

103D CONGRESS  
1ST SESSION

**S. 994**

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**AN ACT**

To authorize the establishment of a fresh cut flow-ers and fresh cut greens promotion and consumer information program for the benefit of the flo-ricultural industry and other persons, and for other purposes.

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## AN ACT

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 other persons, 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,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Fresh Cut Flowers and Fresh Cut Greens Promotion and  
4 Information Act of 1993”.

5 (b) TABLE OF CONTENTS.—The table of contents of  
6 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and declaration of policy.
- Sec. 3. Definitions.
- Sec. 4. Issuance of orders.
- Sec. 5. Required terms in orders.
- Sec. 6. Exclusion; determinations.
- Sec. 7. Referenda.
- Sec. 8. Petition and review.
- Sec. 9. Enforcement.
- Sec. 10. Investigations and power to subpoena.
- Sec. 11. Confidentiality.
- Sec. 12. Authority for Secretary to suspend or terminate order.
- Sec. 13. Construction.
- Sec. 14. Regulations.
- Sec. 15. Authorization of appropriations.

7 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

8 (a) FINDINGS.—Congress finds that—

9 (1) fresh cut flowers and fresh cut greens are  
10 an integral part of life in the United States, are en-  
11 joyed by millions of persons every year for a mul-  
12 titude of special purposes (especially important per-  
13 sonal events), and contribute a natural and beautiful  
14 element to the human environment;

15 (2)(A) cut flowers and cut greens are produced  
16 by many individual producers throughout the United  
17 States as well as in other countries, and are handled

1 and marketed by thousands of small-sized and me-  
2 dium-sized businesses; and

3 (B) the production, handling, and marketing of  
4 cut flowers and cut greens constitute a key segment  
5 of the United States horticultural industry and thus  
6 a significant part of the overall agricultural economy  
7 of the United States;

8 (3) handlers play a vital role in the marketing  
9 of cut flowers and cut greens in that handlers—

10 (A) purchase most of the cut flowers and  
11 cut greens marketed by producers;

12 (B) prepare the cut flowers and cut greens  
13 for retail consumption;

14 (C) serve as an intermediary between the  
15 source of the product and the retailer;

16 (D) otherwise facilitate the entry of cut  
17 flowers and cut greens into the current of do-  
18 mestic commerce; and

19 (E) add efficiencies to the market process  
20 that ensure the availability of a much greater  
21 variety of the product to retailers and consum-  
22 ers;

23 (4) it is widely recognized that it is in the pub-  
24 lic interest and important to the agricultural econ-  
25 omy of the United States to provide an adequate,

1 steady supply of cut flowers and cut greens at rea-  
2 sonable prices to the consumers of the United  
3 States;

4 (5)(A) cut flowers and cut greens move in inter-  
5 state and foreign commerce; and

6 (B) cut flowers and cut greens that do not  
7 move in interstate or foreign channels of commerce  
8 but only in intrastate commerce directly affect inter-  
9 state commerce in cut flowers and cut greens;

10 (6) the maintenance and expansion of markets  
11 in existence on the date of enactment of this Act,  
12 and the development of new or improved markets or  
13 uses for cut flowers and cut greens, are needed to  
14 preserve and strengthen the economic viability of the  
15 domestic cut flowers and cut greens industry for the  
16 benefit of producers, handlers, retailers, and the en-  
17 tire floral industry;

18 (7) generic programs of promotion and  
19 consumer information can be effective in maintain-  
20 ing and developing markets for cut flowers and cut  
21 greens, and have the advantage of equally enhancing  
22 the market position for all cut flowers and cut  
23 greens;

24 (8) because cut flowers and cut greens produc-  
25 ers are primarily agriculture-oriented rather than

1 promotion-oriented, and because the floral marketing  
2 industry within the United States is comprised  
3 mainly of small-sized and medium-sized businesses,  
4 the development and implementation of an adequate  
5 and coordinated national program of generic pro-  
6 motion and consumer information necessary for the  
7 maintenance of markets in existence on the date of  
8 enactment of this Act and the development of new  
9 markets for cut flowers and cut greens have been  
10 prevented;

11 (9) there exist established State and commod-  
12 ity-specific producer-funded programs of promotion  
13 and research that are valuable efforts to expand  
14 markets for domestic producers of cut flowers and  
15 cut greens and that will benefit from the promotion  
16 and consumer information program authorized by  
17 this Act in that the program will enhance the mar-  
18 ket development efforts of the programs for domestic  
19 producers;

20 (10) an effective and coordinated method for  
21 ensuring cooperative and collective action in provid-  
22 ing for and financing a nationwide program of ge-  
23 neric promotion and consumer information is needed  
24 to ensure that the cut flowers and cut greens indus-  
25 try will be able to provide, obtain, and implement

1 programs of promotion and consumer information  
2 necessary to maintain, expand, and develop markets  
3 for cut flowers and cut greens; and

4 (11) the most efficient method of financing  
5 such a nationwide program is to assess cut flowers  
6 and cut greens at the point at which the flowers and  
7 greens are sold by handlers into the retail market.

8 (b) POLICY AND PURPOSE.—It is the policy of Con-  
9 gress that it is in the public interest, and it is the purpose  
10 of this Act, to authorize the establishment, through the  
11 exercise of the powers provided in this Act, of an orderly  
12 procedure for the development and financing (through an  
13 adequate assessment on cut flowers and cut greens sold  
14 by handlers to retailers and related entities in the United  
15 States) of an effective and coordinated program of generic  
16 promotion, consumer information, and related research  
17 designed to strengthen the position of the cut flowers and  
18 cut greens industry in the marketplace and to maintain,  
19 develop, and expand markets for cut flowers and cut  
20 greens.

21 **SEC. 3. DEFINITIONS.**

22 As used in this Act:

23 (1) CONSUMER INFORMATION.—The term  
24 “consumer information” means any action or pro-  
25 gram that provides information to consumers and

1 other persons on appropriate uses under varied cir-  
2 cumstances, and on the care and handling, of cut  
3 flowers or cut greens.

4 (2) CUT FLOWERS AND CUT GREENS.—

5 (A) IN GENERAL.—

6 (i) CUT FLOWERS.—The term “cut  
7 flowers” includes all flowers cut from  
8 growing plants that are used as fresh-cut  
9 flowers and that are produced under cover  
10 or in field operations.

11 (ii) CUT GREENS.—The term “cut  
12 greens” includes all cultivated or  
13 noncultivated decorative foliage cut from  
14 growing plants that are used as fresh-cut  
15 decorative foliage (except Christmas trees)  
16 and that are produced under cover or in  
17 field operations.

18 (iii) EXCLUSIONS.—The terms “cut  
19 flowers” and “cut greens” do not include  
20 a foliage plant, floral supply, or flowering  
21 plant.

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



1 a retailer, the PromoFlor Council may deter-  
2 mine, under procedures specified 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 and that, based on the de-  
6 termination, the article shall not be treated as  
7 an article of cut flowers or cut greens subject  
8 to assessment under the order.

9 (3) GROSS SALES PRICE.—The term “gross  
10 sales price” means the total amount of the trans-  
11 action in a sale of cut flowers or cut greens from a  
12 handler to a retailer or exempt handler.

13 (4) HANDLER.—

14 (A) QUALIFIED HANDLER.—

15 (i) IN GENERAL.—The term “qualified  
16 handler” means a person (including a co-  
17 operative) operating in the cut flowers or  
18 cut greens marketing system—

19 (I) that sells domestic or im-  
20 ported cut flowers or cut greens to re-  
21 tailers and exempt handlers; and

22 (II) whose annual sales of cut  
23 flowers and cut greens to retailers and  
24 exempt handlers are \$750,000 or  
25 more.

1 (ii) INCLUSIONS AND EXCLUSIONS.—

2 (I) IN GENERAL.—The term  
3 “qualified handler” includes—

4 (aa) bouquet manufacturers  
5 (subject to paragraph (2)(B));

6 (bb) an auction house that  
7 clears the sale of cut flowers and  
8 cut greens to retailers and ex-  
9 empt handlers through a central  
10 clearinghouse; and

11 (cc) a distribution center  
12 that is owned or controlled by a  
13 retailer if the predominant retail  
14 business activity of the retailer is  
15 floral sales.

