

**Calendar No. 320**

103D CONGRESS  
1ST SESSION

**S. 994**

**A BILL**

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.

NOVEMBER 19 (legislative day, NOVEMBER 2), 1993

Reported with an amendment

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**IN THE SENATE OF THE UNITED STATES**

MAY 20 (legislative day, APRIL 19), 1993

Mr. PRYOR (for himself, Mr. HEFLIN, Mr. COCHRAN, Mr. McCONNELL, Mr. GRAHAM, Mr. KERREY, Mr. LUGAR, Mr. HELMS, Mr. CHAFEE, and Mr. BUMPERS) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

NOVEMBER 19 (legislative day, NOVEMBER 2), 1993

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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**A BILL**

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; 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; 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  
 11 consumed by millions of persons every year for a  
 12 multitude of special purposes (especially important  
 13 personal events); and contribute a natural and beau-  
 14 tiful element to what is increasingly a man-made, ar-  
 15 tificial environment;

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

1 keted by thousands of small-sized and medium-sized  
2 businesses;

3 (3) 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 (4) handlers play a vital role in the marketing  
9 of cut flowers and cut greens in that handlers pur-  
10 chase most of the cut flowers and cut greens mar-  
11 keted by producers, prepare the cut flowers and cut  
12 greens for retail consumption, serve as an  
13 intermediary between the source of the product and  
14 the retailer, otherwise facilitate the entry of cut  
15 flowers and cut greens into the current of domestic  
16 commerce, and add efficiencies to the market proc-  
17 ess that ensure the availability of a much greater va-  
18 riety of the product and substantial price savings to  
19 retailers and consumers;

20 (5) it is widely recognized that it is in the pub-  
21 lic interest and important to the agricultural econ-  
22 omy of the United States to provide an adequate,  
23 steady supply of cut flowers and cut greens at rea-  
24 sonable prices to the consumers of the United  
25 States;

1           (6) cut flowers and cut greens move in inter-  
2           state and foreign commerce, and cut flowers and cut  
3           greens that do not move in interstate or foreign  
4           channels of commerce but only in intrastate com-  
5           merce directly affect interstate commerce in these  
6           products;

7           (7) the maintenance and expansion of markets  
8           and the development of new or improved markets or  
9           uses for cut flowers and cut greens are needed to  
10          preserve and strengthen the economic viability of the  
11          domestic cut flowers and cut greens industry for the  
12          benefit of producers, handlers, retailers, and the en-  
13          tire floral industry;

14          (8) generic programs of promotion and  
15          consumer information can be effective in maintain-  
16          ing and developing markets for cut flowers and cut  
17          greens, and have the advantage of equally enhancing  
18          the market position for all cut flowers and cut  
19          greens;

20          (9) because cut flowers and cut greens produc-  
21          ers are primarily agriculture-oriented rather than  
22          promotion-oriented, and because the floral marketing  
23          industry within the United States is comprised  
24          mainly of small-sized and medium-sized businesses,  
25          the development and implementation of an adequate

1 and coordinated national program of generic pro-  
2 motion and consumer information necessary for the  
3 maintenance of existing markets and the develop-  
4 ment of new markets for cut flowers and cut greens  
5 have been prevented;

6 (10) there exist established State and commod-  
7 ity-specific producer-funded programs of promotion  
8 and research that are valuable efforts to expand  
9 markets for domestic producers of cut flowers and  
10 cut greens and that will benefit from the promotion  
11 and consumer information program authorized by  
12 this Act by enhancing their market development ef-  
13 forts for domestic producers;

14 (11) an effective and coordinated method for  
15 ensuring cooperative and collective action in provid-  
16 ing for and financing a nationwide program of ge-  
17 neric promotion and consumer information is needed  
18 to ensure that the cut flowers and cut greens indus-  
19 try will be able to provide, obtain, and implement  
20 programs of promotion and consumer information  
21 necessary to maintain, expand, and develop markets  
22 for these products; and

23 (12) the most efficient method of financing  
24 such a nationwide program is to assess cut flowers

1 and cut greens at the point cut flowers and cut  
 2 greens are sold by handlers into the retail market.

3 ~~(b) POLICY AND PURPOSE.~~—It is the purpose of this  
 4 Act to authorize the establishment, through the exercise  
 5 of the powers provided in this Act, of an orderly procedure  
 6 for the development and financing (through an adequate  
 7 assessment on cut flowers and cut greens sold by handlers  
 8 to retailers and related entities in the United States) of  
 9 an effective and coordinated program of generic pro-  
 10 motion, consumer information, and related research de-  
 11 signed to strengthen the position of cut flowers and cut  
 12 greens in the marketplace and to maintain, develop, and  
 13 expand markets for cut flowers and cut greens.

14 **SEC. 3. DEFINITIONS.**

15 As used in this Act:

16 (1) ~~CONSUMER INFORMATION.~~—The term  
 17 “consumer information” means any action or pro-  
 18 gram that provides information to consumers and  
 19 other persons on appropriate uses under varied cir-  
 20 cumstances, and on the care and handling, of cut  
 21 flowers or cut greens.

22 (2) ~~CUT FLOWERS AND CUT GREENS.~~—

23 (A) ~~IN GENERAL.~~—

24 (i) ~~CUT FLOWERS.~~—The term “cut  
 25 flowers” includes all flowers cut from

1 growing plants that are used as fresh-cut  
2 flowers, produced either under cover or in  
3 field operations.

4 (ii) CUT GREENS.—The term “cut  
5 greens” includes all cultivated or  
6 noncultivated decorative foliage cut from  
7 growing plants that are used as fresh-cut  
8 decorative foliage (except Christmas trees)  
9 produced either under cover or in field op-  
10 erations.

11 (iii) EXCLUSIONS.—The terms “cut  
12 flowers” and “cut greens” do not include  
13 a foliage plant, floral supply, or flowering  
14 plant.

15 (B) SUBSTANTIAL PORTION.—In any case  
16 in which a handler packages cut flowers or cut  
17 greens with hard goods in an article (such as a  
18 gift basket or similar presentation) for sale to  
19 a retailer, the PromoFlor Council may deter-  
20 mine, under procedures specified in the order,  
21 that the cut flowers or cut greens in the article  
22 do not constitute a substantial portion of the  
23 value of the article and that, based on the de-  
24 termination, the article shall not be treated as



1 an article of cut flowers or cut greens subject  
2 to assessment under the order.

3 (3) GROSS SALES PRICE.—The term “gross  
4 sales price” means the total amount of the trans-  
5 action derived from the sale of cut flowers or cut  
6 greens from a handler to a retailer.

7 (4) HANDLERS.—

8 (A) QUALIFIED HANDLER.—

9 (i) IN GENERAL.—The term “qualified  
10 handler” means a person (including a co-  
11 operative) operating in the cut flowers or  
12 cut greens marketing system that sells do-  
13 mestic or imported cut flowers or cut  
14 greens to retailers and exempt handlers  
15 and whose annual sales of cut flowers and  
16 cut greens to retailers and exempt handlers  
17 are \$750,000 or more.

18 (ii) INCLUSIONS AND EXCLUSIONS.—

19 The term “qualified handler” includes—

20 (I) a bouquet manufacturer (sub-  
21 ject to paragraph (2)(B));

22 (II) an auction house that clears  
23 the sale of cut flowers and cut greens  
24 to retailers and exempt handlers  
25 through a central clearinghouse; and

1                   (III) a distribution center that is  
2 owned or controlled by a retailer—

3                   (aa) if the predominant re-  
4 tail business activity of the re-  
5 tailer is floral sales; or

6                   (bb) when a majority of the  
7 cut flowers and cut greens sales  
8 or transfers from the center are  
9 to entities other than entities  
10 owned or controlled by the re-  
11 tailer.

12                   (iii) TRANSFERS.—For purposes of  
13 determining sales of cut flowers and cut  
14 greens to a retailer from a distribution  
15 center under clause (ii)(III), each non-sale  
16 transfer to a retailer shall be treated as a  
17 sale in an amount calculated as provided in  
18 subparagraph (C).

19                   (iv) TRANSPORTATION OR DELIV-  
20 ERY.—The term “qualified handler” does  
21 not include a person who merely physically  
22 transports or delivers cut flowers or cut  
23 greens without more.

24                   (v) CONSTRUCTION.—

1 (I) IN GENERAL.—The term  
2 “qualified handler” includes an im-  
3 porter or producer that sells cut flow-  
4 ers or cut greens the importer or pro-  
5 ducer has imported into the United  
6 States or produced, respectively, and  
7 sells the articles directly to consumers  
8 and whose sales of the articles (as cal-  
9 culated under subparagraph (C)), to-  
10 gether with sales of cut flowers and  
11 cut greens to retailers or exempt han-  
12 dlers, annually are \$750,000 or more.

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

19 (III) DEFINITIONS.—For pur-  
20 poses of this clause:

21 (aa) IMPORTER.—The term  
22 “importer” has the same mean-  
23 ing as that provided for the term  
24 in section 5(b)(2)(B)(iii)(I).

1                   ~~(bb) PRODUCER.~~—The term  
2                   “producer” has the same mean-  
3                   ing as that provided for the term  
4                   in section 5(b)(2)(B)(ii)(I).

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

11                  ~~(C) ANNUAL SALES DETERMINED.~~—

12                  ~~(i) IN GENERAL.~~—Except as provided  
13                  in clause (ii), for purposes of determining  
14                  the amount of annual sales of cut flowers  
15                  and cut greens under subparagraphs (A)  
16                  and (B), the amount of a sale shall be de-  
17                  termined on the basis of the gross sales  
18                  price of a product sold.

19                  ~~(ii) TRANSFERS.~~—In the case of the  
20                  non-sale transfer of cut flowers or cut  
21                  greens from a distribution center (as de-  
22                  scribed in subparagraph (A)(ii)(III)) and a  
23                  direct sale to a consumer (as described in  
24                  subparagraph (A)(v)), the amount of the  
25                  sale shall be the price paid by the distribu-

1                   tion center, or importer, respectively, to ac-  
2                   quire the cut flowers or cut greens plus—

3                   (I) an amount determined by  
4                   multiplying the acquisition price by a  
5                   uniform percentage established by the  
6                   PromoFlor Council to represent the  
7                   mark-up of a wholesale handler on a  
8                   sale to a retailer; or

9                   (II) in the case of a direct sale to  
10                  a consumer by a producer, an amount  
11                  determined by applying to the price  
12                  paid by the consumer a uniform per-  
13                  centage established by the PromoFlor  
14                  Council to represent the cost of pro-  
15                  ducing the article and the mark-up of  
16                  a wholesale handler on a sale to a re-  
17                  tailer.

18                  (5) PERSON.—The term “person” means an in-  
19                  dividual, group of individuals, firm, partnership, cor-  
20                  poration, joint stock company, association, society,  
21                  cooperative, or other legal entity.

22                  (6) PROMOFLOL COUNCIL.—The term  
23                  “PromoFlor Council” means the Fresh Cut Flowers  
24                  and Fresh Cut Greens Promotion Council estab-  
25                  lished under section 5(b).

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

5           (8) RESEARCH.—The term “research” means  
6 market research and studies limited to the support  
7 of advertising, market development, and other pro-  
8 motion efforts and consumer information efforts re-  
9 lating to cut flowers or cut greens, including edu-  
10 cational activities.

11           (9) RETAILER.—

12           (A) IN GENERAL.—The term “retailer”  
13 means a person (such as a retail florist, super-  
14 market, mass market retail outlet, or other end-  
15 use seller, as described in an order issued under  
16 this Act) that sells cut flowers or cut greens to  
17 consumers.

18           (B) DISTRIBUTION CENTERS.—The term  
19 “retailer” includes a distribution center owned  
20 or controlled by a person described in subpara-  
21 graph (A) only if—

22           (i) the predominant retail business ac-  
23 tivity of the retailer is not floral sales; and

24           (ii) the majority of the cut flowers  
25 and cut greens sales or transfers from the

1 center are to entities owned or controlled  
2 by the person.

3 ~~(10) SECRETARY.~~—The term “Secretary”  
4 means the Secretary of Agriculture.

5 ~~(11) STATE.~~—The term “State” means each of  
6 the several States of the United States, the District  
7 of Columbia, the Commonwealth of Puerto Rico, the  
8 Commonwealth of the Northern Mariana Islands,  
9 the United States Virgin Islands, Guam, American  
10 Samoa, the Republic of the Marshall Islands, the  
11 Federated States of Micronesia, and the Republic of  
12 Palau (until such time as the Compact of Free Asso-  
13 ciation is ratified).

14 ~~(12) UNITED STATES.~~—The term “United  
15 States” means the States collectively.

16 **SEC. 4. ISSUANCE OF ORDERS.**

17 ~~(a) IN GENERAL.~~—

18 ~~(1) ISSUANCE.~~—To effectuate the purpose of  
19 this Act, the Secretary, subject to the procedures  
20 provided in subsection (b), shall issue orders under  
21 this Act applicable to qualified handlers of cut flow-  
22 ers and cut greens.

23 ~~(2) SCOPE.~~—Any order issued under this Act  
24 shall be national in scope.

1           (3) ONE ORDER.—Not more than one order  
2 shall be in effect under this Act at any time.

3           (b) PROCEDURES.—

4           (1) PROPOSAL FOR AN ORDER.—

5           (A) SECRETARY.—The Secretary may pro-  
6 pose the issuance of an order under this Act.

7           (B) INDUSTRY GROUP.—An industry group  
8 of long standing that represents a substantial  
9 number of the industry members who are to be  
10 assessed under the order (as determined by the  
11 Secretary) may request the issuance of, and  
12 submit a proposal for, an order under this Act.

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

17           (A) the date on which the Secretary pro-  
18 poses an order, as provided in paragraph  
19 (1)(A); or

20           (B) the date of the receipt by the Sec-  
21 retary of a proposal for an order from an indus-  
22 try group, as provided in paragraph (1)(B).

23           (3) ISSUANCE OF ORDER.—

24           (A) IN GENERAL.—After notice and oppor-  
25 tunity for public comment are provided in ac-



1 cordance with paragraph (2), the Secretary  
2 shall issue the order, taking into consideration  
3 the comments received and including in the  
4 order provisions necessary to ensure that the  
5 order is in conformity with the requirements of  
6 this Act.

7 (B) EFFECTIVE DATE.—The order shall be  
8 issued and become effective not later than 150  
9 days following publication of the proposed  
10 order.

11 (c) AMENDMENTS.—The Secretary, from time to  
12 time, may amend an order issued under this Act. The pro-  
13 visions of this Act applicable to an order shall be applica-  
14 ble to amendments to the order.

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

16 (a) IN GENERAL.—An order issued under this Act  
17 shall contain the terms and provisions prescribed in this  
18 section.

