) PROCESS.—Process in any proceeding  
16 under this subsection may be served in the United  
17 States judicial district in which the person being  
18 proceeded against resides or carries on business or  
19 wherever the person may be found.

20 **SEC. 312. CONFIDENTIALITY.**

21 (a) PROHIBITION.—No information on how a person  
22 voted in a referendum conducted under this title shall be  
23 made public.

24 (b) PENALTY.—Any person knowingly violating sub-  
25 section (a) or the confidentiality terms of an order, as de-

1 scribed in section 307(d), on conviction shall be subject  
2 to a fine of not less than \$1,000 nor more than \$10,000  
3 or to imprisonment for not more than one year, or both,  
4 and, if an officer or employee of the Department of Agri-  
5 culture or the PromoFlor Council, shall be removed from  
6 office.

7 (c) ADDITIONAL PROHIBITION.—No information ob-  
8 tained under this title may be made available to any agen-  
9 cy or officer of the Federal Government for any purpose  
10 other than the implementation of this title and any inves-  
11 tigatory or enforcement actions necessary for the imple-  
12 mentation of this title.

13 (d) WITHHOLDING INFORMATION FROM CONGRESS  
14 PROHIBITED.—Nothing in this title authorizes the with-  
15 holding of information from Congress.

16 **SEC. 313. AUTHORITY FOR SECRETARY TO SUSPEND OR**  
17 **TERMINATE ORDER.**

18 Whenever the Secretary finds that an order issued  
19 under this title, or any provision of the order, obstructs  
20 or does not tend to effectuate the declared policy of this  
21 title, the Secretary shall terminate or suspend the oper-  
22 ation of the order or provision under such terms as the  
23 Secretary determines appropriate.

1 **SEC. 314. CONSTRUCTION.**

2 (a) TERMINATION OR SUSPENSION NOT AN  
3 ORDER.—The termination or suspension of an order, or  
4 any provision thereof, shall not be considered an order  
5 under the meaning of this title.

6 (b) PRODUCER RIGHTS.—Nothing in this title may  
7 be construed to provide for control of production or other-  
8 wise limit the right of individual cut flowers and cut  
9 greens producers to produce cut flowers and cut greens.  
10 This title seeks to treat all persons producing cut flowers  
11 and cut greens fairly and to implement any order estab-  
12 lished hereunder equitably in every respect.

13 (c) OTHER PROGRAMS.—Nothing in this title may be  
14 construed to preempt or supersede any other program re-  
15 lating to cut flowers or cut greens promotion and  
16 consumer information organized and operated under the  
17 laws of the United States or any State.

18 **SEC. 315. REGULATIONS.**

19 The Secretary may issue such regulations as are nec-  
20 essary to carry out this title and the powers vested in the  
21 Secretary by this title, including regulations relating to the  
22 assessment of late payment charges and interest.

23 **SEC. 316. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) IN GENERAL.—There are authorized to be appro-  
25 priated for each fiscal year such sums as may be necessary  
26 to carry out this title.

1 (b) ADMINISTRATIVE EXPENSES.—Funds appro-  
2 priated under subsection (a) may not be used for payment  
3 of the expenses or expenditures of the PromoFlor Council  
4 in administering any provision of an order issued under  
5 this title.

6 **SEC. 317. SEPARABILITY.**

7 If any provision of this title or the application thereof  
8 to any person or circumstances is held invalid, the validity  
9 of the remainder of the title and of the application of such  
10 provision to other persons and circumstances shall not be  
11 affected thereby.

12 **TITLE IV—LIME RESEARCH,**  
13 **PROMOTION, AND CONSUMER**  
14 **INFORMATION**

15 **SEC. 401. SHORT TITLE.**

16 This title may be cited as the “Lime Research, Pro-  
17 motion, and Consumer Information Improvement Act”.

18 **SEC. 402. FINDINGS AND PURPOSE.**

19 (a) FINDINGS.—Congress finds the following:

20 (1) The Lime Research, Promotion, and  
21 Consumer Information Act of 1990 (7 U.S.C. 6201  
22 et seq.) was enacted on November 28, 1990, for the  
23 purpose of establishing an orderly procedure for the  
24 development and financing of an effective and co-  
25 ordinated program of research, promotion, and

1 consumer information to strengthen the domestic  
2 and foreign markets for limes.