16 (II) TRANSFERS.—For the pur-  
17 pose of determining sales of cut flow-  
18 ers and cut greens to a retailer from  
19 a distribution center described in  
20 subclause (I)(cc), each non-sale trans-  
21 fer to a retailer shall be treated as a  
22 sale in an amount calculated as pro-  
23 vided in subparagraph (C).

24 (III) TRANSPORTATION OR DE-  
25 LIVERY.—The term “qualified han-

1 dler” does not include a person who  
2 only physically transports or delivers  
3 cut flowers or cut greens.

4 (iii) CONSTRUCTION.—

5 (I) IN GENERAL.—The term  
6 “qualified handler” includes an im-  
7 porter or producer that sells cut flow-  
8 ers or cut greens that the importer or  
9 producer has imported into the United  
10 States or produced, respectively, di-  
11 rectly to consumers and whose sales  
12 of the cut flowers and cut greens (as  
13 calculated under subparagraph (C)),  
14 together with sales of cut flowers and  
15 cut greens to retailers or exempt han-  
16 dlers, annually are \$750,000 or more.

17 (II) SALES.—Each direct sale to  
18 a consumer by a qualified handler de-  
19 scribed in subclause (I) shall be treat-  
20 ed as a sale to a retailer or exempt  
21 handler in an amount calculated as  
22 provided in subparagraph (C).

23 (III) DEFINITIONS.—As used in  
24 this paragraph:

1 (aa) IMPORTER.—The term  
2 “importer” has the meaning pro-  
3 vided in section 5(b)(2)(B)(i)(I).

4 (bb) PRODUCER.—The term  
5 “producer” has the meaning pro-  
6 vided in section 5(b)(2)(B)(ii)(I).

7 (B) EXEMPT HANDLER.—The term “ex-  
8 empt handler” means a person who would oth-  
9 erwise be considered to be a qualified handler,  
10 except that the annual sales by the person of  
11 cut flowers and cut greens to retailers and  
12 other exempt handlers are less than \$750,000.

13 (C) ANNUAL SALES DETERMINED.—

14 (i) IN GENERAL.—Except as provided  
15 in clause (ii), for the purpose of determin-  
16 ing the amount of annual sales of cut flow-  
17 ers and cut greens under subparagraphs  
18 (A) and (B), the amount of a sale shall be  
19 determined on the basis of the gross sales  
20 price of the cut flowers and cut greens  
21 sold.

22 (ii) TRANSFERS.—

23 (I) NON-SALE TRANSFERS AND  
24 DIRECT SALES BY IMPORTERS.—Sub-  
25 ject to subclause (III), in the case of

1 a non-sale transfer of cut flowers or  
2 cut greens from a distribution center  
3 (as described in subparagraph  
4 (A)(ii)(II)), or a direct sale to a  
5 consumer by an importer (as de-  
6 scribed in subparagraph (A)(iii)), the  
7 amount of the sale shall be equal to  
8 the sum of—

9 (aa) the price paid by the  
10 distribution center or importer,  
11 respectively, to acquire the cut  
12 flowers or cut greens; and

13 (bb) an amount determined  
14 by multiplying the acquisition  
15 price referred to in item (aa) by  
16 a uniform percentage established  
17 by an order to represent the  
18 mark-up of a wholesale handler  
19 on a sale to a retailer.

20 (II) DIRECT SALES BY PRODUC-  
21 ERS.—Subject to subclause (III), in  
22 the case of a direct sale to a consumer  
23 by a producer (as described in sub-  
24 paragraph (A)(iii)), the amount of the  
25 sale shall be equal to an amount de-

1           terminated by multiplying the price paid  
2           by the consumer by a uniform per-  
3           centage established by an order to  
4           represent the cost of producing the ar-  
5           ticle and the mark-up of a wholesale  
6           handler on a sale to a retailer.

7                       (III) CHANGES IN UNIFORM PER-  
8           CENTAGES.—Any change in a uniform  
9           percentage referred to in subclause (I)  
10          or (II) may become effective after—

11                       (aa) recommendation by the  
12                       PromoFlor Council; and

13                       (bb) approval by the Sec-  
14                       retary after public notice and op-  
15                       portunity for comment in accord-  
16                       ance with section 553 of title 5,  
17                       United States Code, and without  
18                       regard to sections 556 and 557  
19                       of such title.

20           (5) ORDER.—The term “order” means an order  
21           issued under this Act (other than sections 9, 10, and  
22           12).

23           (6) PERSON.—The term “person” means any  
24           individual, group of individuals, firm, partnership,

1 corporation, joint stock company, association, soci-  
2 ety, cooperative, or other legal entity.

3 (7) PROMOFLOR COUNCIL.—The term  
4 “PromoFlor Council” means the Fresh Cut Flowers  
5 and Fresh Cut Greens Promotion Council estab-  
6 lished under section 5(b).

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

11 (9) RESEARCH.—The term “research” means  
12 market research and studies limited to the support  
13 of advertising, market development, and other pro-  
14 motion efforts and consumer information efforts re-  
15 lating to cut flowers or cut greens, including edu-  
16 cational activities.

17 (10) RETAILER.—

18 (A) IN GENERAL.—The term “retailer”  
19 means a person (such as a retail florist, super-  
20 market, mass market retail outlet, or other end-  
21 use seller), as described in an order, that sells  
22 cut flowers or cut greens to consumers, and a  
23 distribution center described in subparagraph  
24 (B)(i).

25 (B) DISTRIBUTION CENTERS.—

1 (i) IN GENERAL.—The term “retailer”  
2 includes a distribution center that is—

3 (I) owned or controlled by a per-  
4 son described in subparagraph (A), or  
5 owned or controlled cooperatively by a  
6 group of the persons, if the predomi-  
7 nant retail business activity of the  
8 person is not floral sales; or

9 (II) independently owned but op-  
10 erated primarily to provide food prod-  
11 ucts to retail stores.

12 (ii) IMPORTERS AND PRODUCERS.—  
13 An independently owned distribution center  
14 described in clause (i)(II) that also is an  
15 importer or producer of cut flowers or cut  
16 greens shall be subject to the rules of con-  
17 struction specified in paragraph (4)(A)(iii)  
18 and, for the purpose of the rules of con-  
19 struction, be considered to be the seller of  
20 the articles directly to the consumer.

21 (11) SECRETARY.—The term “Secretary”  
22 means the Secretary of Agriculture.

23 (12) STATE.—The term “State” means each of  
24 the several States of the United States, the District  
25 of Columbia, the Commonwealth of Puerto Rico, the



1 Commonwealth of the Northern Mariana Islands,  
2 the United States Virgin Islands, Guam, American  
3 Samoa, the Republic of the Marshall Islands, the  
4 Federated States of Micronesia, and the Republic of  
5 Palau (until such time as the Compact of Free Asso-  
6 ciation is ratified).

7 (13) UNITED STATES.—The term “United  
8 States” means the States collectively.

9 **SEC. 4. ISSUANCE OF ORDERS.**

10 (a) IN GENERAL.—

11 (1) ISSUANCE.—To effectuate the policy of this  
12 Act specified in section 2(b), the Secretary, subject  
13 to the procedures provided in subsection (b), shall  
14 issue orders under this Act applicable to qualified  
15 handlers of cut flowers and cut greens.

16 (2) SCOPE.—Any order shall be national in  
17 scope.

18 (3) ONE ORDER.—Not more than 1 order shall  
19 be in effect at any 1 time.

20 (b) PROCEDURES.—

21 (1) PROPOSAL FOR AN ORDER.—

22 (A) SECRETARY.—The Secretary may pro-  
23 pose the issuance of an order.

24 (B) OTHER PERSONS.—An industry group  
25 that represents a substantial number of the in-

1 industry members who are to be assessed under  
2 the order, or any other person who will be af-  
3 fected by this Act, may request the issuance of,  
4 and submit a proposal for, an order.

5 (2) PUBLICATION OF PROPOSAL.—The Sec-  
6 retary shall publish a proposed order and give notice  
7 and opportunity for public comment on the proposed  
8 order not later than 60 days after the earlier of—

9 (A) the date on which the Secretary pro-  
10 poses an order, as provided in paragraph  
11 (1)(A); and

12 (B) the date of the receipt by the Sec-  
13 retary of a proposal for an order, as provided  
14 in paragraph (1)(B).

15 (3) ISSUANCE OF ORDER.—

16 (A) IN GENERAL.—After notice and oppor-  
17 tunity for public comment are provided in ac-  
18 cordance with paragraph (2), the Secretary  
19 shall issue the order, taking into consideration  
20 the comments received and including in the  
21 order such provisions as are necessary to ensure  
22 that the order is in conformity with this Act.