19 (b) PROMOFLO R COUNCIL.—

20 (1) ESTABLISHMENT AND MEMBERSHIP.—

21 (A) ESTABLISHMENT.—The order shall  
22 provide for the establishment of a Fresh Cut  
23 Flowers and Fresh Cut Greens Promotion  
24 Council, consisting of 21 members, to admin-  
25 ister the order.

1           (B) MEMBERSHIP.—The order shall pro-  
2           vide that members of the PromoFlor Council  
3           shall be appointed by the Secretary from nomi-  
4           nations submitted by qualified wholesale han-  
5           dlers, producers and importers that are quali-  
6           fied handlers, and retailers, as provided in  
7           paragraphs (2) and (3).

8           (2) DISTRIBUTION OF APPOINTMENTS.—

9           (A) IN GENERAL.—The order shall provide  
10           that the membership of the PromoFlor Council  
11           shall be made up 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; and

21                   (iv) 1 member representing cut flow-  
22                   ers and cut greens retailers.

23           (B) DEFINITIONS.—As used in this sub-  
24           section:

1                   (i) QUALIFIED WHOLESALe HAN-  
2                   DLERS.—

3                   (I) IN GENERAL.—The term  
4                   “qualified wholesale handler” means a  
5                   person in business as a floral whole-  
6                   sale jobber or floral supplier that is  
7                   subject to assessments as a qualified  
8                   handler under the order.

9                   (II) DEFINITIONS.—As used in  
10                  this clause:

11                  (aa) FLORAL WHOLESALe  
12                  JOBBER.—The term “floral  
13                  wholesale jobber” means a person  
14                  that conducts a commission or  
15                  other wholesale business in buy-  
16                  ing and selling cut flowers or cut  
17                  greens.

18                  (bb) FLORAL SUPPLIER.—  
19                  The term “floral supplier” means  
20                  a person engaged in acquiring  
21                  cut flowers or cut greens to be  
22                  manufactured into floral articles  
23                  or otherwise processed for resale.

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

4           (I) is engaged—

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

11           (bb) as a first processor of  
12 noncultivated cut greens, in re-  
13 ceiving the cut greens from the  
14 persons that gather the cut  
15 greens for handling; and

16           (II) that is subject to assess-  
17 ments as a qualified handler under  
18 the order.

19           (iii) IMPORTER THAT IS A QUALIFIED  
20 HANDLER.—The term “importer that is a  
21 qualified handler” means an entity—

22           (I) whose principal activity is the  
23 importation of cut flowers or cut  
24 greens into the United States (either  
25 directly or as an agent, broker, or

1           consignee of any person or nation that  
2           produces or handles cut flowers or cut  
3           greens outside the United States for  
4           sale in the United States); and

5                   (II) that is subject to assess-  
6                   ments as a qualified handler under  
7                   the order.

8                   (C) DISTRIBUTION OF QUALIFIED WHOLE-  
9                   SALE HANDLER APPOINTMENTS.—The order  
10                  shall provide that the qualified wholesale han-  
11                  dler appointments made by the Secretary to the  
12                  PromoFlor Council shall take into account the  
13                  geographical distribution of cut flowers and cut  
14                  greens markets in the United States.

15                  (3) NOMINATION PROCESS.—The order shall  
16                  provide that—

17                          (A) 2 nominees be submitted for each ap-  
18                          pointment to the PromoFlor Council;

19                          (B) nominations for each appointment of a  
20                          qualified wholesale handler, producer that is a  
21                          qualified handler, or importer that is a qualified  
22                          handler to the PromoFlor Council shall be  
23                          made by qualified wholesale handlers, producers  
24                          that are qualified handlers, or importers that  
25                          are qualified handlers, respectively, through an

1 election process under regulations prescribed by  
2 the Secretary;

3 ~~(C)~~ nominations for the retailer appoint-  
4 ment shall be made by the American Floral  
5 Marketing Council or a successor entity; and

6 ~~(D)~~ in any case in which qualified whole-  
7 sale handlers, producers that are qualified han-  
8 dlers, importers that are qualified handlers, or  
9 retailers fail to nominate individuals for an ap-  
10 pointment to the PromoFlor Council, the Sec-  
11 retary may appoint a person to fill the vacancy  
12 on a basis provided in the order or other regu-  
13 lations of the Secretary.

14 ~~(4)~~ ALTERNATES.—The order shall provide for  
15 the selection of alternate members of the PromoFlor  
16 Council by the Secretary under procedures specified  
17 in the order.

18 ~~(5)~~ TERMS; COMPENSATION.—The order shall  
19 provide that—

20 ~~(A)~~ each term of appointment to the  
21 PromoFlor Council shall be for 3 years, except  
22 that, of the initial appointments,  $\frac{1}{3}$  of the  
23 terms shall be for 2-year terms,  $\frac{1}{3}$  of the terms  
24 shall be for 3-year terms, and  $\frac{1}{3}$  of the terms  
25 shall be for 4-year terms;

1           (B) no member of the PromoFlor Council  
2           may serve more than 2 consecutive terms of 3  
3           years, except that any member serving an initial  
4           term of 4 years may serve an additional term  
5           of 3 years; and

6           (C) PromoFlor Council members shall  
7           serve without compensation, but shall be reim-  
8           bursed for the expenses of the members in-  
9           curred in performing duties as members of the  
10          PromoFlor Council.

11         (6) EXECUTIVE COMMITTEE.—

12           (A) ESTABLISHMENT.—

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

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

21                   (I) 4 members representing  
22                   qualified wholesale handlers;

23                   (II) 2 members representing pro-  
24                   ducers that are qualified handlers;

1                   (III) 2 members representing im-  
2                   porters that are qualified handlers;  
3                   and

4                   (IV) 1 member representing re-  
5                   tailers.

6                   (iii) ~~SUBSEQUENT MEMBERSHIP.~~—

7                   After the initial appointments, appoint-  
8                   ments to the executive committee shall be  
9                   made so as to ensure that the committee  
10                  reflects, to the maximum extent prac-  
11                  ticable, the membership composition of the  
12                  PromoFlor Council as a whole.

13                  (iv) ~~TERMS.~~—An initial appointment  
14                  to the executive committee shall be for a  
15                  term of 2 years. After the initial appoint-  
16                  ments, an appointment to the executive  
17                  committee shall be for a term of 1 year.

18                  (B) ~~AUTHORITY.~~—The PromoFlor Council  
19                  may delegate to the executive committee the au-  
20                  thority of the Council under the order to hire  
21                  and manage staff and conduct the routine busi-  
22                  ness of the PromoFlor Council consistent with  
23                  the policies determined by the PromoFlor Coun-  
24                  cil.



1       (c) GENERAL RESPONSIBILITIES OF THE  
2 PROMOFLOr COUNCIL.—The order shall define the gen-  
3 eral responsibilities of the PromoFlor Council, which shall  
4 include the responsibility to—

5           (1) administer the order in accordance with the  
6 terms and provisions of the order;

7           (2) make rules and regulations to effectuate the  
8 terms and provisions of the order;

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

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

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

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

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

1           ~~(B)~~ contract or enter into agreements with ap-  
2           propriate persons to implement the plans and  
3           projects, as provided in subsection ~~(e)~~, and pay the  
4           costs of the implementation, or contracts and agree-  
5           ments, with funds received under the order;

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

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

11          ~~(9)~~ recommend to the Secretary amendments to  
12          the order;

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

16                 ~~(A)~~ obligations of the United States or any  
17                 agency of the United States;

18                 ~~(B)~~ general obligations of any State or any  
19                 political subdivision of a State;

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

23                 ~~(D)~~ obligations fully guaranteed as to prin-  
24                 cipal and interest by the United States,

1 except that income from any such invested funds  
2 may only be used for a purpose for which the in-  
3 vested funds may be used; and

4 (11) furnish the Secretary with such informa-  
5 tion as the Secretary may require.

6 ~~(d) BUDGETS; PLANS AND PROJECTS.—~~

7 ~~(1) SUBMISSION OF BUDGETS.—~~The order shall  
8 require the PromoFlor Council to submit to the Sec-  
9 retary for approval budgets on a fiscal year basis of  
10 the anticipated expenses and disbursements of the  
11 PromoFlor Council in the implementation of the  
12 order, including projected costs of cut flowers and  
13 cut greens promotion, consumer information, and re-  
14 lated research plans and projects.

15 ~~(2) PLANS OR PROJECTS.—~~

16 ~~(A) PROMOTION AND CONSUMER INFORMA-~~  
17 ~~TION.—~~The order shall provide—

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

1           (ii) that any plan or project shall be  
2           directed toward increasing the general de-  
3           mand for cut flowers or cut greens and  
4           may not make reference to a private brand  
5           or trade name, point of origin, or source of  
6           supply, except that this clause shall not  
7           preclude the PromoFlor Council from of-  
8           fering the plans and projects of the  
9           PromoFlor Council for use by commercial  
10          parties, under terms and conditions pre-  
11          scribed by the PromoFlor Council and ap-  
12          proved by the Secretary; and

13           (iii) that no plan or project may make  
14           use of unfair or deceptive acts or practices  
15           with respect to quality or value.

16          (B) RESEARCH.—The order shall provide  
17          for—

18           (i) the establishment, implementation,  
19           administration, and evaluation of plans  
20           and projects for market development re-  
21           search, research with respect to the sale,  
22           distribution, marketing, or use of cut flow-  
23           ers or cut greens, and other research with  
24           respect to cut flowers or cut greens mar-

1           keting, promotion, or consumer informa-  
2           tion;

3           (ii) the dissemination of the informa-  
4           tion gained by the activities; and

5           (iii) the disbursement of necessary  
6           funds to carry out this subparagraph.

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.—No budget, or  
15          plan or project for cut flowers or cut greens pro-  
16          motion, consumer information, or related research,  
17          shall be implemented prior to the 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 agree-

1           ment 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 implementation of the plan or project with  
6           funds received by the PromoFlor Council under  
7           the order.

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

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

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

19           (iii) the contracting or agreeing party  
20           shall keep accurate records of all of the  
21           transactions of the party, account for  
22           funds received and expended, make peri-  
23           odic reports to the PromoFlor Council of  
24           activities conducted, and make such other

1 reports as the PromoFlor Council or the  
2 Secretary may require.

3 ~~(2) OTHER CONTRACTS AND AGREEMENTS.—~~

4 The order shall provide that the PromoFlor Council  
5 may enter into a contract or agreement for adminis-  
6 trative services. Any contract or agreement entered  
7 into under this paragraph shall include provisions  
8 comparable to those described in paragraph (1)(B).

9 ~~(f) BOOKS AND RECORDS OF THE PROMOFLO  
10 R COUNCIL.—~~

11 ~~(1) IN GENERAL.—~~The order shall require the  
12 PromoFlor Council to—

13 ~~(A)~~ maintain such books and records  
14 (which shall be available to the Secretary for in-  
15 spection and audit) as the Secretary may pre-  
16 scribe;

17 ~~(B)~~ prepare and submit to the Secretary,  
18 from time to time, such reports as the Sec-  
19 retary may prescribe; and

20 ~~(C)~~ account for the receipt and disburse-  
21 ment of all funds entrusted to the PromoFlor  
22 Council.

23 ~~(2) AUDITS.—~~The PromoFlor Council shall  
24 cause the books and records of the PromoFlor Coun-  
25 cil to be audited by an independent auditor at the

1 end of each fiscal year. A report of each audit shall  
2 be submitted to the Secretary.

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

15 ~~(h) ASSESSMENTS.—~~

16 ~~(1) AUTHORITY.—~~

17 ~~(A) IN GENERAL.—~~The order shall provide  
18 that each qualified handler shall pay to the  
19 PromoFlor Council, in the manner prescribed  
20 by the order, an assessment on each sale of cut  
21 flowers or cut greens to a retailer or an exempt  
22 handler (including each transaction described in  
23 subparagraph ~~(C)(ii)~~), except to the extent the  
24 sale is excluded from assessments under section  
25 ~~6(a)~~.



1           (B) PUBLISHED LISTS.—To facilitate the  
2 payment of assessments under this paragraph,  
3 the PromoFlor Council shall publish lists of  
4 qualified handlers required to pay assessments  
5 under the order and exempt handlers.

6           (C) MAKING DETERMINATIONS.—

7           (i) QUALIFIED HANDLER STATUS.—

8           The order shall contain provisions regard-  
9 ing the determination of the status of a  
10 person as a qualified handler or exempt  
11 handler that include the rules and require-  
12 ments specified in sections 3(4) and 6(b).

13          (ii) COVERED TRANSACTIONS.—

14          (I) IN GENERAL.—The order  
15 shall provide that each non-sale trans-  
16 fer of cut flowers or cut greens to a  
17 retailer from a qualified handler that  
18 is a distribution center (as described  
19 in section 3(4)(A)(ii)(III)), and each  
20 direct sale of cut flowers or cut greens  
21 to a consumer by a qualified handler  
22 that is an importer or producer (as  
23 described in section 3(4)(A)(v)), shall  
24 be treated as a sale of cut flowers or

1 cut greens to a retailer subject to as-  
2 sessments under this subsection.

3 (II) AMOUNT.—The amount of  
4 the assessment under this clause shall  
5 equal—

6 (aa) the price paid by the  
7 distribution center or importer,  
8 respectively, to acquire the cut  
9 flowers or cut greens; and

10 (bb) an amount determined  
11 by multiplying the acquisition  
12 price by a uniform percentage es-  
13 tablished by the PromoFlor  
14 Council to represent the mark-up  
15 of a wholesale handler on a sale  
16 to a retailer (or in the case of a  
17 direct sale to a consumer by a  
18 producer, an amount determined  
19 by applying to the price paid by  
20 the consumer a uniform percent-  
21 age established by the PromoFlor  
22 Council to represent the cost of  
23 producing the article and the  
24 mark-up of a wholesale handler  
25 on a sale to a retailer).

1           (2) ASSESSMENT RATES.—The order shall con-  
2           tain the following terms:

3           (A) INITIAL RATE.—During the first 3  
4           years the order is in effect, the rate of assess-  
5           ment on each sale or transfer of cut flowers or  
6           cut greens shall be  $\frac{1}{2}$  of 1 percent of the gross  
7           sales price of a product sold or (in the case of  
8           transactions described in paragraph (1)(C)(ii))  
9           of the amount of each transaction calculated as  
10          provided in paragraph (1)(C)(ii).

11          (B) CHANGES IN THE RATE.—

12          (i) IN GENERAL.—After the first 3  
13          years the order is in effect, the uniform as-  
14          sessment rate may be increased or de-  
15          creased annually by not more than .25 per-  
16          cent of the gross sales price of a product  
17          sold or (in the case of transactions de-  
18          scribed in paragraph (1)(C)(ii)) of the  
19          amount of each transaction calculated as  
20          provided in paragraph (1)(C)(ii), except  
21          that the assessment rate may in no case  
22          exceed 1 percent of the gross sales price or  
23          transaction amount.