3 (2) The lime research, promotion, and  
4 consumer information order required by such Act be-  
5 came effective on January 27, 1992.

6 (3) Although the intent of such Act was to  
7 cover seedless limes, the definition of the term  
8 “lime” in section 1953(6) of such Act (7 U.S.C.  
9 6202(6)) applies to seeded limes. Therefore, the Act  
10 and the order need to be revised before a research,  
11 promotion, and consumer information program on  
12 seedless limes can go into effect.

13 (4) Since the enactment of such Act, the United  
14 States production of fresh market limes has plum-  
15 meted and the volume of imports has risen dramati-  
16 cally. The drop in United States production is pri-  
17 marily due to damage to lime orchards in the State  
18 of Florida by Hurricane Andrew in August 1992.  
19 United States production is not expected to reach  
20 pre-Hurricane Andrew levels for possibly two to  
21 three years because a majority of the limes produced  
22 in the United States are produced in Florida.

23 (b) PURPOSES.—The purpose of this Act is to amend  
24 the Lime Research, Promotion, and Consumer Informa-  
25 tion Act of 1990 (7 U.S.C. 6201 et seq.)—

- 1 (1) to cover seedless rather than seeded limes;
- 2 (2) to increase the exemption level;
- 3 (3) to delay the initial referendum date; and
- 4 (4) to alter the composition of the Lime Board.

5 **SEC. 403. DEFINITION OF LIME.**

6 Section 1953(6) of the Lime Research, Promotion,  
7 and Consumer Information Act of 1990 (7 U.S.C.  
8 6202(6)) is amended by striking “citrus aurantifolia” and  
9 inserting “citrus latifolia”.

10 **SEC. 404. REQUIRED TERMS IN ORDERS.**

11 (a) COMPOSITION OF LIME BOARD.—Subsection (b)  
12 of section 1955 of the Lime Research, Promotion, and  
13 Consumer Information Act of 1990 (7 U.S.C. 6204) is  
14 amended—

15 (1) in paragraph (1)(A), by striking “7” and  
16 inserting “3”;

17 (2) in paragraph (2)(B), by striking “7” and  
18 inserting “3”; and

19 (3) in paragraph (2)(F), by adding at the end  
20 the following new sentence: “The Secretary shall ter-  
21minate the initial Board established under this sub-  
22section as soon as practicable after the date of the  
23enactment of the Lime Research, Promotion, and  
24Consumer Information Improvement Act.”.

1 (b) ALLOCATION OF MEMBERS.—Subsection (b)(2)  
2 of such section is amended—

3 (1) in subparagraph (B) (as amended by sub-  
4 section (a)(2)), by adding at the end the following  
5 new sentence: “Of these producer members, 2 mem-  
6 bers shall be appointed from the district east of the  
7 Mississippi River and 1 member shall be appointed  
8 from the district west of the Mississippi River.”; and

9 (2) in subparagraph (C), by adding at the end  
10 the following new sentence: “Of these importer  
11 members, 1 member shall be appointed from the dis-  
12 trict east of the Mississippi River and 2 members  
13 shall be appointed from the district west of the Mis-  
14 sissippi River.”.

15 (c) TERMS OF MEMBERS.—Subsection (b)(4) of such  
16 section is amended—

17 (1) by striking “Members of” and all that fol-  
18 lows through “appointed—” and inserting “The ini-  
19 tial members of the Board appointed under the  
20 amended order shall serve a term of 30 months.  
21 Subsequent appointments to the Board shall be for  
22 a term of 3 years, except that—”;

23 (2) in subparagraph (A), by striking “3” and  
24 inserting “2”;





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