23 (B) EFFECTIVE DATE.—The order shall be  
24 issued and become effective not later than 180  
25 days after publication of the proposed order.

1 (c) AMENDMENTS.—The Secretary, from time to  
2 time, may amend an order. The provisions of this Act ap-  
3 plicable to an order shall be applicable to any amendment  
4 to an order.

5 **SEC. 5. REQUIRED TERMS IN ORDERS.**

6 (a) IN GENERAL.—An order shall contain the terms  
7 and provisions specified in this section.

8 (b) PROMOFLOL COUNCIL.—

9 (1) ESTABLISHMENT AND MEMBERSHIP.—

10 (A) ESTABLISHMENT.—The order shall  
11 provide for the establishment of a Fresh Cut  
12 Flowers and Fresh Cut Greens Promotion  
13 Council, consisting of 25 members, to admin-  
14 ister the order.

15 (B) MEMBERSHIP.—

16 (i) APPOINTMENT.—The order shall  
17 provide that members of the PromoFlor  
18 Council shall be appointed by the Secretary  
19 from nominations submitted as provided in  
20 paragraphs (2) and (3).

21 (ii) COMPOSITION.—The PromoFlor  
22 Council shall consist of—

23 (I) participating qualified han-  
24 dlers representing qualified wholesale

1 handlers and producers and importers  
2 that are qualified handlers;

3 (II) representatives of traditional  
4 retailers; and

5 (III) representatives of persons  
6 who produce fresh cut flowers and  
7 fresh cut greens.

8 (2) DISTRIBUTION OF APPOINTMENTS.—

9 (A) IN GENERAL.—The order shall provide  
10 that the membership of the PromoFlor Council  
11 shall consist of—

12 (i) 14 members representing qualified  
13 wholesale handlers of domestic or imported  
14 cut flowers and cut greens;

15 (ii) 3 members representing producers  
16 that are qualified handlers of cut flowers  
17 and cut greens;

18 (iii) 3 members representing import-  
19 ers that are qualified handlers of cut flow-  
20 ers and cut greens;

21 (iv) 3 members representing tradi-  
22 tional cut flowers and cut greens retailers;  
23 and

1 (v) 2 members representing persons  
2 who produce fresh cut flowers and fresh  
3 cut greens, of whom—

4 (I) 1 member shall represent per-  
5 sons who produce the flowers or  
6 greens in locations that are east of the  
7 Mississippi River; and

8 (II) 1 member shall represent  
9 persons who produce the flowers or  
10 greens in locations that are west of  
11 the Mississippi River.

12 (B) DEFINITIONS.—As used in this sub-  
13 section:

14 (i) IMPORTER THAT IS A QUALIFIED  
15 HANDLER.—The term “importer that is a  
16 qualified handler” means an entity—

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

1 (II) that is subject to assess-  
2 ments as a qualified handler under  
3 the order.

4 (ii) PRODUCER THAT IS A QUALIFIED  
5 HANDLER.—The term “producer that is a  
6 qualified handler” means an entity that—

7 (I) is engaged—

8 (aa) in the domestic produc-  
9 tion, for sale in commerce, of cut  
10 flowers or cut greens and that  
11 owns or shares in the ownership  
12 and risk of loss of the cut flowers  
13 or cut greens; or

14 (bb) as a first processor of  
15 noncultivated cut greens, in re-  
16 ceiving the cut greens from a  
17 person who gathers the cut  
18 greens for handling; and

19 (II) is subject to assessments as  
20 a qualified handler under the order.

21 (iii) QUALIFIED WHOLESALE HAN-  
22 DLER.—

23 (I) IN GENERAL.—The term  
24 “qualified wholesale handler” means a  
25 person in business as a floral whole-

1 sale jobber or floral supplier that is  
2 subject to assessments as a qualified  
3 handler under the order.

4 (II) DEFINITIONS.—As used in  
5 this clause:

6 (aa) FLORAL SUPPLIER.—

7 The term “floral supplier” means  
8 a person engaged in acquiring  
9 cut flowers or cut greens to be  
10 manufactured into floral articles  
11 or otherwise processed for resale.

12 (bb) FLORAL WHOLESALE

13 JOBBER.—The term “floral  
14 wholesale jobber” means a person  
15 who conducts a commission or  
16 other wholesale business in buy-  
17 ing and selling cut flowers or cut  
18 greens.

19 (C) DISTRIBUTION OF QUALIFIED WHOLE-  
20 SALE HANDLER APPOINTMENTS.—The order  
21 shall provide that the appointments of qualified  
22 wholesale handlers to the PromoFlor Council  
23 made by the Secretary shall take into account  
24 the geographical distribution of cut flowers and  
25 cut greens markets in the United States.

1           (3) NOMINATION PROCESS.—The order shall  
2 provide that—

3           (A) 2 nominees shall be submitted for each  
4 appointment to the PromoFlor Council;

5           (B) nominations for each appointment of a  
6 qualified wholesale handler, producer that is a  
7 qualified handler, or importer that is a qualified  
8 handler to the PromoFlor Council shall be  
9 made by qualified wholesale handlers, producers  
10 that are qualified handlers, or importers that  
11 are qualified handlers, respectively, through an  
12 election process, in accordance with regulations  
13 issued by the Secretary;

14           (C) nominations for—

15           (i) 1 of the retailer appointments shall  
16 be made by the American Floral Marketing  
17 Council or a successor entity; and

18           (ii) 2 of the retailer appointments  
19 shall be made by traditional retail florist  
20 organizations, in accordance with regula-  
21 tions issued by the Secretary;

22           (D) nominations for each appointment of a  
23 representative of persons who produce fresh cut  
24 flowers and fresh cut greens shall be made by  
25 the persons through an election process, in ac-



1 cordance with regulations issued by the Sec-  
2 retary; and

3 (E) in any case in which qualified whole-  
4 sale handlers, producers that are qualified han-  
5 dlers, importers that are qualified handlers,  
6 persons who produce fresh cut flowers and fresh  
7 cut greens, or retailers fail to nominate individ-  
8 uals for an appointment to the PromoFlor  
9 Council, the Secretary may appoint an individ-  
10 ual to fill the vacancy on a basis provided in the  
11 order or other regulations of the Secretary.

12 (4) ALTERNATES.—The order shall provide for  
13 the selection of alternate members of the PromoFlor  
14 Council by the Secretary in accordance with proce-  
15 dures specified in the order.

16 (5) TERMS; COMPENSATION.—The order shall  
17 provide that—

18 (A) each term of appointment to the  
19 PromoFlor Council shall be for 3 years, except  
20 that, of the initial appointments, 9 of the ap-  
21 pointments shall be for 2-year terms, 8 of the  
22 appointments shall be for 3-year terms, and 8  
23 of the appointments shall be for 4-year terms;

24 (B) no member of the PromoFlor Council  
25 may serve more than 2 consecutive terms of 3

1 years, except that any member serving an initial  
2 term of 4 years may serve an additional term  
3 of 3 years; and

4 (C) members of the PromoFlor Council  
5 shall serve without compensation, but shall be  
6 reimbursed for the expenses of the members in-  
7 curred in performing duties as members of the  
8 PromoFlor Council.

9 (6) EXECUTIVE COMMITTEE.—

10 (A) ESTABLISHMENT.—

11 (i) IN GENERAL.—The order shall au-  
12 thorize the PromoFlor Council to appoint,  
13 from among the members of the Council,  
14 an executive committee of not more than 9  
15 members.

16 (ii) INITIAL MEMBERSHIP.—The  
17 membership of the executive committee ini-  
18 tially shall be composed of—

19 (I) 4 members representing  
20 qualified wholesale handlers;

21 (II) 2 members representing pro-  
22 ducers that are qualified handlers;

23 (III) 2 members representing im-  
24 porters that are qualified handlers;  
25 and

1 (IV) 1 member representing tra-  
2 ditional retailers.

3 (iii) SUBSEQUENT MEMBERSHIP.—

4 After the initial appointments, each ap-  
5 pointment to the executive committee shall  
6 be made so as to ensure that the commit-  
7 tee reflects, to the maximum extent prac-  
8 ticable, the membership composition of the  
9 PromoFlor Council as a whole.