1           (ii) REQUIREMENTS.—Any change in  
2           the rate of assessment under this subpara-  
3           graph—

4                   (I) may be made only if adopted  
5                   by the PromoFlor Council by a  $\frac{2}{3}$   
6                   majority vote and approved by the  
7                   Secretary as necessary to achieve the  
8                   objectives of this Act;

9                   (II) shall be announced by the  
10                  PromoFlor Council at least 30 days  
11                  prior to going into effect; and

12                  (III) shall not be subject to a  
13                  vote in a referendum under section 7.

14           (3) TIMING OF SUBMITTING ASSESSMENTS.—

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

23           (4) REFUNDS FROM ESCROW ACCOUNT.—

1           (A) ESTABLISHMENT OF ESCROW AC-  
2           COUNT.—The order shall provide that the  
3           PromoFlor Council shall—

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

7                   (ii) place into the account an amount  
8                   equal to 10 percent of the total amount of  
9                   assessments collected during the period be-  
10                  ginning on the date the order goes into ef-  
11                  fect, as provided in section 4(b)(3), and  
12                  ending on the date the initial referendum  
13                  on the order provided for in section 7(a) is  
14                  completed.

15          (B) RIGHT TO RECEIVE REFUND.—

16                  (i) IN GENERAL.—The order shall  
17                  provide that, subject to subparagraph (C)  
18                  and the conditions specified in clause (ii),  
19                  any qualified handler shall have the right  
20                  to demand and receive from the PromoFlor  
21                  Council out of the escrow account a one-  
22                  time refund of any assessments paid by or  
23                  on behalf of the qualified handler during  
24                  the time period specified in subparagraph  
25                  (A)(ii), if—

- 1           (I) the qualified handler is re-  
2           quired to pay the assessments;
- 3           (II) the qualified handler does  
4           not support the program established  
5           under this Act;
- 6           (III) the qualified handler de-  
7           mands the refund prior to the conduct  
8           of the referendum on the order under  
9           section 7(a); and
- 10          (IV) the order is not approved by  
11          qualified handlers in the referendum.
- 12          (ii) CONDITIONS.—The right of a  
13          qualified handler to receive a refund under  
14          clause (i) shall be subject to the following  
15          conditions:
- 16               (I) The demand shall be made in  
17               accordance with regulations, on a  
18               form, and within a time period pre-  
19               scribed by the PromoFlor Council.
- 20               (II) The refund shall be made  
21               only on submission of proof satisfac-  
22               tory to the Board that the qualified  
23               handler paid the assessment for which  
24               refund is demanded.

1                   (III) If the amount in the escrow  
2                   account required under subparagraph  
3                   (A) is not sufficient to refund the  
4                   total amount of assessments de-  
5                   manded by all qualified handlers de-  
6                   termined eligible for refunds and the  
7                   order is not approved in the referen-  
8                   dum on the order under section 7(a),  
9                   the PromoFlor Council shall prorate  
10                  the amount of all such refunds among  
11                  all eligible qualified handlers that de-  
12                  mand the refund.

13                  (C) PROGRAM APPROVED.—The order shall  
14                  provide that, if the order is approved in the ref-  
15                  erendum under section 7(a), there shall be no  
16                  refunds made and all funds in the escrow ac-  
17                  count shall be returned to the PromoFlor Coun-  
18                  cil for use by the PromoFlor Council in accord-  
19                  ance with the other provisions of the order.

20                  (5) USE OF ASSESSMENT FUNDS.—The order  
21                  shall provide that assessment funds (less any re-  
22                  funds paid out under the terms of the order required  
23                  under paragraph (4)) shall be used for payment of  
24                  costs incurred in implementing and administering  
25                  the order, with provision for a reasonable reserve,

1 and to cover those administrative costs incurred by  
2 the Secretary in implementing and administering  
3 this Act, except for the salaries of Federal Govern-  
4 ment employees incurred in conducting referenda.

5 (i) PROHIBITION.—The order shall prohibit the use  
6 of any funds received by the PromoFlor Council in any  
7 manner for the purpose of influencing legislation or gov-  
8 ernment action or policy, except that the funds may be  
9 used by the PromoFlor Council for the development and  
10 recommendation to the Secretary of amendments to the  
11 order.

12 (j) BOOKS AND RECORDS; REPORTS.—

13 (1) IN GENERAL.—The order shall provide that  
14 each qualified handler shall maintain, and make  
15 available for inspection, such books and records as  
16 may be required by the order and file reports at the  
17 time, in the manner, and having the content pre-  
18 scribed by the order, to the end that information is  
19 made available to the Secretary and the PromoFlor  
20 Council as is appropriate for the administration or  
21 enforcement of this Act, the order, or any regulation  
22 issued under this Act.

23 (2) CONFIDENTIALITY REQUIRED.—

24 (A) IN GENERAL.—Information obtained  
25 from books, records, or reports under the au-



1           thority provided in paragraph (1), or from re-  
2           ports required under section 6(b)(3), shall be  
3           kept confidential by all officers and employees  
4           of the Department of Agriculture and by the  
5           staff and agents of the PromoFlor Council.

6           (B) ~~SUITS AND HEARINGS.~~—Information  
7           described in subparagraph (A) may be disclosed  
8           to the public only—

9           (i) in a suit or administrative hearing  
10          brought at the request of the Secretary, or  
11          to which the Secretary or any officer of the  
12          United States is a party, involving the  
13          order; and

14          (ii) to the extent the Secretary consid-  
15          ers the information relevant to the suit or  
16          hearing.

17          (C) ~~GENERAL STATEMENTS AND PUBLICA-~~  
18          ~~TION.~~—Nothing in this paragraph may be con-  
19          strued to prohibit—

20          (i) the issuance of general statements,  
21          based on the reports, of the number of per-  
22          sons subject to the order or statistical data  
23          collected from the reports, which state-  
24          ments do not identify the information fur-  
25          nished by any person; or

1                   (ii) the publication, by direction of the  
2                   Secretary, of the name of any person vio-  
3                   lating the order, together with a statement  
4                   of the particular provisions of the order  
5                   violated by the person.

6                   ~~(3) LISTS OF IMPORTERS.—~~

7                   (A) REVIEW.—The order shall provide that  
8                   the staff of the PromoFlor Council periodically  
9                   shall review lists of importers of cut flowers and  
10                  cut greens to determine whether persons on the  
11                  lists are subject to the order.

12                  (B) CUSTOMS SERVICE.—On the request of  
13                  the PromoFlor Council, the United States Cus-  
14                  toms Service shall provide to the PromoFlor  
15                  Council lists of importers of cut flowers and cut  
16                  greens.

17                  ~~(k) CONSULTATIONS WITH INDUSTRY EXPERTS.—~~

18                  (1) IN GENERAL.—The order shall provide that  
19                  the PromoFlor Council, from time to time, may seek  
20                  advice from and consult with experts from the pro-  
21                  duction, import, wholesale, and retail segments of  
22                  the cut flowers and cut greens industry to assist in  
23                  the development of promotion, consumer informa-  
24                  tion, and related research plans and projects.

25                  (2) SPECIAL COMMITTEES.—

1           (A) ~~IN GENERAL.~~—For the purposes de-  
2           scribed in paragraph (1), the order shall au-  
3           thorize the appointment of special committees  
4           composed of persons other than PromoFlor  
5           Council members.

6           (B) ~~CONSULTATION.~~—A committee ap-  
7           pointed under subparagraph (A)—

8                   (i) may not provide advice or rec-  
9                   ommendations to an agency or officer of  
10                  the Federal Government; and

11                  (ii) shall consult directly with the  
12                  PromoFlor Council.

13          (H) ~~OTHER TERMS OF THE ORDER.~~—The order shall  
14          contain such other terms and provisions, consistent with  
15          this Act, as are necessary to carry out this Act (including  
16          provision for the assessment of a charge for each late pay-  
17          ment of assessments under subsection (h) and for carrying  
18          out section 6).

19          **SEC. 6. EXCLUSION; DETERMINATIONS.**

20          (a) ~~EXCLUSION.~~—An order issued under this Act  
21          shall exclude from assessments under the order any sale  
22          of cut flowers or cut greens for export from the United  
23          States.

24          (b) ~~MAKING DETERMINATIONS.~~—

1           (1) IN GENERAL.—For purposes of applying the  
2           \$750,000 annual sales limitation to a person to de-  
3           termine the status of the person as a qualified han-  
4           dler or an exempt handler under section 3(4), or to  
5           a specific facility in order to determine the status of  
6           the facility as an eligible separate facility under sec-  
7           tion 7(b)(2), an order issued under this Act shall  
8           provide that—

9                   (A) a determination of the annual sales  
10                  volume of a person or facility shall be based on  
11                  the sales of cut flowers and cut greens by the  
12                  person or facility during the most recently com-  
13                  pleted calendar year, except as provided in sub-  
14                  paragraph (B); and

15                  (B) in the case of a new business or other  
16                  operation for which complete data on sales dur-  
17                  ing all or part of the most recently completed  
18                  calendar year are not available to the  
19                  PromoFlor Council, the determination may be  
20                  made using an alternative time period or other  
21                  alternative procedures specified in the order.

22           (2) RULE OF ATTRIBUTION.—

23                   (A) IN GENERAL.—For purposes of deter-  
24                  mining the annual sales volume of a person or

1 a separate facility of a person, sales attrib-  
2 utable to a person shall include—

3 (i) in the case of an individual, sales  
4 attributable to the spouse, children, grand-  
5 children, parents, and grandparents of the  
6 individual;

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

11 (iii) in the case of an individual and  
12 partnership, sales attributable to any cor-  
13 poration or other entity in which the indi-  
14 vidual or partnership owns more than 50  
15 percent of the stock or (if the entity is not  
16 a corporation) that the individual or part-  
17 nership controls; and

18 (iv) in the case of a corporation, sales  
19 attributable to any corporate subsidiary or  
20 other corporation or entity in which the  
21 corporation owns more than 50 percent of  
22 the stock or (if the entity is not a corpora-  
23 tion) that the corporation controls.

24 (B) STOCK AND OWNERSHIP INTEREST.—

25 For purposes of this paragraph, stock or an

1 ownership interest in an entity that is owned by  
2 the spouse, children, grandchildren, parents,  
3 grandparents, or partners of an individual, or  
4 by a partnership in which a person is a partner,  
5 or by a corporation more than 50 percent of the  
6 stock of which is owned by a person, shall be  
7 treated as owned by the individual or person.

8 (3) REPORTS.—For purposes of this subsection,  
9 the order may require a person that sells cut flowers  
10 or cut greens to retailers to submit reports to the  
11 PromoFlor Council on annual sales by the person.  
12 The reports shall be subject to the confidentiality re-  
13 quirements of section 5(j)(2).

14 **SEC. 7. REFERENDA.**

15 (a) REQUIREMENT FOR INITIAL REFERENDUM.—

16 (1) CONDUCT.—Not later than 3 years after  
17 the issuance of an order under section 4(b)(3), the  
18 Secretary shall conduct a referendum among quali-  
19 fied handlers required to pay assessments under the  
20 order, as provided in section 5(h)(1), subject to the  
21 voting requirements of subsection (b), to ascertain  
22 whether or not the order then in effect shall be con-  
23 tinued.

24 (2) APPROVAL OF ORDER NEEDED.—The order  
25 shall be continued only if the Secretary determines

1 that the order has been approved by a simple major-  
2 ity of all votes cast in the referendum. If the order  
3 is not approved, the Secretary shall terminate the  
4 order as provided in subsection (d).

5 ~~(b) VOTES PERMITTED.—~~

6 ~~(1) IN GENERAL.—~~Each qualified handler eligi-  
7 ble to vote in a referendum under this section shall  
8 be entitled to cast 1 vote for each separate facility  
9 of the person that is an eligible separate facility, as  
10 defined in paragraph ~~(2)~~.

11 ~~(2) ELIGIBLE SEPARATE FACILITY.—~~For pur-  
12 poses of paragraph ~~(1)~~:

13 ~~(A) SEPARATE FACILITY.—~~A handling or  
14 marketing facility of a qualified handler shall be  
15 considered a separate facility if the facility is  
16 physically located away from other facilities of  
17 the qualified handler or the business function of  
18 the facility is substantially different than the  
19 functions of other facilities owned or operated  
20 by the qualified handler.

21 ~~(B) ELIGIBILITY.—~~A separate facility of a  
22 qualified handler shall be considered an eligible  
23 separate facility if the annual sales of cut flow-  
24 ers and cut greens to retailers and exempt han-  
25 dlers from the facility are \$750,000 or more.

1           (C) ANNUAL SALES DETERMINED.—For  
2           purposes of determining the amount of annual  
3           sales of cut flowers and cut greens under sub-  
4           paragraph (B), the requirements of subpara-  
5           graphs (A) and (C) of section 3(4) shall apply.

6           (c) SUSPENSION OR TERMINATION REFERENDA.—  
7           Effective beginning on the date that is 3 years after an  
8           order issued under this Act is approved in a referendum  
9           conducted under subsection (a), the Secretary—

10           (1) at the discretion of the Secretary, may con-  
11           duct at any time a referendum of qualified handlers  
12           required to pay assessments under the order, as pro-  
13           vided in section 5(h)(1), subject to the voting re-  
14           quirements of subsection (b), to ascertain whether or  
15           not qualified handlers favor suspension or termi-  
16           nation of the order; and

17           (2) whenever requested by the PromoFlor  
18           Council or by a representative group comprising 30  
19           percent or more of all qualified handlers required to  
20           pay assessments under the order, as provided in sec-  
21           tion 5(h)(1), shall conduct a referendum of all quali-  
22           fied handlers required to pay assessments under the  
23           order, as provided in section 5(h)(1), subject to the  
24           voting requirements of subsection (b), to ascertain



1 whether or not qualified handlers favor suspension  
2 or termination of the order.