10 (iv) TERMS.—Each initial appoint-  
11 ment to the executive committee shall be  
12 for a term of 2 years. After the initial ap-  
13 pointments, each appointment to the exec-  
14 utive committee shall be for a term of 1  
15 year.

16 (B) AUTHORITY.—The PromoFlor Council  
17 may delegate to the executive committee the au-  
18 thority of the PromoFlor Council under the  
19 order to hire and manage staff and conduct the  
20 routine business of the PromoFlor Council con-  
21 sistent with such policies as are determined by  
22 the PromoFlor Council.

23 (c) GENERAL RESPONSIBILITIES OF THE  
24 PROMOFLOL COUNCIL.—The order shall define the gen-

1 eral responsibilities of the PromoFlor Council, which shall  
2 include the responsibility to—

3 (1) administer the order in accordance with the  
4 terms and provisions of the order;

5 (2) make rules and regulations to effectuate the  
6 terms and provisions of the order;

7 (3) appoint members of the PromoFlor Council  
8 to serve on an executive committee;

9 (4) employ such persons as the PromoFlor  
10 Council determines are necessary, and set the com-  
11 pensation and define the duties of the persons;

12 (5)(A) develop budgets for the implementation  
13 of the order and submit the budgets to the Secretary  
14 for approval under subsection (d); and

15 (B) propose and develop (or receive and evalu-  
16 ate), approve, and submit to the Secretary for ap-  
17 proval under subsection (d) plans and projects for  
18 cut flowers or cut greens promotion, consumer infor-  
19 mation, or related research;

20 (6)(A) implement plans and projects for cut  
21 flowers or cut greens promotion, consumer informa-  
22 tion, or related research, as provided in subsection  
23 (d); or

24 (B) contract or enter into agreements with ap-  
25 propriate persons to implement the plans and

1 projects, as provided in subsection (e), and pay the  
2 costs of the implementation, or contracts and agree-  
3 ments, with funds received under the order;

4 (7) evaluate on-going and completed plans and  
5 projects for cut flowers or cut greens promotion,  
6 consumer information, or related research;

7 (8) receive, investigate, and report to the Sec-  
8 retary complaints of violations of the order;

9 (9) recommend to the Secretary amendments to  
10 the order;

11 (10) invest, pending disbursement under a plan  
12 or project, funds collected through assessments au-  
13 thorized under this Act only in—

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

16 (B) general obligations of any State or any  
17 political subdivision of a State;

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

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

23 except that income from any such invested funds  
24 may be used only for a purpose for which the in-  
25 vested funds may be used; and

1           (11) provide the Secretary such information as  
2 the Secretary may require.

3           (d) BUDGETS; PLANS AND PROJECTS.—

4           (1) SUBMISSION OF BUDGETS.—The order shall  
5 require the PromoFlor Council to submit to the Sec-  
6 retary for approval budgets, on a fiscal year basis,  
7 of the anticipated expenses and disbursements of the  
8 Council in the implementation of the order, includ-  
9 ing the projected costs of cut flowers and cut greens  
10 promotion, consumer information, and related re-  
11 search plans and projects.

12           (2) PLANS AND PROJECTS.—

13           (A) PROMOTION AND CONSUMER INFORMA-  
14 TION.—The order shall provide—

15                   (i) for the establishment, implementa-  
16 tion, administration, and evaluation of ap-  
17 propriate plans and projects for advertis-  
18 ing, sales promotion, other promotion, and  
19 consumer information with respect to cut  
20 flowers and cut greens, and for the dis-  
21 bursement of necessary funds for the pur-  
22 poses described in this clause;

23                   (ii) that any plan or project referred  
24 to in clause (i) shall be directed toward in-  
25 creasing the general demand for cut flow-

1           ers or cut greens and may not make ref-  
2           erence to a private brand or trade name,  
3           point of origin, or source of supply, except  
4           that this clause shall not preclude the  
5           PromoFlor Council from offering the plans  
6           and projects of the Council for use by com-  
7           mercial parties, under terms and condi-  
8           tions prescribed by the PromoFlor Council  
9           and approved by the Secretary; and

10                   (iii) that no plan or project may make  
11           use of unfair or deceptive acts or practices  
12           with respect to quality or value.

13           (B) RESEARCH.—The order shall provide  
14           for—

15                   (i) the establishment, implementation,  
16           administration, and evaluation of plans  
17           and projects for—

18                           (I) market development research;

19                           (II) research with respect to the  
20           sale, distribution, marketing, or use of  
21           cut flowers or cut greens; and

22                           (III) other research with respect  
23           to cut flowers or cut greens market-  
24           ing, promotion, or consumer informa-  
25           tion;

1 (ii) the dissemination of the informa-  
2 tion acquired through the plans and  
3 projects; and

4 (iii) the disbursement of such funds as  
5 are necessary to carry out this subpara-  
6 graph.

7 (C) SUBMISSION TO SECRETARY.—The  
8 order shall provide that the PromoFlor Council  
9 shall submit to the Secretary for approval a  
10 proposed plan or project for cut flowers or cut  
11 greens promotion, consumer information, or re-  
12 lated research, as described in subparagraphs  
13 (A) and (B).

14 (3) APPROVAL BY SECRETARY.—A budget, or  
15 plan or project for cut flowers or cut greens pro-  
16 motion, consumer information, or related research  
17 may not be implemented prior to approval of the  
18 budget, plan, or project by the Secretary.

19 (e) CONTRACTS AND AGREEMENTS.—

20 (1) PROMOTION, CONSUMER INFORMATION, AND  
21 RELATED RESEARCH PLANS AND PROJECTS.—

22 (A) IN GENERAL.—To ensure efficient use  
23 of funds, the order shall provide that the  
24 PromoFlor Council, with the approval of the  
25 Secretary, may enter into a contract or an



1 agreement for the implementation of a plan or  
2 project for promotion, consumer information, or  
3 related research with respect to cut flowers or  
4 cut greens, and for the payment of the cost of  
5 the contract or agreement with funds received  
6 by the PromoFlor Council under the order.

7 (B) REQUIREMENTS.—The order shall pro-  
8 vide that any contract or agreement entered  
9 into under this paragraph shall provide that—

10 (i) the contracting or agreeing party  
11 shall develop and submit to the PromoFlor  
12 Council a plan or project, together with a  
13 budget that includes the estimated costs to  
14 be incurred for the plan or project;

15 (ii) the plan or project shall become  
16 effective on the approval of the Secretary;  
17 and

18 (iii) the contracting or agreeing party  
19 shall—

20 (I) keep accurate records of all of  
21 the transactions of the party;

22 (II) account for funds received  
23 and expended;

1 (III) make periodic reports to the  
2 PromoFlor Council of activities con-  
3 ducted; and

4 (IV) make such other reports as  
5 the PromoFlor Council or the Sec-  
6 retary may require.

7 (2) OTHER CONTRACTS AND AGREEMENTS.—

8 The order shall provide that the PromoFlor Council  
9 may enter into a contract or agreement for adminis-  
10 trative services. Any contract or agreement entered  
11 into under this paragraph shall include provisions  
12 comparable to the provisions described in paragraph  
13 (1)(B).

14 (f) BOOKS AND RECORDS OF THE PROMOFLO  
15 R COUNCIL.—

16 (1) IN GENERAL.—The order shall require the  
17 PromoFlor Council to—

18 (A) maintain such books and records  
19 (which shall be available to the Secretary for in-  
20 spection and audit) as the Secretary may re-  
21 quire;

22 (B) prepare and submit to the Secretary,  
23 from time to time, such reports as the Sec-  
24 retary may require; and

1           (C) account for the receipt and disburse-  
2           ment of all funds entrusted to the PromoFlor  
3           Council.

4           (2) AUDITS.—The PromoFlor Council shall  
5           cause the books and records of the Council to be au-  
6           dited by an independent auditor at the end of each  
7           fiscal year. A report of each audit shall be submitted  
8           to the Secretary.

9           (g) CONTROL OF ADMINISTRATIVE COSTS.—The  
10          order shall provide that the PromoFlor Council shall, as  
11          soon as practicable after the order becomes effective and  
12          after consultation with the Secretary and other appro-  
13          priate persons, implement a system of cost controls based  
14          on normally accepted business practices that will ensure  
15          that the annual budgets of the PromoFlor Council include  
16          only amounts for administrative expenses that cover the  
17          minimum administrative activities and personnel needed  
18          to properly administer and enforce the order, and conduct,  
19          supervise, and evaluate plans and projects under the  
20          order.

21          (h) ASSESSMENTS.—

22                 (1) AUTHORITY.—

23                         (A) IN GENERAL.—The order shall provide  
24                         that each qualified handler shall pay to the  
25                         PromoFlor Council, in the manner provided in

1 the order, an assessment on each sale of cut  
2 flowers or cut greens to a retailer or an exempt  
3 handler (including each transaction described in  
4 subparagraph (C)(ii)), except to the extent that  
5 the sale is excluded from assessments under  
6 section 6(a).

7 (B) PUBLISHED LISTS.—To facilitate the  
8 payment of assessments under this paragraph,  
9 the PromoFlor Council shall publish lists of  
10 qualified handlers required to pay assessments  
11 under the order and exempt handlers.

12 (C) MAKING DETERMINATIONS.—

13 (i) QUALIFIED HANDLER STATUS.—  
14 The order shall contain provisions regard-  
15 ing the determination of the status of a  
16 person as a qualified handler or exempt  
17 handler that include the rules and require-  
18 ments specified in sections 3(4) and 6(b).

19 (ii) CERTAIN COVERED TRANS-  
20 ACTIONS.—

21 (I) IN GENERAL.—The order  
22 shall provide that each non-sale trans-  
23 fer of cut flowers or cut greens to a  
24 retailer from a qualified handler that  
25 is a distribution center (as described

1 in section 3(4)(A)(ii)(II)), and each  
2 direct sale of cut flowers or cut greens  
3 to a consumer by a qualified handler  
4 that is an importer or a producer (as  
5 described in section 3(4)(A)(iii)), shall  
6 be treated as a sale of cut flowers or  
7 cut greens to a retailer subject to as-  
8 sements under this subsection.

9 (II) AMOUNT OF SALE IN THE  
10 CASE OF NON-SALE TRANSFERS AND  
11 DIRECT SALES BY IMPORTERS.—Sub-  
12 ject to subclause (IV), in the case of  
13 a non-sale transfer of cut flowers or  
14 cut greens from a distribution center,  
15 or a direct sale to a consumer by an  
16 importer, the amount of the sale shall  
17 be equal to the sum of—

18 (aa) the price paid by the  
19 distribution center or importer,  
20 respectively, to acquire the cut  
21 flowers or cut greens; and

22 (bb) an amount determined  
23 by multiplying the acquisition  
24 price referred to in item (aa) by  
25 a uniform percentage established

1 by the order to represent the  
2 mark-up of a wholesale handler  
3 on a sale to a retailer.

4 (III) DIRECT SALES BY PRODUC-  
5 ERS.—Subject to subclause (IV), in  
6 the case of a direct sale to a consumer  
7 by a producer, the amount of the sale  
8 shall be equal to an amount deter-  
9 mined by multiplying the price paid  
10 by the consumer by a uniform per-  
11 centage established by the order to  
12 represent the cost of producing the ar-  
13 ticle and the mark-up of a wholesale  
14 handler on a sale to a retailer.

15 (IV) CHANGES IN UNIFORM PER-  
16 CENTAGES.—Any change in a uniform  
17 percentage referred to in subclause  
18 (II) or (III) may become effective  
19 after—

20 (aa) recommendation by the  
21 PromoFlor Council; and

22 (bb) approval by the Sec-  
23 retary after public notice and op-  
24 portunity for comment in accord-  
25 ance with section 553 of title 5,

1 United States Code, and without  
2 regard to sections 556 and 557  
3 of such title.

4 (2) ASSESSMENT RATES.—With respect to as-  
5 sessment rates, the order shall contain the following  
6 terms:

7 (A) INITIAL RATE.—During the first 3  
8 years the order is in effect, the rate of assess-  
9 ment on each sale or transfer of cut flowers or  
10 cut greens shall be  $\frac{1}{2}$  of 1 percent of—

11 (i) the gross sales price of the cut  
12 flowers or cut greens sold; or

13 (ii) in the case of transactions de-  
14 scribed in paragraph (1)(C)(ii), the  
15 amount of each transaction calculated as  
16 provided in paragraph (1)(C)(ii).

17 (B) CHANGES IN THE RATE.—

18 (i) IN GENERAL.—After the first 3  
19 years the order is in effect, the uniform as-  
20 sessment rate may be increased or de-  
21 creased annually by not more than .25 per-  
22 cent of—

23 (I) the gross sales price of a  
24 product sold; or

1 (II) in the case of transactions  
2 described in paragraph (1)(C)(ii), the  
3 amount of each transaction calculated  
4 as provided in paragraph (1)(C)(ii),  
5 except that the assessment rate may in no  
6 case exceed 1 percent of the gross sales  
7 price or 1 percent of the transaction  
8 amount.

9 (ii) REQUIREMENTS.—Any change in  
10 the rate of assessment under this subpara-  
11 graph—

12 (I) may be made only if adopted  
13 by the PromoFlor Council by at least  
14 a  $\frac{2}{3}$  majority vote and approved by  
15 the Secretary as necessary to achieve  
16 the objectives of this Act (after public  
17 notice and opportunity for comment  
18 in accordance with section 553 of title  
19 5, United States Code, and without  
20 regard to sections 556 and 557 of  
21 such title);

22 (II) shall be announced by the  
23 PromoFlor Council not less than 30  
24 days prior to going into effect; and



1 (III) shall not be subject to a  
2 vote in a referendum conducted under  
3 section 7.

4 (3) TIMING OF SUBMITTING ASSESSMENTS.—  
5 The order shall provide that each person required to  
6 pay assessments under this subsection shall remit, to  
7 the PromoFlor Council, the assessment due from  
8 each sale by the person of cut flowers or cut greens  
9 that is subject to an assessment within such time pe-  
10 riod after the sale (not to exceed 60 days after the  
11 end of the month in which the sale took place) as  
12 is specified in the order.

13 (4) REFUNDS FROM ESCROW ACCOUNT.—

14 (A) ESTABLISHMENT OF ESCROW AC-  
15 COUNT.—The order shall provide that the  
16 PromoFlor Council shall—

17 (i) establish an escrow account to be  
18 used for assessment refunds, as needed;  
19 and

20 (ii) place into the account an amount  
21 equal to 10 percent of the total amount of  
22 assessments collected during the period be-  
23 ginning on the date the order becomes ef-  
24 fective, as provided in section 4(b)(3)(B),  
25 and ending on the date the initial referen-

1                   dum on the order under section 7(a) is  
2                   completed.

3                   (B) RIGHT TO RECEIVE REFUND.—

4                   (i) IN GENERAL.—The order shall  
5                   provide that, subject to subparagraph (C)  
6                   and the conditions specified in clause (ii),  
7                   any qualified handler shall have the right  
8                   to demand and receive from the PromoFlor  
9                   Council out of the escrow account a one-  
10                  time refund of any assessments paid by or  
11                  on behalf of the qualified handler during  
12                  the time period specified in subparagraph  
13                  (A)(ii), if—

14                   (I) the qualified handler is re-  
15                   quired to pay the assessments;

16                   (II) the qualified handler does  
17                   not support the program established  
18                   under this Act;

19                   (III) the qualified handler de-  
20                   mands the refund prior to the conduct  
21                   of the referendum on the order under  
22                   section 7(a); and

23                   (IV) the order is not approved by  
24                   qualified handlers in the referendum.

1 (ii) CONDITIONS.—The right of a  
2 qualified handler to receive a refund under  
3 clause (i) shall be subject to the following  
4 conditions:

5 (I) The demand shall be made in  
6 accordance with regulations, on a  
7 form, and within a time period speci-  
8 fied by the PromoFlor Council.

9 (II) The refund shall be made  
10 only on submission of proof satisfac-  
11 tory to the PromoFlor Council that  
12 the qualified handler paid the assess-  
13 ment for which the refund is de-  
14 manded.

15 (III) If the amount in the escrow  
16 account required under subparagraph  
17 (A) is not sufficient to refund the  
18 total amount of assessments de-  
19 manded by all qualified handlers de-  
20 termined eligible for refunds and the  
21 order is not approved in the referen-  
22 dum on the order under section 7(a),  
23 the PromoFlor Council shall prorate  
24 the amount of all such refunds among

1 all eligible qualified handlers that de-  
2 mand the refund.

3 (C) PROGRAM APPROVED.—The order shall  
4 provide that, if the order is approved in the ref-  
5 erendum conducted under section 7(a), there  
6 shall be no refunds made, and all funds in the  
7 escrow account shall be returned to the  
8 PromoFlor Council for use by the PromoFlor  
9 Council in accordance with the other provisions  
10 of the order.