3 ~~(d) SUSPENSION OR TERMINATION.—If, as a result~~  
4 ~~of the referendum conducted under subsection (a)(2), the~~  
5 ~~Secretary determines that the order has not been approved~~  
6 ~~by a simple majority of all votes cast in the referendum,~~  
7 ~~or as a result of a referendum conducted under subsection~~  
8 ~~(c), the Secretary determines that suspension or termi-~~  
9 ~~nation of the order is favored by a simple majority of all~~  
10 ~~votes cast in the referendum, the Secretary shall—~~

11 ~~(1) within 180 days after the referendum, sus-~~  
12 ~~pend or terminate, as appropriate, collection of as-~~  
13 ~~sessments under the order; and~~

14 ~~(2) suspend or terminate, as appropriate, activi-~~  
15 ~~ties under the order in an orderly manner as soon~~  
16 ~~as practicable.~~

17 ~~(e) MANNER OF CONDUCTING REFERENDA.—~~  
18 ~~Referenda under this section shall be conducted in such~~  
19 ~~manner as is determined appropriate by the Secretary.~~

20 **SEC. 8. PETITION AND REVIEW.**

21 ~~(a) PETITION AND HEARING.—~~

22 ~~(1) PETITION.—A person subject to an order~~  
23 ~~issued under this Act may file with the Secretary a~~  
24 ~~petition—~~

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

5           (B) requesting a modification of the order  
6           or an exemption from the order.

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

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

19          (b) REVIEW.—

20           (1) COMMENCEMENT OF ACTION.—The district  
21          courts of the United States in any district in which  
22          a person that is a petitioner under subsection (a) re-  
23          sides or carries on business shall have jurisdiction to  
24          review the ruling of the Secretary on the petition of  
25          the person, if a complaint requesting the review is

1 filed within 20 days after the date of the entry of  
2 the ruling by the Secretary.

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

6 ~~(3) REMAND.—If the court in a proceeding~~  
7 ~~under this subsection determines that the ruling of~~  
8 ~~the Secretary on the petition of the person is not in~~  
9 ~~accordance with law, the court shall remand the~~  
10 ~~matter to the Secretary with directions—~~

11 ~~(A) to make such ruling as the court shall~~  
12 ~~determine to be in accordance with law; or~~

13 ~~(B) to take such further action as, in the~~  
14 ~~opinion of the court, the law requires.~~

15 ~~(c) ENFORCEMENT UNDER SECTION 9.—The pend-~~  
16 ~~ency of proceedings instituted under this section shall not~~  
17 ~~impede, hinder, or delay the Attorney General or the Sec-~~  
18 ~~retary from obtaining relief under section 9.~~

19 **SEC. 9. ENFORCEMENT.**

20 ~~(a) JURISDICTION.—A district court of the United~~  
21 ~~States shall have jurisdiction to enforce, and to prevent~~  
22 ~~and restrain any person from violating, this Act or an~~  
23 ~~order or regulation made or issued by the Secretary under~~  
24 ~~this Act.~~

1       (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-  
2 tion brought under subsection (a) shall be referred to the  
3 Attorney General for appropriate action, except that the  
4 Secretary is not required to refer to the Attorney General  
5 a violation of this Act, or a violation of an order or regula-  
6 tion issued under this Act, if the Secretary believes that  
7 the administration and enforcement of this Act would be  
8 adequately served by administrative action under sub-  
9 section (c) or suitable written notice or warning to the per-  
10 son who committed or is committing the violation.

11       (c) CIVIL PENALTIES AND ORDERS.—

12           (1) CIVIL PENALTIES.—

13               (A) IN GENERAL.—A person that violates  
14 a provision of this Act, or an order or regula-  
15 tion issued by the Secretary under this Act, or  
16 who fails or refuses to pay, collect, or remit any  
17 assessment or fee required of the person under  
18 an order or regulation issued under this Act,  
19 may be assessed by the Secretary—

20                   (i) a civil penalty of not less than  
21 \$500 nor more than \$5,000 for each viola-  
22 tion; and

23                   (ii) in the case of a willful failure to  
24 remit an assessment as required by an

1           order or regulation, an additional penalty  
2           equal to the amount of the assessment.

3           ~~(B) SEPARATE OFFENSES.—~~Each violation  
4           shall be a separate offense.

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

11          ~~(3) NOTICE AND HEARING.—~~No penalty shall  
12          be assessed ~~or~~ cease and desist order issued by the  
13          Secretary under this subsection unless the Secretary  
14          gives the person against whom the penalty is as-  
15          sessed ~~or~~ the order is issued notice and opportunity  
16          for a hearing before the Secretary with respect to  
17          the violation. Any such hearing shall be conducted in  
18          accordance with section ~~10(b)(2)~~ and shall be held  
19          within the United States judicial district in which  
20          the residence or principal place of business of the  
21          person against whom the penalty is assessed ~~or~~ the  
22          order is issued is located.

23          ~~(4) 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.—~~

6 ~~(A) IN GENERAL.—~~Any person against  
7 whom a violation is found and a civil penalty is  
8 assessed or cease and desist order is issued  
9 under subsection (c) may obtain review of the  
10 penalty or order by—

11 ~~(i) filing, within the 30-day period be-~~  
12 ~~ginning on the date the penalty is assessed~~  
13 ~~or order is issued, a notice of appeal in the~~  
14 ~~district court of the United States for the~~  
15 ~~district in which the person resides or has~~  
16 ~~a principal place of business, or in the~~  
17 ~~United States district court for the Dis-~~  
18 ~~trict of Columbia; and~~

19 ~~(ii) simultaneously sending a copy of~~  
20 ~~the notice by certified mail to the Sec-~~  
21 ~~retary.~~

22 ~~(B) COPY OF RECORD.—~~The Secretary  
23 shall promptly file in the court a certified copy  
24 of the record on which the Secretary found that  
25 the person had committed a violation.

1           (2) 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.—

6           (1) IN GENERAL.—A person that fails to obey  
7 a cease and desist order issued under subsection (c)  
8 after the order has become final and unappealable,  
9 or after the appropriate United States district court  
10 has entered a final judgment in favor of the Sec-  
11 retary, shall be subject to a civil penalty assessed by  
12 the Secretary of not more than \$5,000 for each of-  
13 fense, after opportunity for a hearing and for judi-  
14 cial review under the procedures specified in sub-  
15 sections (c) and (d).

16           (2) SEPARATE VIOLATIONS.—Each day during  
17 which the person fails to obey an order shall be con-  
18 sidered as a separate violation of the order.

19           (f) FAILURE TO PAY A PENALTY.—

20           (1) IN GENERAL.—If a person fails to pay a  
21 civil penalty assessed under subsection (c) or (e)  
22 after the penalty has become final and unappealable,  
23 or after the appropriate United States district court  
24 has entered final judgment in favor of the Secretary,  
25 the Secretary shall refer the matter to the Attorney

1 General for recovery of the amount assessed in any  
2 United States district court in which the person re-  
3 sides or has a principal place of business.

4 (2) SCOPE OF REVIEW.—In the action, the va-  
5 lidity and appropriateness of the civil penalty shall  
6 not be subject to review.

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

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

11 (a) INVESTIGATIONS.—The Secretary may make such  
12 investigations as the Secretary considers necessary for the  
13 effective administration of this Act, or to determine wheth-  
14 er any person has engaged or is engaging in any act that  
15 constitutes a violation of this Act or an order or regulation  
16 issued under this Act.

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

18 (1) IN GENERAL.—For the purpose of conduct-  
19 ing an investigation under subsection (a), the Sec-  
20 retary may administer oaths and affirmations, and  
21 issue subpoenas to require the production of any  
22 records that are relevant to the inquiry. The produc-  
23 tion of any records may be required from any place  
24 in the United States.



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

10          (c) AID OF COURTS.—

11           (1) IN GENERAL.—In the case of contumacy by,  
12           or refusal to obey a subpoena issued to, any person,  
13           the Secretary may invoke the aid of any court of the  
14           United States within the jurisdiction of which the in-  
15           vestigation or proceeding is carried on, or where the  
16           person resides or carries on business, in order to en-  
17           force a subpoena issued under subsection (b).

18           (2) ORDER.—The court may issue an order re-  
19           quiring the person to comply with such a subpoena.

20           (3) FAILURE TO OBEY.—Any failure to obey  
21           the order of the court may be punished by the court  
22           as a contempt of the order.

23           (4) PROCESS.—Process in any proceeding  
24           under this subsection may be served in the United  
25           States judicial district in which the person being

1       proceeded against resides or carries on business or  
2       wherever the person may be found.

3       **SEC. 11. CONFIDENTIALITY.**

4       (a) **PROHIBITION.**—No information on how a person  
5       voted in a referendum conducted under this Act shall be  
6       made public.

7       (b) **PENALTY.**—Any person who knowingly violates  
8       subsection (a) or the confidentiality terms of an order, as  
9       described in section 5(j)(2), shall be subject to a fine of  
10      not less than \$1,000 nor more than \$10,000 or to impris-  
11      onment for not more than 1 year, or both, and, if an offi-  
12      cer or employee of the Department of Agriculture or the  
13      PromoFlor Council, shall be removed from office.

14      (c) **ADDITIONAL PROHIBITION.**—No information ob-  
15      tained under this Act may be made available to any agency  
16      or officer of the Federal Government for any purpose  
17      other than the implementation of this Act or an investiga-  
18      tory or enforcement action necessary for the implementa-  
19      tion of this Act.

20      (d) **WITHHOLDING INFORMATION FROM CONGRESS**  
21      **PROHIBITED.**—Nothing in this Act shall be construed to  
22      authorize the withholding of information from Congress.

1 **SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR**  
2 **TERMINATE ORDER.**

3 Whenever the Secretary finds that an order issued  
4 under this Act, or any provision of the order, obstructs  
5 or does not tend to effectuate the declared policy of this  
6 Act, the Secretary shall terminate or suspend the oper-  
7 ation of the order or provision under such terms as the  
8 Secretary determines appropriate.

9 **SEC. 13. CONSTRUCTION.**

10 (a) **TERMINATION OR SUSPENSION NOT AN**  
11 **ORDER.**—The termination or suspension of an order, or  
12 any provision of an order, shall not be considered an order  
13 within the meaning of this Act.

14 (b) **PRODUCER RIGHTS.**—This Act—

15 (1) may not be construed to provide for control  
16 of production or otherwise limit the right of individ-  
17 ual cut flowers and cut greens producers to produce  
18 cut flowers and cut greens; and

19 (2) shall be construed to treat all persons pro-  
20 ducing cut flowers and cut greens fairly and to im-  
21 plement any order established under this Act in an  
22 equitable manner.

23 (c) **OTHER PROGRAMS.**—Nothing in this Act may be  
24 construed to preempt or supersede any other program re-  
25 lating to cut flowers or cut greens promotion and

1 consumer information organized and operated under the  
2 laws of the United States or a State.

3 **SEC. 14. REGULATIONS.**

4 The Secretary may issue such regulations as are nec-  
5 essary to carry out this Act and the powers vested in the  
6 Secretary by this Act, including regulations relating to the  
7 assessment of late payment charges.

8 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) ~~IN GENERAL.~~—There are authorized to be appro-  
10 priated for each fiscal year such sums as are necessary  
11 to carry out this Act.

12 (b) ~~ADMINISTRATIVE EXPENSES.~~—Funds appro-  
13 priated under subsection (a) may not be used for payment  
14 of the expenses or expenditures of the PromoFlor Council  
15 in administering any provision of an order issued under  
16 this Act.

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

18 (a) *SHORT TITLE.*—This Act may be cited as the  
19 “Fresh Cut Flowers and Fresh Cut Greens Promotion and  
20 Information Act of 1993”.

21 (b) *TABLE OF CONTENTS.*—The table of contents of this  
22 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.*

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

2 (a) *FINDINGS.—Congress finds that—*

3 (1) *fresh cut flowers and fresh cut greens are an*  
4 *integral part of life in the United States, are enjoyed*  
5 *by millions of persons every year for a multitude of*  
6 *special purposes (especially important personal*  
7 *events), and contribute a natural and beautiful ele-*  
8 *ment to the human environment;*

9 (2)(A) *cut flowers and cut greens are produced*  
10 *by 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*

14 (B) *the production, handling, and marketing of*  
15 *cut flowers and cut greens constitute a key segment of*  
16 *the United States horticultural industry and thus a*  
17 *significant part of the overall agricultural economy of*  
18 *the United States;*

19 (3) *handlers play a vital role in the marketing*  
20 *of cut flowers and cut greens in that handlers—*

1           (A) purchase most of the cut flowers and cut  
2 greens marketed by producers;

3           (B) prepare the cut flowers and cut greens  
4 for retail consumption;

5           (C) serve as an intermediary between the  
6 source of the product and the retailer;

7           (D) otherwise facilitate the entry of cut  
8 flowers and cut greens into the current of domes-  
9 tic commerce; and

10          (E) add efficiencies to the market process  
11 that ensure the availability of a much greater  
12 variety of the product to retailers and consumers;

13          (4) it is widely recognized that it is in the public  
14 interest and important to the agricultural economy of  
15 the United States to provide an adequate, steady sup-  
16 ply of cut flowers and cut greens at reasonable prices  
17 to the consumers of the United States;

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

20          (B) cut flowers and cut greens that do not move  
21 in interstate or foreign channels of commerce but only  
22 in intrastate commerce directly affect interstate com-  
23 merce in cut flowers and cut greens;

24          (6) the maintenance and expansion of markets  
25 in existence on the date of enactment of this Act, and

1        *the development of new or improved markets or uses*  
2        *for cut flowers and cut greens, are needed to preserve*  
3        *and strengthen the economic viability of the domestic*  
4        *cut flowers and cut greens industry for the benefit of*  
5        *producers, handlers, retailers, and the entire floral in-*  
6        *dustry;*

7                *(7) generic programs of promotion and consumer*  
8        *information can be effective in maintaining and de-*  
9        *veloping markets for cut flowers and cut greens, and*  
10       *have the advantage of equally enhancing the market*  
11       *position for all cut flowers and cut greens;*

12               *(8) because cut flowers and cut greens producers*  
13       *are primarily agriculture-oriented rather than pro-*  
14       *motion-oriented, and because the floral marketing in-*  
15       *dustry within the United States is comprised mainly*  
16       *of small-sized and medium-sized businesses, the devel-*  
17       *opment and implementation of an adequate and co-*  
18       *ordinated national program of generic promotion and*  
19       *consumer information necessary for the maintenance*  
20       *of markets in existence on the date of enactment of*  
21       *this Act and the development of new markets for cut*  
22       *flowers and cut greens have been prevented;*

23               *(9) there exist established State and commodity-*  
24       *specific producer-funded programs of promotion and*  
25       *research that are valuable efforts to expand markets*

1     *for domestic producers of cut flowers and cut greens*  
2     *and that will benefit from the promotion and*  
3     *consumer information program authorized by this Act*  
4     *in that the program will enhance the market develop-*  
5     *ment efforts of the programs for domestic producers;*

6             *(10) an effective and coordinated method for en-*  
7     *sureing cooperative and collective action in providing*  
8     *for and financing a nationwide program of generic*  
9     *promotion and consumer information is needed to en-*  
10    *sure that the cut flowers and cut greens industry will*  
11    *be able to provide, obtain, and implement programs*  
12    *of promotion and consumer information necessary to*  
13    *maintain, expand, and develop markets for cut flow-*  
14    *ers and cut greens; and*

15            *(11) the most efficient method of financing such*  
16    *a nationwide program is to assess cut flowers and cut*  
17    *greens at the point at which the flowers and greens*  
18    *are sold by handlers into the retail market.*

19            *(b) POLICY AND PURPOSE.—It is the policy of Con-*  
20    *gress that it is in the public interest, and it is the purpose*  
21    *of this Act, to authorize the establishment, through the exer-*  
22    *cise of the powers provided in this Act, of an orderly proce-*  
23    *dure for the development and financing (through an ade-*  
24    *quate assessment on cut flowers and cut greens sold by han-*  
25    *dlers to retailers and related entities in the United States)*



1 *of an effective and coordinated program of generic pro-*  
2 *motion, consumer information, and related research de-*  
3 *signed to strengthen the position of the cut flowers and cut*  
4 *greens industry in the marketplace and to maintain, de-*  
5 *velop, and expand markets for cut flowers and cut greens.*

6 **SEC. 3. DEFINITIONS.**

7 *As used in this Act:*

8 (1) *CONSUMER INFORMATION.*—The term  
9 “consumer information” means any action or pro-  
10 gram that provides information to consumers and  
11 other persons on appropriate uses under varied cir-  
12 cumstances, and on the care and handling, of cut  
13 flowers or cut greens.