11 (5) USE OF ASSESSMENT FUNDS.—The order  
12 shall provide that assessment funds (less any re-  
13 funds expended under the terms of the order re-  
14 quired under paragraph (4)) shall be used for pay-  
15 ment of costs incurred in implementing and admin-  
16 istering the order, with provision for a reasonable re-  
17 serve, and to cover the administrative costs incurred  
18 by the Secretary in implementing and administering  
19 this Act.

20 (6) POSTPONEMENT OF COLLECTIONS.—

21 (A) AUTHORITY.—

22 (i) IN GENERAL.—Subject to the  
23 other provisions of this paragraph and not-  
24 withstanding any other provision of this  
25 Act, the PromoFlor Council may grant a

1           postponement of the payment of an assess-  
2           ment under this subsection for any quali-  
3           fied handler that establishes that the han-  
4           dler is financially unable to make the pay-  
5           ment.

6           (ii) REQUIREMENTS AND PROCE-  
7           DURES.—A handler described in clause (i)  
8           shall establish that the handler is finan-  
9           cially unable to make the payment in ac-  
10          cordance with application and documenta-  
11          tion requirements and review procedures  
12          established under rules recommended by  
13          the PromoFlor Council, approved by the  
14          Secretary, and issued after public notice  
15          and opportunity for comment in accord-  
16          ance with section 553 of title 5, United  
17          States Code, and without regard to sec-  
18          tions 556 and 557 of such title.

19          (B) CRITERIA AND RESPONSIBILITY FOR  
20          DETERMINATIONS.—The PromoFlor Council  
21          may grant a postponement under subparagraph  
22          (A) only if the handler demonstrates by the  
23          submission of an opinion of an independent cer-  
24          tified public accountant, and by submission of  
25          other documentation required under the rules

1 established under subparagraph (A)(ii), that the  
2 handler is insolvent or will be unable to con-  
3 tinue to operate if the handler is required to  
4 pay the assessment when otherwise due.

5 (C) PERIOD OF POSTPONEMENT.—

6 (i) IN GENERAL.—The time period of  
7 a postponement and the terms and condi-  
8 tions of the payment of each assessment  
9 that is postponed under this paragraph  
10 shall be established by the PromoFlor  
11 Council, in accordance with rules estab-  
12 lished under the procedures specified in  
13 subparagraph (A)(ii), so as to appro-  
14 priately reflect the demonstrated needs of  
15 the qualified handler.

16 (ii) EXTENSIONS.—A postponement  
17 may be extended under rules established  
18 under the procedures specified in subpara-  
19 graph (A)(ii) for the grant of initial post-  
20 ponements.

21 (i) PROHIBITION.—The order shall prohibit the use  
22 of any funds received by the PromoFlor Council in any  
23 manner for the purpose of influencing legislation or gov-  
24 ernment action or policy, except that the funds may be  
25 used by the PromoFlor Council for the development and

1 recommendation to the Secretary of amendments to the  
2 order.

3 (j) BOOKS AND RECORDS; REPORTS.—

4 (1) IN GENERAL.—The order shall provide that  
5 each qualified handler shall maintain, and make  
6 available for inspection, such books and records as  
7 are required by the order and file reports at the  
8 time, in the manner, and having the content re-  
9 quired by the order, to the end that such informa-  
10 tion is made available to the Secretary and the  
11 PromoFlor Council as is appropriate for the admin-  
12 istration or enforcement of this Act, the order, or  
13 any regulation issued under this Act.

14 (2) CONFIDENTIALITY REQUIREMENT.—

15 (A) IN GENERAL.—Information obtained  
16 from books, records, or reports under para-  
17 graph (1) or subsection (h)(6), or from reports  
18 required under section 6(b)(3), shall be kept  
19 confidential by all officers and employees of the  
20 Department of Agriculture and by the staff and  
21 agents of the PromoFlor Council.

22 (B) SUITS AND HEARINGS.—Information  
23 described in subparagraph (A) may be disclosed  
24 to the public only—

1 (i) in a suit or administrative hearing  
2 brought at the request of the Secretary, or  
3 to which the Secretary or any officer of the  
4 United States is a party, involving the  
5 order; and

6 (ii) to the extent the Secretary consid-  
7 ers the information relevant to the suit or  
8 hearing.

9 (C) GENERAL STATEMENTS AND PUBLICA-  
10 TIONS.—Nothing in this paragraph may be con-  
11 strued to prohibit—

12 (i) the issuance of general statements,  
13 based on the reports, of the number of per-  
14 sons subject to the order or statistical data  
15 collected from the reports, if the state-  
16 ments do not identify the information fur-  
17 nished by any person; or

18 (ii) the publication, by direction of the  
19 Secretary, of the name of any person who  
20 violates the order, together with a state-  
21 ment of the particular provisions of the  
22 order violated by the person.

23 (3) LISTS OF IMPORTERS.—

24 (A) REVIEW.—The order shall provide that  
25 the staff of the PromoFlor Council shall peri-



1           odically review lists of importers of cut flowers  
2           and cut greens to determine whether persons on  
3           the lists are subject to the order.

4           (B) CUSTOMS SERVICE.—On the request of  
5           the PromoFlor Council, the Commissioner of  
6           the United States Customs Service shall provide  
7           to the PromoFlor Council lists of importers of  
8           cut flowers and cut greens.

9           (k) CONSULTATIONS WITH INDUSTRY EXPERTS.—

10           (1) IN GENERAL.—The order shall provide that  
11           the PromoFlor Council, from time to time, may seek  
12           advice from and consult with experts from the pro-  
13           duction, import, wholesale, and retail segments of  
14           the cut flowers and cut greens industry to assist in  
15           the development of promotion, consumer informa-  
16           tion, and related research plans and projects.

17           (2) SPECIAL COMMITTEES.—

18           (A) IN GENERAL.—For the purposes de-  
19           scribed in paragraph (1), the order shall au-  
20           thorize the appointment of special committees  
21           composed of persons other than PromoFlor  
22           Council members.

23           (B) CONSULTATION.—A committee ap-  
24           pointed under subparagraph (A)—

1 (i) may not provide advice or rec-  
2 ommendations to a representative of an  
3 agency, or an officer, of the Federal Gov-  
4 ernment; and

5 (ii) shall consult directly with the  
6 PromoFlor Council.

7 (l) OTHER TERMS OF THE ORDER.—The order shall  
8 contain such other terms and provisions, consistent with  
9 this Act, as are necessary to carry out this Act (including  
10 provision for the assessment of interest and a charge for  
11 each late payment of assessments under subsection (h)  
12 and for carrying out section 6).

13 **SEC. 6. EXCLUSION; DETERMINATIONS.**

14 (a) EXCLUSION.—An order shall exclude from assess-  
15 ments under the order any sale of cut flowers or cut  
16 greens for export from the United States.

17 (b) MAKING DETERMINATIONS.—

18 (1) IN GENERAL.—For the purpose of applying  
19 the \$750,000 annual sales limitation to a specific  
20 person in order to determine the status of the per-  
21 son as a qualified handler or an exempt handler  
22 under section 3(4), or to a specific facility in order  
23 to determine the status of the facility as an eligible  
24 separate facility under section 7(b)(2), an order is-  
25 sued under this Act shall provide that—

1 (A) a determination of the annual sales  
2 volume of a person or facility shall be based on  
3 the sales of cut flowers and cut greens by the  
4 person or facility during the most recently-com-  
5 pleted calendar year, except as provided in sub-  
6 paragraph (B); and

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

14 (2) RULE OF ATTRIBUTION.—

15 (A) IN GENERAL.—For the purpose of de-  
16 termining the annual sales volume of a person  
17 or a separate facility of a person, sales attrib-  
18 utable to a person shall include—

19 (i) in the case of an individual, sales  
20 attributable to the spouse, children, grand-  
21 children, parents, and grandparents of the  
22 person;

23 (ii) in the case of a partnership or  
24 member of a partnership, sales attributable

1 to the partnership and other partners of  
2 the partnership;

3 (iii) in the case of an individual or a  
4 partnership, sales attributable to any cor-  
5 poration or other entity in which the indi-  
6 vidual or partnership owns more than 50  
7 percent of the stock or (if the entity is not  
8 a corporation) that the individual or part-  
9 nership controls; and

10 (iv) in the case of a corporation, sales  
11 attributable to any corporate subsidiary or  
12 other corporation or entity in which the  
13 corporation owns more than 50 percent of  
14 the stock or (if the entity is not a corpora-  
15 tion) that the corporation controls.

16 (B) STOCK AND OWNERSHIP INTEREST.—

17 For the purpose of this paragraph, stock or an  
18 ownership interest in an entity that is owned by  
19 the spouse, children, grandchildren, parents,  
20 grandparents, or partners of an individual, or  
21 by a partnership in which a person is a partner,  
22 or by a corporation more than 50 percent of the  
23 stock of which is owned by a person, shall be  
24 treated as owned by the individual or person.

1           (3) REPORTS.—For the purpose of this sub-  
2           section, the order may require a person who sells cut  
3           flowers or cut greens to retailers to submit reports  
4           to the PromoFlor Council on annual sales by the  
5           person.

6 **SEC. 7. REFERENDA.**

7           (a) REQUIREMENT FOR INITIAL REFERENDUM.—

8           (1) IN GENERAL.—Not later than 3 years after  
9           the issuance of an order under section 4(b)(3), the  
10          Secretary shall conduct a referendum among quali-  
11          fied handlers required to pay assessments under the  
12          order, as provided in section 5(h)(1), subject to the  
13          voting requirements of subsection (b), to ascertain  
14          whether the order then in effect shall be continued.

15          (2) APPROVAL OF ORDER NEEDED.—The order  
16          shall be continued only if the Secretary determines  
17          that the order has been approved by a simple major-  
18          ity of all votes cast in the referendum. If the order  
19          is not approved, the Secretary shall terminate the  
20          order as provided in subsection (d).

21          (b) VOTES PERMITTED.—

22          (1) IN GENERAL.—Each qualified handler eligi-  
23          ble to vote in a referendum conducted under this  
24          section shall be entitled to cast 1 vote for each sepa-

1 rate facility of the person that is an eligible separate  
2 facility, as defined in paragraph (2).

3 (2) ELIGIBLE SEPARATE FACILITY.—For the  
4 purpose of paragraph (1):

5 (A) SEPARATE FACILITY.—A handling or  
6 marketing facility of a qualified handler shall be  
7 considered to be a separate facility if the facil-  
8 ity is physically located away from other facili-  
9 ties of the qualified handler or the business  
10 function of the facility is substantially different  
11 from the functions of other facilities owned or  
12 operated by the qualified handler.

13 (B) ELIGIBILITY.—A separate facility of a  
14 qualified handler shall be considered to be an  
15 eligible separate facility if the annual sales of  
16 cut flowers and cut greens to retailers and ex-  
17 empt handlers from the facility are \$750,000 or  
18 more.

19 (C) ANNUAL SALES DETERMINED.—For  
20 the purpose of determining the amount of an-  
21 nual sales of cut flowers and cut greens under  
22 subparagraph (B), subparagraphs (A) and (C)  
23 of section 3(4) shall apply.

24 (c) SUSPENSION OR TERMINATION REFERENDA.—If  
25 an order is approved in a referendum conducted under

1 subsection (a), effective beginning on the date that is 3  
2 years after the date of the approval, the Secretary—

3 (1) at the discretion of the Secretary, may con-  
4 duct at any time a referendum of qualified handlers  
5 required to pay assessments under the order, as pro-  
6 vided in section 5(h)(1), subject to the voting re-  
7 quirements of subsection (b), to ascertain whether  
8 qualified handlers favor suspension or termination of  
9 the order; and

10 (2) if requested by the PromoFlor Council or by  
11 a representative group comprising 30 percent or  
12 more of all qualified handlers required to pay assess-  
13 ments under the order, as provided in section  
14 5(h)(1), shall conduct a referendum of all qualified  
15 handlers required to pay assessments under the  
16 order, as provided in section 5(h)(1), subject to the  
17 voting requirements of subsection (b), to ascertain  
18 whether qualified handlers favor suspension or ter-  
19 mination of the order.

20 (d) SUSPENSION OR TERMINATION.—If, as a result  
21 of the referendum conducted under subsection (a), the  
22 Secretary determines that the order has not been approved  
23 by a simple majority of all votes cast in the referendum,  
24 or as a result of a referendum conducted under subsection  
25 (c), the Secretary determines that suspension or termi-

1 nation of the order is favored by a simple majority of all  
2 votes cast in the referendum, the Secretary shall—

3 (1) not later than 180 days after the referen-  
4 dum, suspend or terminate, as appropriate, collec-  
5 tion of assessments under the order; and

6 (2) suspend or terminate, as appropriate, activi-  
7 ties under the order as soon as practicable and in  
8 an orderly manner.

9 (e) MANNER OF CONDUCTING REFERENDA.—  
10 Referenda under this section shall be conducted in such  
11 manner as is determined appropriate by the Secretary.

12 **SEC. 8. PETITION AND REVIEW.**

13 (a) PETITION AND HEARING.—

14 (1) PETITION.—A person subject to an order  
15 may file with the Secretary a petition—

16 (A) stating that the order, any provision of  
17 the order, or any obligation imposed in connec-  
18 tion with the order is not in accordance with  
19 law; and

20 (B) requesting a modification of the order  
21 or an exemption from the order.

22 (2) HEARING.—The petitioner shall be given  
23 the opportunity for a hearing on a petition filed  
24 under paragraph (1), in accordance with regulations  
25 issued by the Secretary. Any such hearing shall be



1 conducted in accordance with section 10(b)(2) and  
2 be held within the United States judicial district in  
3 which the residence or principal place of business of  
4 the person is located.

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

8 (b) REVIEW.—

9 (1) COMMENCEMENT OF ACTION.—The district  
10 courts of the United States in any district in which  
11 a person who is a petitioner under subsection (a) re-  
12 sides or conducts business shall have jurisdiction to  
13 review the ruling of the Secretary on the petition of  
14 the person, if a complaint requesting the review is  
15 filed not later than 20 days after the date of the  
16 entry of the ruling by the Secretary.

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

20 (3) REMAND.—If the court in a proceeding  
21 under this subsection determines that the ruling of  
22 the Secretary on the petition of the person is not in  
23 accordance with law, the court shall remand the  
24 matter to the Secretary with directions—

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

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

5 (c) ENFORCEMENT.—The pendency of proceedings  
6 instituted under this section shall not impede, hinder, or  
7 delay the Attorney General or the Secretary from obtain-  
8 ing relief under section 9.

9 **SEC. 9. ENFORCEMENT.**

10 (a) JURISDICTION.—A district court of the United  
11 States shall have jurisdiction to enforce, and to prevent  
12 and restrain any person from violating, this Act or an  
13 order or regulation issued by the Secretary under this Act.

14 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-  
15 tion brought under subsection (a) shall be referred to the  
16 Attorney General for appropriate action, except that the  
17 Secretary is not required to refer to the Attorney General  
18 a violation of this Act, or an order or regulation issued  
19 under this Act, if the Secretary believes that the adminis-  
20 tration and enforcement of this Act would be adequately  
21 served by administrative action under subsection (c) or  
22 suitable written notice or warning to the person who com-  
23 mitted or is committing the violation.

24 (c) CIVIL PENALTIES AND ORDERS.—

25 (1) CIVIL PENALTIES.—

1 (A) IN GENERAL.—A person who violates a  
2 provision of this Act, or an order or regulation  
3 issued by the Secretary under this Act, or who  
4 fails or refuses to pay, collect, or remit any as-  
5 sessment or fee required of the person under an  
6 order or regulation issued under this Act, may  
7 be assessed by the Secretary—

8 (i) a civil penalty of not less than  
9 \$500 nor more than \$5,000 for each viola-  
10 tion; and

11 (ii) in the case of a willful failure to  
12 remit an assessment as required by an  
13 order or regulation, an additional penalty  
14 equal to the amount of the assessment.

15 (B) SEPARATE OFFENSES.—Each violation  
16 shall be a separate offense.

17 (2) CEASE AND DESIST ORDERS.—In addition  
18 to or in lieu of a civil penalty under paragraph (1),  
19 the Secretary may issue an order requiring a person  
20 to cease and desist from continuing a violation of  
21 this Act, or an order or regulation issued under this  
22 Act.