14 (2) *CUT FLOWERS AND CUT GREENS.*—

15 (A) *IN GENERAL.*—

16 (i) *CUT FLOWERS.*—The term “cut  
17 flowers” includes all flowers cut from grow-  
18 ing plants that are used as fresh-cut flowers  
19 and that are produced under cover or in  
20 field operations.

21 (ii) *CUT GREENS.*—The term “cut  
22 greens” includes all cultivated or  
23 noncultivated decorative foliage cut from  
24 growing plants that are used as fresh-cut  
25 decorative foliage (except Christmas trees)

1           *and that are produced under cover or in*  
2           *field operations.*

3           (iii) *EXCLUSIONS.—The terms “cut*  
4           *flowers” and “cut greens” do not include a*  
5           *foliage plant, floral supply, or flowering*  
6           *plant.*

7           (B) *SUBSTANTIAL PORTION.—In any case*  
8           *in which a handler packages cut flowers or cut*  
9           *greens with hard goods in an article (such as a*  
10           *gift basket or similar presentation) for sale to a*  
11           *retailer, the PromoFlor Council may determine,*  
12           *under procedures specified in the order, that the*  
13           *cut flowers or cut greens in the article do not*  
14           *constitute a substantial portion of the value of*  
15           *the article and that, based on the determination,*  
16           *the article shall not be treated as an article of*  
17           *cut flowers or cut greens subject to assessment*  
18           *under the order.*

19           (3) *GROSS SALES PRICE.—The term “gross sales*  
20           *price” means the total amount of the transaction in*  
21           *a sale of cut flowers or cut greens from a handler to*  
22           *a retailer or exempt handler.*

23           (4) *HANDLER.—*

24           (A) *QUALIFIED HANDLER.—*

1           (i) *IN GENERAL.*—The term “qualified  
2 handler” means a person (including a coop-  
3 erative) operating in the cut flowers or cut  
4 greens marketing system—

5           (I) that sells domestic or imported  
6 cut flowers or cut greens to retailers  
7 and exempt handlers; and

8           (II) whose annual sales of cut  
9 flowers and cut greens to retailers and  
10 exempt handlers are \$750,000 or more.

11       (ii) *INCLUSIONS AND EXCLUSIONS.*—

12           (I) *IN GENERAL.*—The term  
13 “qualified handler” includes—

14           (aa) bouquet manufacturers  
15 (subject to paragraph (2)(B));

16           (bb) an auction house that  
17 clears the sale of cut flowers and  
18 cut greens to retailers and exempt  
19 handlers through a central clear-  
20 inghouse; and

21           (cc) a distribution center  
22 that is owned or controlled by a  
23 retailer if the predominant retail  
24 business activity of the retailer is  
25 floral sales.

1           (II) *TRANSFERS.*—*For the pur-*  
2           *pose of determining sales of cut flowers*  
3           *and cut greens to a retailer from a dis-*  
4           *tribution center described in subclause*  
5           *(I)(cc), each non-sale transfer to a re-*  
6           *tailer shall be treated as a sale in an*  
7           *amount calculated as provided in sub-*  
8           *paragraph (C).*

9           (III) *TRANSPORTATION OR DELIV-*  
10          *ERY.*—*The term “qualified handler”*  
11          *does not include a person who only*  
12          *physically transports or delivers cut*  
13          *flowers or cut greens.*

14          (iii) *CONSTRUCTION.*—

15           (I) *IN GENERAL.*—*The term*  
16           *“qualified handler” includes an im-*  
17           *porter or producer that sells cut flowers*  
18           *or cut greens that the importer or pro-*  
19           *ducer has imported into the United*  
20           *States or produced, respectively, di-*  
21           *rectly to consumers and whose sales of*  
22           *the cut flowers and cut greens (as cal-*  
23           *culated under subparagraph (C)), to-*  
24           *gether with sales of cut flowers and cut*

1           *greens to retailers or exempt handlers,*  
2           *annually are \$750,000 or more.*

3           (II) *SALES.*—*Each direct sale to*  
4           *a consumer by a qualified handler de-*  
5           *scribed in subclause (I) shall be treated*  
6           *as a sale to a retailer or exempt han-*  
7           *dlers in an amount calculated as pro-*  
8           *vided in subparagraph (C).*

9           (III) *DEFINITIONS.*—*As used in*  
10          *this paragraph:*

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

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

17           (B) *EXEMPT HANDLER.*—*The term “exempt*  
18           *handler” means a person who would otherwise be*  
19           *considered to be a qualified handler, except that*  
20           *the annual sales by the person of cut flowers and*  
21           *cut greens to retailers and other exempt handlers*  
22           *are less than \$750,000.*

23           (C) *ANNUAL SALES DETERMINED.*—

24           (i) *IN GENERAL.*—*Except as provided*  
25           *in clause (ii), for the purpose of determin-*

1            *ing the amount of annual sales of cut flow-*  
2            *ers and cut greens under subparagraphs (A)*  
3            *and (B), the amount of a sale shall be deter-*  
4            *mined on the basis of the gross sales price*  
5            *of the cut flowers and cut greens sold.*

6            *(ii) TRANSFERS.—*

7                    *(I) NON-SALE TRANSFERS AND DI-*  
8                    *RECT SALES BY IMPORTERS.—Subject*  
9                    *to subclause (III), in the case of a non-*  
10                   *sale transfer of cut flowers or cut*  
11                   *greens from a distribution center (as*  
12                   *described in subparagraph (A)(ii)(II)),*  
13                   *or a direct sale to a consumer by an*  
14                   *importer (as described in subpara-*  
15                   *graph (A)(iii)), the amount of the sale*  
16                   *shall be equal to the sum of—*

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

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

1                   up of a wholesale handler on a  
2                   sale to a retailer.

3                   (II) *DIRECT SALES BY PRODUC-*  
4                   *ERS.*—Subject to subclause (III), in the  
5                   case of a direct sale to a consumer by  
6                   a producer (as described in subpara-  
7                   graph (A)(iii)), 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 percent-  
11                  age established by an order to represent  
12                  the cost of producing the article and  
13                  the mark-up of a wholesale handler on  
14                  a sale to a retailer.

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

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

21                         (bb) approval by the Sec-  
22                         retary after public notice and op-  
23                         portunity for comment in accord-  
24                         ance with section 553 of title 5,  
25                         United States Code, and without

1                                    *regard to sections 556 and 557 of*  
2                                    *such title.*

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

6                    (6) *PERSON.*—*The term “person” means any in-*  
7                    *dividual, group of individuals, firm, partnership, cor-*  
8                    *poration, joint stock company, association, society,*  
9                    *cooperative, or other legal entity.*

10                    (7) *PROMOFLO* *COUNCIL.*—*The term*  
11                    *“PromoFlor Council” means the Fresh Cut Flowers*  
12                    *and Fresh Cut Greens Promotion Council established*  
13                    *under section 5(b).*

14                    (8) *PROMOTION.*—*The term “promotion” means*  
15                    *any action determined by the Secretary to advance*  
16                    *the image, desirability, or marketability of cut flowers*  
17                    *or cut greens, including paid advertising.*

18                    (9) *RESEARCH.*—*The term “research” means*  
19                    *market research and studies limited to the support of*  
20                    *advertising, market development, and other promotion*  
21                    *efforts and consumer information efforts relating to*  
22                    *cut flowers or cut greens, including educational ac-*  
23                    *tivities.*

24                    (10) *RETAILER.*—



1           (A) *IN GENERAL.*—The term “retailer”  
2 means a person (such as a retail florist, super-  
3 market, mass market retail outlet, or other end-  
4 use seller), as described in an order, that sells cut  
5 flowers or cut greens to consumers, and a dis-  
6 tribution center described in subparagraph  
7 (B)(i).

8           (B) *DISTRIBUTION CENTERS.*—

9           (i) *IN GENERAL.*—The term “retailer”  
10 includes a distribution center that is—

11                   (I) owned or controlled by a per-  
12 son described in subparagraph (A), or  
13 owned or controlled cooperatively by a  
14 group of the persons, if the predomi-  
15 nant retail business activity of the per-  
16 son is not floral sales; or

17                   (II) independently owned but op-  
18 erated primarily to provide food prod-  
19 ucts to retail stores.

20           (ii) *IMPORTERS AND PRODUCERS.*—An  
21 independently owned distribution center de-  
22 scribed in clause (i)(II) that also is an im-  
23 porter or producer of cut flowers or cut  
24 greens shall be subject to the rules of con-  
25 struction specified in paragraph (4)(A)(iii)

1                   and, for the purpose of the rules of construc-  
2                   tion, be considered to be the seller of the ar-  
3                   ticles directly to the consumer.

4                   (11) *SECRETARY*.—The term “Secretary” means  
5                   the Secretary of Agriculture.

6                   (12) *STATE*.—The term “State” means each of  
7                   the several States of the United States, the District of  
8                   Columbia, the Commonwealth of Puerto Rico, the  
9                   Commonwealth of the Northern Mariana Islands, the  
10                  United States Virgin Islands, Guam, American  
11                  Samoa, the Republic of the Marshall Islands, the Fed-  
12                  erated States of Micronesia, and the Republic of  
13                  Palau (until such time as the Compact of Free Asso-  
14                  ciation is ratified).

15                  (13) *UNITED STATES*.—The term “United  
16                  States” means the States collectively.

17 **SEC. 4. ISSUANCE OF ORDERS.**

18                  (a) *IN GENERAL*.—

19                  (1) *ISSUANCE*.—To effectuate the policy of this  
20                  Act specified in section 2(b), the Secretary, subject to  
21                  the procedures provided in subsection (b), shall issue  
22                  orders under this Act applicable to qualified handlers  
23                  of cut flowers and cut greens.

24                  (2) *SCOPE*.—Any order shall be national in  
25                  scope.

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

3     (b) *PROCEDURES.*—

4           (1) *PROPOSAL FOR AN ORDER.*—

5           (A) *SECRETARY.*—The Secretary may pro-  
6     pose the issuance of an order.

7           (B) *OTHER PERSONS.*—An industry group  
8     that represents a substantial number of the in-  
9     dustry members who are to be assessed under the  
10    order, or any other person who will be affected  
11    by this Act, may request the issuance of, and  
12    submit a proposal for, an order.

13          (2) *PUBLICATION OF PROPOSAL.*—The Secretary  
14    shall publish a proposed order and give notice and  
15    opportunity for public comment on the proposed order  
16    not later than 60 days after the earlier of—

17           (A) the date on which the Secretary pro-  
18     poses an order, as provided in paragraph (1)(A);  
19     and

20           (B) the date of the receipt by the Secretary  
21     of a proposal for an order, as provided in para-  
22     graph (1)(B).

23          (3) *ISSUANCE OF ORDER.*—

24           (A) *IN GENERAL.*—After notice and oppor-  
25     tunity for public comment are provided in ac-

1           *cordance with paragraph (2), the Secretary shall*  
2           *issue the order, taking into consideration the*  
3           *comments received and including in the order*  
4           *such provisions as are necessary to ensure that*  
5           *the order is in conformity with this Act.*

6           (B) *EFFECTIVE DATE.*—*The order shall be*  
7           *issued and become effective not later than 180*  
8           *days after publication of the proposed order.*

9           (c) *AMENDMENTS.*—*The Secretary, from time to time,*  
10          *may amend an order. The provisions of this Act applicable*  
11          *to an order shall be applicable to any amendment to an*  
12          *order.*

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

14          (a) *IN GENERAL.*—*An order shall contain the terms*  
15          *and provisions specified in this section.*

16          (b) *PROMOFLOR COUNCIL.*—

17                  (1) *ESTABLISHMENT AND MEMBERSHIP.*—

18                          (A) *ESTABLISHMENT.*—*The order shall pro-*  
19                          *vide for the establishment of a Fresh Cut Flowers*  
20                          *and Fresh Cut Greens Promotion Council, con-*  
21                          *sisting of 25 members, to administer the order.*

22                          (B) *MEMBERSHIP.*—

23                                  (i) *APPOINTMENT.*—*The order shall*  
24                                  *provide that members of the PromoFlor*  
25                                  *Council shall be appointed by the Secretary*

1           *from nominations submitted as provided in*  
2           *paragraphs (2) and (3).*

3           (ii) *COMPOSITION.—The PromoFlor*  
4           *Council shall consist of—*

5                   (i) *participating qualified han-*  
6                   *dlers representing qualified wholesale*  
7                   *handlers and producers and importers*  
8                   *that are qualified handlers;*

9                   (ii) *representatives of traditional*  
10                  *retailers; and*

11                  (iii) *representatives of persons*  
12                  *who produce fresh cut flowers and fresh*  
13                  *cut greens.*

14          (2) *DISTRIBUTION OF APPOINTMENTS.—*

15                  (A) *IN GENERAL.—The order shall provide*  
16                  *that the membership of the PromoFlor Council*  
17                  *shall consist of—*

18                          (i) *14 members representing qualified*  
19                          *wholesale handlers of domestic or imported*  
20                          *cut flowers and cut greens;*

21                          (ii) *3 members representing producers*  
22                          *that are qualified handlers of cut flowers*  
23                          *and cut greens;*

1                   (iii) 3 members representing importers  
2                   that are qualified handlers of cut flowers  
3                   and cut greens;

4                   (iv) 3 members representing tradi-  
5                   tional cut flowers and cut greens retailers;  
6                   and

7                   (v) 2 members representing persons  
8                   who produce fresh cut flowers and fresh cut  
9                   greens, of whom—

10                   (I) 1 member shall represent per-  
11                   sons who produce the flowers or greens  
12                   in locations that are east of the Mis-  
13                   sissippi River; and

14                   (II) 1 member shall represent per-  
15                   sons who produce the flowers or greens  
16                   in locations that are west of the Mis-  
17                   sissippi River.