23 (3) NOTICE AND HEARING.—No penalty shall  
24 be assessed or cease and desist order issued by the  
25 Secretary under this subsection unless the Secretary

1 gives the person against whom the penalty is as-  
2 sessed or the order is issued notice and opportunity  
3 for a hearing before the Secretary with respect to  
4 the violation. Any such hearing shall be conducted in  
5 accordance with section 10(b)(2) and shall be held  
6 within the United States judicial district in which  
7 the residence or principal place of business of the  
8 person is located.

9 (4) FINALITY.—The penalty assessed or cease  
10 and desist order issued under this subsection shall  
11 be final and conclusive unless the person against  
12 whom the penalty is assessed or the order is issued  
13 files an appeal with the appropriate district court of  
14 the United States in accordance with subsection (d).

15 (d) REVIEW BY DISTRICT COURT.—

16 (1) COMMENCEMENT OF ACTION.—

17 (A) IN GENERAL.—Any person against  
18 whom a violation is found and a civil penalty is  
19 assessed or a cease and desist order is issued  
20 under subsection (c) may obtain review of the  
21 penalty or order by, within the 30-day period  
22 beginning on the date the penalty is assessed or  
23 order issued—

24 (i) filing a notice of appeal in the dis-  
25 trict court of the United States for the dis-

1           trict in which the person resides or con-  
2           ducts business, or in the United States  
3           District Court for the District of Colum-  
4           bia; and

5           (ii) sending a copy of the notice by  
6           certified mail to the Secretary.

7           (B) COPY OF RECORD.—The Secretary  
8           shall promptly file in the court a certified copy  
9           of the record on which the Secretary found that  
10          the person had committed a violation.

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

15          (e) FAILURE TO OBEY AN ORDER.—

16          (1) IN GENERAL.—A person who fails to obey  
17          a cease and desist order issued under subsection (c)  
18          after the order has become final and unappealable,  
19          or after the appropriate United States district court  
20          has entered a final judgment in favor of the Sec-  
21          retary, shall be subject to a civil penalty assessed by  
22          the Secretary of not more than \$5,000 for each of-  
23          fense, after opportunity for a hearing and for judi-  
24          cial review under the procedures specified in sub-  
25          sections (c) and (d).

1           (2) SEPARATE VIOLATIONS.—Each day during  
2           which the person fails to obey an order described in  
3           paragraph (1) shall be considered as a separate vio-  
4           lation of the order.

5           (f) FAILURE TO PAY A PENALTY.—

6           (1) IN GENERAL.—If a person fails to pay a  
7           civil penalty assessed under subsection (c) or (e)  
8           after the penalty has become final and unappealable,  
9           or after the appropriate United States district court  
10          has entered final judgment in favor of the Secretary,  
11          the Secretary shall refer the matter to the Attorney  
12          General for recovery of the amount assessed in any  
13          United States district court in which the person re-  
14          sides or conducts business.

15          (2) SCOPE OF REVIEW.—In an action by the  
16          Attorney General under paragraph (1), the validity  
17          and appropriateness of the civil penalty shall not be  
18          subject to review.

19          (g) ADDITIONAL REMEDIES.—The remedies provided  
20          in this Act shall be in addition to, and not exclusive of,  
21          other remedies that may be available.

22   **SEC. 10. INVESTIGATIONS AND POWER TO SUBPOENA.**

23          (a) INVESTIGATIONS.—The Secretary may make such  
24          investigations as the Secretary considers necessary for the  
25          effective administration of this Act, or to determine wheth-

1 er any person has engaged or is engaging in any act that  
2 constitutes a violation of this Act or any order or regula-  
3 tion issued under this Act.

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

5 (1) INVESTIGATIONS.—For the purpose of mak-  
6 ing an investigation under subsection (a), the Sec-  
7 retary may administer oaths and affirmations, and  
8 issue subpoenas to require the production of any  
9 records that are relevant to the inquiry. The produc-  
10 tion of the records may be required from any place  
11 in the United States.

12 (2) ADMINISTRATIVE HEARINGS.—For the pur-  
13 pose of an administrative hearing held under section  
14 8(a)(2) or 9(c)(3), the presiding officer may admin-  
15 ister oaths and affirmations, subpoena witnesses,  
16 compel the attendance of witnesses, take evidence,  
17 and require the production of any records that are  
18 relevant to the inquiry. The attendance of witnesses  
19 and the production of the records may be required  
20 from any place in the United States.

21 (c) AID OF COURTS.—

22 (1) IN GENERAL.—In the case of contumacy by,  
23 or refusal to obey a subpoena issued under sub-  
24 section (b) to, any person, the Secretary may invoke  
25 the aid of any court of the United States within the

1 jurisdiction of which the investigation or proceeding  
2 is conducted, or where the person resides or con-  
3 ducts business, in order to enforce a subpoena issued  
4 under subsection (b).

5 (2) ORDER.—The court may issue an order re-  
6 quiring the person referred to in paragraph (1) to  
7 comply with a subpoena referred to in paragraph  
8 (1).

9 (3) FAILURE TO OBEY.—Any failure to obey  
10 the order of the court may be punished by the court  
11 as a contempt of court.

12 (4) PROCESS.—Process in any proceeding  
13 under this subsection may be served in the United  
14 States judicial district in which the person being  
15 proceeded against resides or conducts business or  
16 wherever the person may be found.

17 **SEC. 11. CONFIDENTIALITY.**

18 (a) PROHIBITION.—No information on how a person  
19 voted in a referendum conducted under this Act shall be  
20 made public.

21 (b) PENALTY.—Any person who knowingly violates  
22 subsection (a) or the confidentiality terms of an order, as  
23 described in section 5(j)(2), shall be subject to a fine of  
24 not less than \$1,000 nor more than \$10,000 or to impris-  
25 onment for not more than 1 year, or both. If the person



1 is an officer or employee of the Department of Agriculture  
2 or the PromoFlor Council, the person shall be removed  
3 from office.

4 (c) ADDITIONAL PROHIBITION.—No information ob-  
5 tained under this Act may be made available to any agency  
6 or officer of the Federal Government for any purpose  
7 other than the implementation of this Act or an investiga-  
8 tory or enforcement action necessary for the implementa-  
9 tion of this Act.

10 (d) WITHHOLDING INFORMATION FROM CONGRESS  
11 PROHIBITED.—Nothing in this Act shall be construed to  
12 authorize the withholding of information from Congress.

13 **SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR**  
14 **TERMINATE ORDER.**

15 If the Secretary finds that an order, or any provision  
16 of the order, obstructs or does not tend to effectuate the  
17 policy of this Act specified in section 2(b), the Secretary  
18 shall terminate or suspend the operation of the order or  
19 provision under such terms as the Secretary determines  
20 are appropriate.

21 **SEC. 13. CONSTRUCTION.**

22 (a) TERMINATION OR SUSPENSION NOT AN  
23 ORDER.—The termination or suspension of an order, or  
24 a provision of an order, shall not be considered an order  
25 under the meaning of this Act.

1 (b) PRODUCER RIGHTS.—This Act—

2 (1) may not be construed to provide for control  
3 of production or otherwise limit the right of individ-  
4 ual cut flowers and cut greens producers to produce  
5 cut flowers and cut greens; and

6 (2) shall be construed to treat all persons pro-  
7 ducing cut flowers and cut greens fairly and to im-  
8 plement any order in an equitable manner.

9 (c) OTHER PROGRAMS.—Nothing in this Act may be  
10 construed to preempt or supersede any other program re-  
11 lating to cut flowers or cut greens promotion and  
12 consumer information organized and operated under the  
13 laws of the United States or a State.

14 **SEC. 14. REGULATIONS.**

15 The Secretary may issue such regulations as are nec-  
16 essary to carry out this Act and the powers vested in the  
17 Secretary by this Act, including regulations relating to the  
18 assessment of late payment charges and interest.

19 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) IN GENERAL.—There are authorized to be appro-  
21 priated for each fiscal year such sums as are necessary  
22 to carry out this Act.

23 (b) ADMINISTRATIVE EXPENSES.—Funds appro-  
24 priated under subsection (a) may not be used for the pay-

- 1 ment of the expenses or expenditures of the PromoFlor
- 2 Council in administering a provision of an order.

Passed the Senate November 20 (legislative day, November 2), 1993.

Attest:

*Secretary.*

S 5 ES—2

S 5 ES—3

S 5 ES—4

S 5 ES—5

S 5 ES—6

S 5 ES—7

S 5 ES—8

S 5 ES—9

S 5 ES—10

S 5 ES—11