18                   (B) DEFINITIONS.—As used in this sub-  
19                   section:

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

23                   (I) whose principal activity is the  
24                   importation of cut flowers or cut  
25                   greens into the United States (either

1                   *directly or as an agent, broker, or con-*  
2                   *signee of any person or nation that*  
3                   *produces or handles cut flowers or cut*  
4                   *greens outside the United States for*  
5                   *sale in the United States); and*

6                   *(II) that is subject to assessments*  
7                   *as a qualified handler under the order.*

8                   *(ii) PRODUCER THAT IS A QUALIFIED*  
9                   *HANDLER.—The term “producer that is a*  
10                  *qualified handler” means an entity that—*

11                  *(I) is engaged—*

12                  *(aa) in the domestic produc-*  
13                  *tion, for sale in commerce, of cut*  
14                  *flowers or cut greens and that*  
15                  *owns or shares in the ownership*  
16                  *and risk of loss of the cut flowers*  
17                  *or cut greens; or*

18                  *(bb) as a first processor of*  
19                  *noncultivated cut greens, in re-*  
20                  *ceiving the cut greens from a per-*  
21                  *son who gathers the cut greens for*  
22                  *handling; and*

23                  *(II) is subject to assessments as a*  
24                  *qualified handler under the order.*

1                   (iii) *QUALIFIED WHOLESALE HAN-*  
2                   *DLER.—*

3                   (I) *IN GENERAL.—The term*  
4                   *“qualified wholesale handler” means a*  
5                   *person in business as a floral wholesale*  
6                   *jobber or floral supplier that is subject*  
7                   *to assessments as a qualified handler*  
8                   *under the order.*

9                   (II) *DEFINITIONS.—As used in*  
10                   *this clause:*

11                   (aa) *FLORAL SUPPLIER.—*  
12                   *The term “floral supplier” means*  
13                   *a person engaged in acquiring cut*  
14                   *flowers or cut greens to be manu-*  
15                   *factured into floral articles or oth-*  
16                   *erwise processed for resale.*

17                   (bb) *FLORAL WHOLESALE*  
18                   *JOBBER.—The term “floral whole-*  
19                   *sale jobber” means a person who*  
20                   *conducts a commission or other*  
21                   *wholesale business in buying and*  
22                   *selling cut flowers or cut greens.*

23                   (C) *DISTRIBUTION OF QUALIFIED WHOLE-*  
24                   *SALE HANDLER APPOINTMENTS.—The order shall*  
25                   *provide that the appointments of qualified whole-*



1           *sale handlers to the PromoFlor Council made by*  
2           *the Secretary shall take into account the geo-*  
3           *graphical distribution of cut flowers and cut*  
4           *greens markets in the United States.*

5           (3) *NOMINATION PROCESS.*—*The order shall pro-*  
6           *vide that—*

7                   (A) *2 nominees shall be submitted for each*  
8                   *appointment to the PromoFlor Council;*

9                   (B) *nominations for each appointment of a*  
10                  *qualified wholesale handler, producer that is a*  
11                  *qualified handler, or importer that is a qualified*  
12                  *handler to the PromoFlor Council shall be made*  
13                  *by qualified wholesale handlers, producers that*  
14                  *are qualified handlers, or importers that are*  
15                  *qualified handlers, respectively, through an elec-*  
16                  *tion process, in accordance with regulations is-*  
17                  *sued by the Secretary;*

18                  (C) *nominations for—*

19                          (i) *1 of the retailer appointments shall*  
20                          *be made by the American Floral Marketing*  
21                          *Council or a successor entity; and*

22                          (ii) *2 of the retailer appointments shall*  
23                          *be made by traditional retail florist organi-*  
24                          *zations, in accordance with regulations is-*  
25                          *sued by the Secretary;*

1           (D) nominations for each appointment of a  
2 representative of persons who produce fresh cut  
3 flowers and fresh cut greens shall be made by the  
4 persons through an election process, in accord-  
5 ance with regulations issued by the Secretary;  
6 and

7           (E) in any case in which qualified whole-  
8 sale handlers, producers that are qualified han-  
9 dlers, importers that are qualified handlers, per-  
10 sons who produce fresh cut flowers and fresh cut  
11 greens, or retailers fail to nominate individuals  
12 for an appointment to the PromoFlor Council,  
13 the Secretary may appoint an individual to fill  
14 the vacancy on a basis provided in the order or  
15 other regulations of the Secretary.

16           (4) ALTERNATES.—The order shall provide for  
17 the selection of alternate members of the PromoFlor  
18 Council by the Secretary in accordance with proce-  
19 dures specified in the order.

20           (5) TERMS; COMPENSATION.—The order shall  
21 provide that—

22           (A) each term of appointment to the  
23 PromoFlor Council shall be for 3 years, except  
24 that, of the initial appointments, 9 of the ap-  
25 pointments shall be for 2-year terms, 8 of the ap-

1           *pointments shall be for 3-year terms, and 8 of*  
2           *the appointments shall be for 4-year terms;*

3           *(B) no member of the PromoFlor Council*  
4           *may serve more than 2 consecutive terms of 3*  
5           *years, except that any member serving an initial*  
6           *term of 4 years may serve an additional term of*  
7           *3 years; and*

8           *(C) members of the PromoFlor Council shall*  
9           *serve without compensation, but shall be reim-*  
10          *bursed for the expenses of the members incurred*  
11          *in performing duties as members of the*  
12          *PromoFlor Council.*

13          (6) *EXECUTIVE COMMITTEE.—*

14                 (A) *ESTABLISHMENT.—*

15                         (i) *IN GENERAL.—The order shall au-*  
16                         *thorize the PromoFlor Council to appoint,*  
17                         *from among the members of the Council, an*  
18                         *executive committee of not more than 9*  
19                         *members.*

20                         (ii) *INITIAL MEMBERSHIP.—The mem-*  
21                         *bership of the executive committee initially*  
22                         *shall be composed of—*

23                                         (I) *4 members representing quali-*  
24                                         *fied wholesale handlers;*

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

3                   (III) 2 members representing im-  
4                   porters that are qualified handlers; and

5                   (IV) 1 member representing tradi-  
6                   tional retailers.

7                   (iii) *SUBSEQUENT MEMBERSHIP.*—  
8                   After the initial appointments, each ap-  
9                   pointment to the executive committee shall  
10                  be made so as to ensure that the committee  
11                  reflects, to the maximum extent practicable,  
12                  the membership composition of the  
13                  PromoFlor Council as a whole.

14                  (iv) *TERMS.*—Each initial appoint-  
15                  ment to the executive committee shall be for  
16                  a term of 2 years. After the initial appoint-  
17                  ments, each appointment to the executive  
18                  committee shall be for a term of 1 year.

19                  (B) *AUTHORITY.*—The PromoFlor Council  
20                  may delegate to the executive committee the au-  
21                  thority of the PromoFlor Council under the order  
22                  to hire and manage staff and conduct the routine  
23                  business of the PromoFlor Council consistent  
24                  with such policies as are determined by the  
25                  PromoFlor Council.

1           (c) *GENERAL RESPONSIBILITIES OF THE PROMOFLO*  
2 *COUNCIL.*—*The order shall define the general responsibil-*  
3 *ities of the PromoFlor Council, which shall include the re-*  
4 *sponsibility to—*

5           (1) *administer the order in accordance with the*  
6 *terms and provisions of the order;*

7           (2) *make rules and regulations to effectuate the*  
8 *terms and provisions of the order;*

9           (3) *appoint members of the PromoFlor Council*  
10 *to serve on an executive committee;*

11           (4) *employ such persons as the PromoFlor Coun-*  
12 *cil determines are necessary, and set the compensa-*  
13 *tion and define the duties of the persons;*

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

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

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

1           (B) contract or enter into agreements with ap-  
2           propriate persons to implement the plans and  
3           projects, as provided in subsection (e), and pay the  
4           costs of the implementation, or contracts and agree-  
5           ments, with funds received under the order;

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

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

11          (9) recommend to the Secretary amendments to  
12          the order;

13          (10) invest, pending disbursement under a plan  
14          or project, funds collected through assessments author-  
15          ized under this Act only in—

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

18                (B) general obligations of any State or any  
19                political subdivision of a State;

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

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

1       *except that income from any such invested funds may*  
2       *be used only for a purpose for which the invested*  
3       *funds may be used; and*

4             (11) *provide the Secretary such information as*  
5       *the Secretary may require.*

6       (d) *BUDGETS; PLANS AND PROJECTS.—*

7             (1) *SUBMISSION OF BUDGETS.—The order shall*  
8       *require the PromoFlor Council to submit to the Sec-*  
9       *retary for approval budgets, on a fiscal year basis, of*  
10       *the anticipated expenses and disbursements of the*  
11       *Council in the implementation of the order, including*  
12       *the projected costs of cut flowers and cut greens pro-*  
13       *motion, consumer information, and related research*  
14       *plans and projects.*

15            (2) *PLANS AND PROJECTS.—*

16               (A) *PROMOTION AND CONSUMER INFORMA-*  
17       *TION.—The order shall provide—*

18                   (i) *for the establishment, implementa-*  
19       *tion, administration, and evaluation of ap-*  
20       *propriate plans and projects for advertising,*  
21       *sales promotion, other promotion, and*  
22       *consumer information with respect to cut*  
23       *flowers and cut greens, and for the disburse-*  
24       *ment of necessary funds for the purposes de-*  
25       *scribed in this clause;*

1           (ii) that any plan or project referred to  
2           in clause (i) shall be directed toward in-  
3           creasing the general demand for cut flowers  
4           or cut greens and may not make reference  
5           to a private brand or trade name, point of  
6           origin, or source of supply, except that this  
7           clause shall not preclude the PromoFlor  
8           Council from offering the plans and projects  
9           of the Council for use by commercial par-  
10          ties, under terms and conditions prescribed  
11          by the PromoFlor Council and approved by  
12          the Secretary; and

13           (iii) that no plan or project may make  
14           use of unfair or deceptive acts or practices  
15           with respect to quality or value.

16          (B) RESEARCH.—The order shall provide  
17          for—

18           (i) the establishment, implementation,  
19           administration, and evaluation of plans  
20           and projects for—

21                   (I) market development research;

22                   (II) research with respect to the  
23                   sale, distribution, marketing, or use of  
24                   cut flowers or cut greens; and



1                   (III) other research with respect to  
2                   cut flowers or cut greens marketing,  
3                   promotion, or consumer information;

4                   (ii) the dissemination of the informa-  
5                   tion acquired through the plans and  
6                   projects; and

7                   (iii) the disbursement of such funds as  
8                   are necessary to carry out this subpara-  
9                   graph.

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

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

22                  (e) *CONTRACTS AND AGREEMENTS.*—

23                         (1) *PROMOTION, CONSUMER INFORMATION, AND*  
24                         *RELATED RESEARCH PLANS AND PROJECTS.*—

1           (A) *IN GENERAL.*—*To ensure efficient use of*  
2 *funds, the order shall provide that the PromoFlor*  
3 *Council, with the approval of the Secretary, may*  
4 *enter into a contract or an agreement for the im-*  
5 *plementation of a plan or project for promotion,*  
6 *consumer information, or related research with*  
7 *respect to cut flowers or cut greens, and for the*  
8 *payment of the cost of the contract or agreement*  
9 *with funds received by the PromoFlor Council*  
10 *under the order.*

11           (B) *REQUIREMENTS.*—*The order shall pro-*  
12 *vide that any contract or agreement entered into*  
13 *under this paragraph shall provide that—*

14                   (i) *the contracting or agreeing party*  
15 *shall develop and submit to the PromoFlor*  
16 *Council a plan or project, together with a*  
17 *budget that includes the estimated costs to*  
18 *be incurred for the plan or project;*

19                   (ii) *the plan or project shall become ef-*  
20 *fective on the approval of the Secretary; and*

21                   (iii) *the contracting or agreeing party*  
22 *shall—*

23                           (I) *keep accurate records of all of*  
24 *the transactions of the party;*

1                   (II) account for funds received  
2                   and expended;

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

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

9                   (2) OTHER CONTRACTS AND AGREEMENTS.—The  
10                  order shall provide that the PromoFlor Council may  
11                  enter into a contract or agreement for administrative  
12                  services. Any contract or agreement entered into  
13                  under this paragraph shall include provisions com-  
14                  parable to the provisions described in paragraph  
15                  (1)(B).

16               (f) BOOKS AND RECORDS OF THE PROMOFLOL COUN-  
17               CIL.—

18               (1) IN GENERAL.—The order shall require the  
19               PromoFlor Council to—

20                   (A) maintain such books and records (which  
21                   shall be available to the Secretary for inspection  
22                   and audit) as the Secretary may require;

23                   (B) prepare and submit to the Secretary,  
24                   from time to time, such reports as the Secretary  
25                   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 cause  
5           the books and records of the Council to be audited by  
6           an independent auditor at the end of each fiscal year.  
7           A report of each audit shall be submitted to the Sec-  
8           retary.

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

20          (h) ASSESSMENTS.—

21               (1) AUTHORITY.—

22                   (A) IN GENERAL.—The order shall provide  
23                   that each qualified handler shall pay to the  
24                   PromoFlor Council, in the manner provided in  
25                   the order, an assessment on each sale of cut flow-

1            *ers or cut greens to a retailer or an exempt han-*  
 2            *dlers (including each transaction described in*  
 3            *subparagraph (C)(ii)), except to the extent that*  
 4            *the sale is excluded from assessments under sec-*  
 5            *tion 6(a).*

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

11           (C) *MAKING DETERMINATIONS.—*

12           (i) *QUALIFIED HANDLER STATUS.—*  
 13           *The order shall contain provisions regard-*  
 14           *ing the determination of the status of a per-*  
 15           *son as a qualified handler or exempt han-*  
 16           *dlers that include the rules and requirements*  
 17           *specified in sections 3(4) and 6(b).*

18           (ii) *CERTAIN COVERED TRANS-*  
 19           *ACTIONS.—*

20           (I) *IN GENERAL.—The order shall*  
 21           *provide that each non-sale transfer of*  
 22           *cut flowers or cut greens to a retailer*  
 23           *from a qualified handler that is a dis-*  
 24           *tribution center (as described in section*  
 25           *3(4)(A)(ii)(II)), and each direct sale of*

1           *cut flowers or cut greens to a consumer*  
2           *by a qualified handler that is an im-*  
3           *porter or a producer (as described in*  
4           *section 3(4)(A)(iii)), shall be treated as*  
5           *a sale of cut flowers or cut greens to a*  
6           *retailer subject to assessments under*  
7           *this subsection.*

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

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

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

1           *mark-up of a wholesale handler*  
2           *on a sale to a retailer.*

3           (III) *DIRECT SALES BY PRODUC-*  
4           *ERS.—Subject to subclause (IV), in the*  
5           *case of a direct sale to a consumer by*  
6           *a producer, the amount of the sale*  
7           *shall be equal to an amount deter-*  
8           *mined by multiplying the price paid*  
9           *by the consumer by a uniform percent-*  
10          *age established by the order to rep-*  
11          *resent the cost of producing the article*  
12          *and the mark-up of a wholesale han-*  
13          *dlar on a sale to a retailer.*

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

18                 *(aa) recommendation by the*  
19                 *PromoFlor Council; and*

20                 *(bb) approval by the Sec-*  
21                 *retary after public notice and op-*  
22                 *portunity for comment in accord-*  
23                 *ance with section 553 of title 5,*  
24                 *United States Code, and without*

1                    regard to sections 556 and 557 of  
2                    such title.

3                    (2) *ASSESSMENT RATES.*—With respect to assess-  
4                    ment rates, the order shall contain the following  
5                    terms:

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

10                    (i) the gross sales price of the cut flow-  
11                    ers or cut greens sold; or

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

16                    (B) *CHANGES IN THE RATE.*—

17                    (i) *IN GENERAL.*—After the first 3  
18                    years the order is in effect, the uniform as-  
19                    sessment rate may be increased or decreased  
20                    annually by not more than .25 percent of—

21                    (I) the gross sales price of a prod-  
22                    uct sold; or

23                    (II) in the case of transactions de-  
24                    scribed in paragraph (1)(C)(ii), the



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

6           (ii) *REQUIREMENTS.—Any change in*  
7           *the rate of assessment under this subpara-*  
8           *graph—*

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

19                   (ii) *shall be announced by the*  
20                  *PromoFlor Council not less than 30*  
21                  *days prior to going into effect; and*

22                   (iii) *shall not be subject to a vote*  
23                  *in a referendum conducted under sec-*  
24                  *tion 7.*

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

10           (4) *REFUNDS FROM ESCROW ACCOUNT.*—

11           (A) *ESTABLISHMENT OF ESCROW AC-*  
12           *COUNT.*—The order shall provide that the  
13           PromoFlor Council shall—

14                   (i) *establish an escrow account to be*  
15                   *used for assessment refunds, as needed; and*

16                   (ii) *place into the account an amount*  
17                   *equal to 10 percent of the total amount of*  
18                   *assessments collected during the period be-*  
19                   *ginning on the date the order becomes effec-*  
20                   *tive, as provided in section 4(b)(3)(B), and*  
21                   *ending on the date the initial referendum*  
22                   *on the order under section 7(a) is com-*  
23                   *pleted.*

24           (B) *RIGHT TO RECEIVE REFUND.*—

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

11                   (I) *the qualified handler is re-*  
12 *quired to pay the assessments;*

13                   (II) *the qualified handler does not*  
14 *support the program established under*  
15 *this Act;*

16                   (III) *the qualified handler de-*  
17 *mands the refund prior to the conduct*  
18 *of the referendum on the order under*  
19 *section 7(a); and*

20                   (IV) *the order is not approved by*  
21 *qualified handlers in the referendum.*

22           (ii) *CONDITIONS.*—*The right of a*  
23 *qualified handler to receive a refund under*  
24 *clause (i) shall be subject to the following*  
25 *conditions:*

1           (I) *The demand shall be made in*  
2           *accordance with regulations, on a*  
3           *form, and within a time period speci-*  
4           *fied by the PromoFlor Council.*

5           (II) *The refund shall be made*  
6           *only on submission of proof satisfac-*  
7           *tory to the PromoFlor Council that the*  
8           *qualified handler paid the assessment*  
9           *for which the refund is demanded.*

10          (III) *If the amount in the escrow*  
11          *account required under subparagraph*  
12          *(A) is not sufficient to refund the total*  
13          *amount of assessments demanded by*  
14          *all qualified handlers determined eligi-*  
15          *ble for refunds and the order is not ap-*  
16          *proved in the referendum on the order*  
17          *under section 7(a), the PromoFlor*  
18          *Council shall prorate the amount of all*  
19          *such refunds among all eligible quali-*  
20          *fied handlers that demand the refund.*

21          (C) *PROGRAM APPROVED.—The order shall*  
22          *provide that, if the order is approved in the ref-*  
23          *erendum conducted under section 7(a), there*  
24          *shall be no refunds made, and all funds in the*  
25          *escrow account shall be returned to the*

1           *PromoFlor Council for use by the PromoFlor*  
2           *Council in accordance with the other provisions*  
3           *of the order.*

4           (5) *USE OF ASSESSMENT FUNDS.—The order*  
5           *shall provide that assessment funds (less any refunds*  
6           *expended under the terms of the order required under*  
7           *paragraph (4)) shall be used for payment of costs in-*  
8           *curring in implementing and administering the order,*  
9           *with provision for a reasonable reserve, and to cover*  
10          *the administrative costs incurred by the Secretary in*  
11          *implementing and administering this Act, except for*  
12          *the salaries of Federal Government employees in-*  
13          *curring in conducting referenda.*

14          (6) *POSTPONEMENT OF COLLECTIONS.—*

15                (A) *AUTHORITY.—*

16                    (i) *IN GENERAL.—Subject to the other*  
17                    *provisions of this paragraph and notwith-*  
18                    *standing any other provision of this Act, the*  
19                    *PromoFlor Council may grant a postpone-*  
20                    *ment of the payment of an assessment under*  
21                    *this subsection for any qualified handler*  
22                    *that establishes that the handler is finan-*  
23                    *cially unable to make the payment.*

24                    (ii) *REQUIREMENTS AND PROCE-*  
25                    *DURES.—A handler described in clause (i)*

1           *shall establish that the handler is finan-*  
2           *cially unable to make the payment in ac-*  
3           *cordance with application and documenta-*  
4           *tion requirements and review procedures es-*  
5           *tablished under rules recommended by the*  
6           *PromoFlor Council, approved by the Sec-*  
7           *retary, and issued after public notice and*  
8           *opportunity for comment in accordance*  
9           *with section 553 of title 5, United States*  
10          *Code, and without regard to sections 556*  
11          *and 557 of such title.*

12           (B) *CRITERIA AND RESPONSIBILITY FOR*  
13          *DETERMINATIONS.—The PromoFlor Council may*  
14          *grant a postponement under subparagraph (A)*  
15          *only if the handler demonstrates by the submis-*  
16          *sion of an opinion of an independent certified*  
17          *public accountant, and by submission of other*  
18          *documentation required under the rules estab-*  
19          *lished under subparagraph (A)(ii), that the han-*  
20          *dlers is insolvent or will be unable to continue to*  
21          *operate if the handler is required to pay the as-*  
22          *essment when otherwise due.*

23           (C) *PERIOD OF POSTPONEMENT.—*

24           (i) *IN GENERAL.—The time period of a*  
25          *postponement and the terms and conditions*

1           of the payment of each assessment that is  
2           postponed under this paragraph shall be es-  
3           tablished by the PromoFlor Council, in ac-  
4           cordance with rules established under the  
5           procedures specified in subparagraph  
6           (A)(ii), so as to appropriately reflect the  
7           demonstrated needs of the qualified handler.

8           (ii) *EXTENSIONS.*—A postponement  
9           may be extended under rules established  
10          under the procedures specified in subpara-  
11          graph (A)(ii) for the grant of initial post-  
12          ponements.

13          (i) *PROHIBITION.*—The order shall prohibit the use of  
14          any funds received by the PromoFlor Council in any man-  
15          ner for the purpose of influencing legislation or government  
16          action or policy, except that the funds may be used by the  
17          PromoFlor Council for the development and recommenda-  
18          tion to the Secretary of amendments to the order.

19          (j) *BOOKS AND RECORDS; REPORTS.*—

20                 (1) *IN GENERAL.*—The order shall provide that  
21                 each qualified handler shall maintain, and make  
22                 available for inspection, such books and records as are  
23                 required by the order and file reports at the time, in  
24                 the manner, and having the content required by the  
25                 order, to the end that such information is made avail-

1     *able to the Secretary and the PromoFlor Council as*  
2     *is appropriate for the administration or enforcement*  
3     *of this Act, the order, or any regulation issued under*  
4     *this Act.*

5           (2) *CONFIDENTIALITY REQUIREMENT.—*

6           (A) *IN GENERAL.—Information obtained*  
7     *from books, records, or reports under paragraph*  
8     *(1) or subsection (h)(6), or from reports required*  
9     *under section 6(b)(3), shall be kept confidential*  
10    *by all officers and employees of the Department*  
11    *of Agriculture and by the staff and agents of the*  
12    *PromoFlor Council.*

13          (B) *SUITS AND HEARINGS.—Information*  
14    *described in subparagraph (A) may be disclosed*  
15    *to the public only—*

16           (i) *in a suit or administrative hearing*  
17    *brought at the request of the Secretary, or to*  
18    *which the Secretary or any officer of the*  
19    *United States is a party, involving the*  
20    *order; and*

21           (ii) *to the extent the Secretary consid-*  
22    *ers the information relevant to the suit or*  
23    *hearing.*



1           (C) *GENERAL STATEMENTS AND PUBLICA-*  
2           *TIONS.—Nothing in this paragraph may be con-*  
3           *strued to prohibit—*

4                   (i) *the issuance of general statements,*  
5                   *based on the reports, of the number of per-*  
6                   *sons subject to the order or statistical data*  
7                   *collected from the reports, if the statements*  
8                   *do not identify the information furnished*  
9                   *by any person; or*

10                   (ii) *the publication, by direction of the*  
11                   *Secretary, of the name of any person who*  
12                   *violates the order, together with a statement*  
13                   *of the particular provisions of the order vio-*  
14                   *lated by the person.*

15           (3) *LISTS OF IMPORTERS.—*

16                   (A) *REVIEW.—The order shall provide that*  
17                   *the staff of the PromoFlor Council shall periodi-*  
18                   *cally review lists of importers of cut flowers and*  
19                   *cut greens to determine whether persons on the*  
20                   *lists are subject to the order.*

21                   (B) *CUSTOMS SERVICE.—On the request of*  
22                   *the PromoFlor Council, the Commissioner of the*  
23                   *United States Customs Service shall provide to*  
24                   *the PromoFlor Council lists of importers of cut*  
25                   *flowers and cut greens.*

1       (k) *CONSULTATIONS WITH INDUSTRY EXPERTS.*—

2           (1) *IN GENERAL.*—*The order shall provide that*  
3 *the PromoFlor Council, from time to time, may seek*  
4 *advice from and consult with experts from the pro-*  
5 *duction, import, wholesale, and retail segments of the*  
6 *cut flowers and cut greens industry to assist in the*  
7 *development of promotion, consumer information, and*  
8 *related research plans and projects.*

9           (2) *SPECIAL COMMITTEES.*—

10           (A) *IN GENERAL.*—*For the purposes de-*  
11 *scribed in paragraph (1), the order shall author-*  
12 *ize the appointment of special committees com-*  
13 *posed of persons other than PromoFlor Council*  
14 *members.*

15           (B) *CONSULTATION.*—*A committee ap-*  
16 *pointed under subparagraph (A)—*

17           (i) *may not provide advice or rec-*  
18 *ommendations to a representative of an*  
19 *agency, or an officer, of the Federal Govern-*  
20 *ment; and*

21           (ii) *shall consult directly with the*  
22 *PromoFlor Council.*

23           (l) *OTHER TERMS OF THE ORDER.*—*The order shall*  
24 *contain such other terms and provisions, consistent with*  
25 *this Act, as are necessary to carry out this Act (including*

1 *provision for the assessment of interest and a charge for*  
2 *each late payment of assessments under subsection (h) and*  
3 *for carrying out section 6).*

4 **SEC. 6. EXCLUSION; DETERMINATIONS.**

5 (a) *EXCLUSION.*—*An order shall exclude from assess-*  
6 *ments under the order any sale of cut flowers or cut greens*  
7 *for export from the United States.*

8 (b) *MAKING DETERMINATIONS.*—

9 (1) *IN GENERAL.*—*For the purpose of applying*  
10 *the \$750,000 annual sales limitation to a specific per-*  
11 *son in order to determine the status of the person as*  
12 *a qualified handler or an exempt handler under sec-*  
13 *tion 3(4), or to a specific facility in order to deter-*  
14 *mine the status of the facility as an eligible separate*  
15 *facility under section 7(b)(2), an order issued under*  
16 *this Act shall provide that—*

17 (A) *a determination of the annual sales vol-*  
18 *ume of a person or facility shall be based on the*  
19 *sales of cut flowers and cut greens by the person*  
20 *or facility during the most recently-completed*  
21 *calendar year, except as provided in subpara-*  
22 *graph (B); and*

23 (B) *in the case of a new business or other*  
24 *operation for which complete data on sales dur-*  
25 *ing all or part of the most recently-completed*

1           *calendar year are not available to the PromoFlor*  
2           *Council, the determination may be made using*  
3           *an alternative time period or other alternative*  
4           *procedure specified in the order.*

5           (2) *RULE OF ATTRIBUTION.—*

6                 (A) *IN GENERAL.—For the purpose of deter-*  
7                 *mining the annual sales volume of a person or*  
8                 *a separate facility of a person, sales attributable*  
9                 *to a person shall include—*

10                         (i) *in the case of an individual, sales*  
11                         *attributable to the spouse, children, grand-*  
12                         *children, parents, and grandparents of the*  
13                         *person;*

14                         (ii) *in the case of a partnership or*  
15                         *member of a partnership, sales attributable*  
16                         *to the partnership and other partners of the*  
17                         *partnership;*

18                         (iii) *in the case of an individual or a*  
19                         *partnership, sales attributable to any cor-*  
20                         *poration or other entity in which the indi-*  
21                         *vidual or partnership owns more than 50*  
22                         *percent of the stock or (if the entity is not*  
23                         *a corporation) that the individual or part-*  
24                         *nership controls; and*

1                   (iv) in the case of a corporation, sales  
2                   attributable to any corporate subsidiary or  
3                   other corporation or entity in which the  
4                   corporation owns more than 50 percent of  
5                   the stock or (if the entity is not a corpora-  
6                   tion) that the corporation controls.

7                   (B) STOCK AND OWNERSHIP INTEREST.—  
8                   For the purpose of this paragraph, stock or an  
9                   ownership interest in an entity that is owned by  
10                  the spouse, children, grandchildren, parents,  
11                  grandparents, or partners of an individual, or  
12                  by a partnership in which a person is a partner,  
13                  or by a corporation more than 50 percent of the  
14                  stock of which is owned by a person, shall be  
15                  treated as owned by the individual or person.

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

20 **SEC. 7. REFERENDA.**

21                  (a) REQUIREMENT FOR INITIAL REFERENDUM.—

22                  (1) IN GENERAL.—Not later than 3 years after  
23                  the issuance of an order under section 4(b)(3), the  
24                  Secretary shall conduct a referendum among qualified  
25                  handlers required to pay assessments under the order,

1 *as provided in section 5(h)(1), subject to the voting*  
2 *requirements of subsection (b), to ascertain whether*  
3 *the order then in effect shall be continued.*

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

10 (b) *VOTES PERMITTED.—*

11 (1) *IN GENERAL.—Each qualified handler eligi-*  
12 *ble to vote in a referendum conducted under this sec-*  
13 *tion shall be entitled to cast 1 vote for each separate*  
14 *facility of the person that is an eligible separate facil-*  
15 *ity, as defined in paragraph (2).*

16 (2) *ELIGIBLE SEPARATE FACILITY.—For the*  
17 *purpose of paragraph (1):*

18 (A) *SEPARATE FACILITY.—A handling or*  
19 *marketing facility of a qualified handler shall be*  
20 *considered to be a separate facility if the facility*  
21 *is physically located away from other facilities of*  
22 *the qualified handler or the business function of*  
23 *the facility is substantially different from the*  
24 *functions of other facilities owned or operated by*  
25 *the qualified handler.*

1           (B) *ELIGIBILITY.*—A separate facility of a  
2           qualified handler shall be considered to be an eli-  
3           gible separate facility if the annual sales of cut  
4           flowers and cut greens to retailers and exempt  
5           handlers from the facility are \$750,000 or more.

6           (C) *ANNUAL SALES DETERMINED.*—For the  
7           purpose of determining the amount of annual  
8           sales of cut flowers and cut greens under sub-  
9           paragraph (B), subparagraphs (A) and (C) of  
10          section 3(4) shall apply.

11          (c) *SUSPENSION OR TERMINATION REFERENDA.*—If  
12          an order is approved in a referendum conducted under sub-  
13          section (a), effective beginning on the date that is 3 years  
14          after the date of the approval, the Secretary—

15               (1) at the discretion of the Secretary, may con-  
16               duct at any time a referendum of qualified handlers  
17               required to pay assessments under the order, as pro-  
18               vided in section 5(h)(1), subject to the voting require-  
19               ments of subsection (b), to ascertain whether qualified  
20               handlers favor suspension or termination of the order;  
21               and

22               (2) if requested by the PromoFlor Council or by  
23               a representative group comprising 30 percent or more  
24               of all qualified handlers required to pay assessments  
25               under the order, as provided in section 5(h)(1), shall

1       *conduct a referendum of all qualified handlers re-*  
2       *quired to pay assessments under the order, as pro-*  
3       *vided in section 5(h)(1), subject to the voting require-*  
4       *ments of subsection (b), to ascertain whether qualified*  
5       *handlers favor suspension or termination of the order.*

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

14             *(1) not later than 180 days after the referendum,*  
15             *suspend or terminate, as appropriate, collection of as-*  
16             *sessments under the order; and*

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

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. 8. PETITION AND REVIEW.**

24      *(a) PETITION AND HEARING.—*



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

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

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

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

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

20           (b) *REVIEW.*—

21           (1) *COMMENCEMENT OF ACTION.*—The district  
22 courts of the United States in any district in which  
23 a person who is a petitioner under subsection (a) re-  
24 sides or conducts business shall have jurisdiction to  
25 review the ruling of the Secretary on the petition of

1        *the person, if a complaint requesting the review is*  
2        *filed not later than 20 days after the date of the entry*  
3        *of the ruling by the Secretary.*

4            (2) *PROCESS.*—*Service of process in proceedings*  
5        *under this subsection shall be conducted in accordance*  
6        *with the Federal Rules of Civil Procedure.*

7            (3) *REMAND.*—*If the court in a proceeding*  
8        *under this subsection determines that the ruling of the*  
9        *Secretary on the petition of the person is not in ac-*  
10       *cordance with law, the court shall remand the matter*  
11       *to the Secretary with directions—*

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

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

16        (c) *ENFORCEMENT.*—*The pendency of proceedings in-*  
17       *stituted under this section shall not impede, hinder, or*  
18       *delay the Attorney General or the Secretary from obtaining*  
19       *relief under section 9.*

20        **SEC. 9. ENFORCEMENT.**

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

1       (b) *REFERRAL TO ATTORNEY GENERAL.*—A civil ac-  
2       tion brought under subsection (a) shall be referred to the  
3       Attorney General for appropriate action, except that the  
4       Secretary is not required to refer to the Attorney General  
5       a violation of this Act, or an order or regulation issued  
6       under this Act, if the Secretary believes that the administra-  
7       tion and enforcement of this Act would be adequately served  
8       by administrative action under subsection (c) or suitable  
9       written notice or warning to the person who committed or  
10      is committing the violation.

11      (c) *CIVIL PENALTIES AND ORDERS.*—

12           (1) *CIVIL PENALTIES.*—

13                   (A) *IN GENERAL.*—A person who violates a  
14                   provision of this Act, or an order or regulation  
15                   issued by the Secretary under this Act, or who  
16                   fails or refuses to pay, collect, or remit any as-  
17                   sessment or fee required of the person under an  
18                   order or regulation issued under this Act, may  
19                   be assessed by the Secretary—

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

23                           (ii) in the case of a willful failure to  
24                           remit an assessment as required by an order

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

3                   (B) *SEPARATE OFFENSES.*—Each violation  
4                   shall be a separate offense.

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

10                  (3) *NOTICE AND HEARING.*—No penalty shall be  
11                  assessed or cease and desist order issued by the Sec-  
12                  retary under this subsection unless the Secretary gives  
13                  the person against whom the penalty is assessed or  
14                  the order is issued notice and opportunity for a hear-  
15                  ing before the Secretary with respect to the violation.  
16                  Any such hearing shall be conducted in accordance  
17                  with section 10(b)(2) and shall be held within the  
18                  United States judicial district in which the residence  
19                  or principal place of business of the person is located.

20                  (4) *FINALITY.*—The penalty assessed or cease  
21                  and desist order issued under this subsection shall be  
22                  final and conclusive unless the person against whom  
23                  the penalty is assessed or the order is issued files an  
24                  appeal with the appropriate district court of the  
25                  United States in accordance with subsection (d).

1       (d) *REVIEW BY DISTRICT COURT.*—

2             (1) *COMMENCEMENT OF ACTION.*—

3                 (A) *IN GENERAL.*—Any person against  
4                 whom a violation is found and a civil penalty  
5                 is assessed or a cease and desist order is issued  
6                 under subsection (c) may obtain review of the  
7                 penalty or order by, within the 30-day period be-  
8                 ginning on the date the penalty is assessed or  
9                 order issued—

10                         (i) filing a notice of appeal in the dis-  
11                         trict court of the United States for the dis-  
12                         trict in which the person resides or conducts  
13                         business, or in the United States District  
14                         Court for the District of Columbia; and

15                         (ii) sending a copy of the notice by cer-  
16                         tified mail to the Secretary.

17             (B) *COPY OF RECORD.*—The Secretary shall  
18             promptly file in the court a certified copy of the  
19             record on which the Secretary found that the  
20             person had committed a violation.

21             (2) *STANDARD OF REVIEW.*—A finding of the  
22             Secretary shall be set aside under this subsection only  
23             if the finding is found to be unsupported by substan-  
24             tial evidence.

25             (e) *FAILURE TO OBEY AN ORDER.*—

1           (1) *IN GENERAL.*—A person who fails to obey a  
2           *cease and desist order issued under subsection (c)*  
3           *after the order has become final and unappealable, or*  
4           *after the appropriate United States district court has*  
5           *entered a final judgment in favor of the Secretary,*  
6           *shall be subject to a civil penalty assessed by the Sec-*  
7           *retary of not more than \$5,000 for each offense, after*  
8           *opportunity for a hearing and for judicial review*  
9           *under the procedures specified in subsections (c) and*  
10          *(d).*

11          (2) *SEPARATE VIOLATIONS.*—Each day during  
12          *which the person fails to obey an order described in*  
13          *paragraph (1) shall be considered as a separate viola-*  
14          *tion of the order.*

15          (f) *FAILURE TO PAY A PENALTY.*—

16          (1) *IN GENERAL.*—If a person fails to pay a civil  
17          *penalty assessed under subsection (c) or (e) after the*  
18          *penalty has become final and unappealable, or after*  
19          *the appropriate United States district court has en-*  
20          *tered final judgment in favor of the Secretary, the*  
21          *Secretary shall refer the matter to the Attorney Gen-*  
22          *eral for recovery of the amount assessed in any Unit-*  
23          *ed States district court in which the person resides or*  
24          *conducts business.*

1           (2) *SCOPE OF REVIEW.*—In an action by the At-  
2           torney General under paragraph (1), the validity and  
3           appropriateness of the civil penalty shall not be sub-  
4           ject to review.

5           (g) *ADDITIONAL REMEDIES.*—The remedies provided  
6           in this Act shall be in addition to, and not exclusive of,  
7           other remedies that may be available.

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

9           (a) *INVESTIGATIONS.*—The Secretary may make such  
10          investigations as the Secretary considers necessary for the  
11          effective administration of this Act, or to determine whether  
12          any person has engaged or is engaging in any act that con-  
13          stitutes a violation of this Act or any order or regulation  
14          issued under this Act.

15          (b) *SUBPOENAS, OATHS, AND AFFIRMATIONS.*—

16               (1) *INVESTIGATIONS.*—For the purpose of mak-  
17               ing an investigation under subsection (a), the Sec-  
18               retary may administer oaths and affirmations, and  
19               issue subpoenas to require the production of any  
20               records that are relevant to the inquiry. The produc-  
21               tion of the records may be required from any place  
22               in the United States.

23               (2) *ADMINISTRATIVE HEARINGS.*—For the pur-  
24               pose of an administrative hearing held under section  
25               8(a)(2) or 9(c)(3), the presiding officer may admin-

1     *ister oaths and affirmations, subpoena witnesses, com-*  
2     *pel the attendance of witnesses, take evidence, and re-*  
3     *quire the production of any records that are relevant*  
4     *to the inquiry. The attendance of witnesses and the*  
5     *production of the records may be required from any*  
6     *place in the United States.*

7     (c) *AID OF COURTS.*—

8             (1) *IN GENERAL.*—*In the case of contumacy by,*  
9     *or refusal to obey a subpoena issued under subsection*  
10    *(b) to, any person, the Secretary may invoke the aid*  
11    *of any court of the United States within the jurisdic-*  
12    *tion of which the investigation or proceeding is con-*  
13    *ducted, or where the person resides or conducts busi-*  
14    *ness, in order to enforce a subpoena issued under sub-*  
15    *section (b).*

16            (2) *ORDER.*—*The court may issue an order re-*  
17    *quiring the person referred to in paragraph (1) to*  
18    *comply with a subpoena referred to in paragraph (1).*

19            (3) *FAILURE TO OBEY.*—*Any failure to obey the*  
20    *order of the court may be punished by the court as*  
21    *a contempt of court.*

22            (4) *PROCESS.*—*Process in any proceeding under*  
23    *this subsection may be served in the United States ju-*  
24    *dicial district in which the person being proceeded*



1       *against resides or conducts business or wherever the*  
2       *person may be found.*

3       **SEC. 11. CONFIDENTIALITY.**

4       (a) *PROHIBITION.*—*No information on how a person*  
5       *voted in a referendum conducted under this Act shall be*  
6       *made public.*

7       (b) *PENALTY.*—*Any person who knowingly violates*  
8       *subsection (a) or the confidentiality terms of an order, as*  
9       *described in section 5(j)(2), shall be subject to a fine of not*  
10       *less than \$1,000 nor more than \$10,000 or to imprisonment*  
11       *for not more than 1 year, or both. If the person is an officer*  
12       *or employee of the Department of Agriculture or the*  
13       *PromoFlor Council, the person shall be removed from office.*

14       (c) *ADDITIONAL PROHIBITION.*—*No information ob-*  
15       *tained under this Act may be made available to any agency*  
16       *or officer of the Federal Government for any purpose other*  
17       *than the implementation of this Act or an investigatory or*  
18       *enforcement action necessary for the implementation of this*  
19       *Act.*

20       (d) *WITHHOLDING INFORMATION FROM CONGRESS*  
21       *PROHIBITED.*—*Nothing in this Act shall be construed to au-*  
22       *thorize the withholding of information from Congress.*

1 **SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR TER-**  
2 **MINATE ORDER.**

3 *If the Secretary finds that an order, or any provision*  
4 *of the order, obstructs or does not tend to effectuate the pol-*  
5 *icy of this Act specified in section 2(b), the Secretary shall*  
6 *terminate or suspend the operation of the order or provision*  
7 *under such terms as the Secretary determines are appro-*  
8 *priate.*

9 **SEC. 13. CONSTRUCTION.**

10 *(a) TERMINATION OR SUSPENSION NOT AN ORDER.—*  
11 *The termination or suspension of an order, or a provision*  
12 *of an order, shall not be considered an order under the*  
13 *meaning of this Act.*

14 *(b) PRODUCER RIGHTS.—This Act—*

15 *(1) may not be construed to provide for control*  
16 *of production or otherwise limit the right of individ-*  
17 *ual cut flowers and cut greens producers to produce*  
18 *cut flowers and cut greens; and*

19 *(2) shall be construed to treat all persons produc-*  
20 *ing cut flowers and cut greens fairly and to imple-*  
21 *ment any order in an equitable manner.*

22 *(c) OTHER PROGRAMS.—Nothing in this Act may be*  
23 *construed to preempt or supersede any other program relat-*  
24 *ing to cut flowers or cut greens promotion and consumer*  
25 *information organized and operated under the laws of the*  
26 *United States or a State.*

1 **SEC. 14. REGULATIONS.**

2       *The Secretary may issue such regulations as are nec-*  
 3 *essary to carry out this Act and the powers vested in the*  
 4 *Secretary by this Act, including regulations relating to the*  
 5 *assessment of late payment charges and interest.*

6 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

7       *(a) IN GENERAL.—There are authorized to be appro-*  
 8 *priated for each fiscal year such sums as are necessary to*  
 9 *carry out this Act.*

10       *(b) ADMINISTRATIVE EXPENSES.—Funds appro-*  
 11 *priated under subsection (a) may not be used for the pay-*  
 12 *ment of the expenses or expenditures of the PromoFlor*  
 13 *Council in administering any provision of an order.*

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