

Public Law 103-190
103d Congress

An Act

Dec. 14, 1993
[S. 994]

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.

Fresh Cut
Flowers and
Fresh Cut
Greens
Promotion and
Information Act
of 1993.
7 USC 6801 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

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

7 USC 6801.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

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

(1) fresh cut flowers and fresh cut greens are an integral part of life in the United States, are enjoyed by millions of persons every year for a multitude of special purposes (especially important personal events), and contribute a natural and beautiful element to the human environment;

(2)(A) cut flowers and cut greens are produced by many individual producers throughout the United States as well as in other countries, and are handled and marketed by thousands of small-sized and medium-sized businesses; and

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

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

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

- (B) prepare the cut flowers and cut greens for retail consumption;
- (C) serve as an intermediary between the source of the product and the retailer;
- (D) otherwise facilitate the entry of cut flowers and cut greens into the current of domestic commerce; and
- (E) add efficiencies to the market process that ensure the availability of a much greater variety of the product to retailers and consumers;
- (4) it is widely recognized that it is in the public interest and important to the agricultural economy of the United States to provide an adequate, steady supply of cut flowers and cut greens at reasonable prices to the consumers of the United States;
- (5)(A) cut flowers and cut greens move in interstate and foreign commerce; and
- (B) cut flowers and cut greens that do not move in interstate or foreign channels of commerce but only in intrastate commerce directly affect interstate commerce in cut flowers and cut greens;
- (6) the maintenance and expansion of markets in existence on the date of enactment of this Act, and the development of new or improved markets or uses for cut flowers and cut greens, are needed to preserve and strengthen the economic viability of the domestic cut flowers and cut greens industry for the benefit of producers, handlers, retailers, and the entire floral industry;
- (7) generic programs of promotion and consumer information can be effective in maintaining and developing markets for cut flowers and cut greens, and have the advantage of equally enhancing the market position for all cut flowers and cut greens;
- (8) because cut flowers and cut greens producers are primarily agriculture-oriented rather than promotion-oriented, and because the floral marketing industry within the United States is comprised mainly of small-sized and medium-sized businesses, the development and implementation of an adequate and coordinated national program of generic promotion and consumer information necessary for the maintenance of markets in existence on the date of enactment of this Act and the development of new markets for cut flowers and cut greens have been prevented;
- (9) there exist established State and commodity-specific producer-funded programs of promotion and research that are valuable efforts to expand markets for domestic producers of cut flowers and cut greens and that will benefit from the promotion and consumer information program authorized by this Act in that the program will enhance the market development efforts of the programs for domestic producers;
- (10) an effective and coordinated method for ensuring cooperative and collective action in providing for and financing a nationwide program of generic promotion and consumer information is needed to ensure that the cut flowers and cut greens industry will be able to provide, obtain, and implement programs of promotion and consumer information necessary to maintain, expand, and develop markets for cut flowers and cut greens; and

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

(b) **POLICY AND PURPOSE.**—It is the policy of Congress that it is in the public interest, and it is the purpose of this Act, to authorize the establishment, through the exercise of the powers provided in this Act, of an orderly procedure for the development and financing (through an adequate assessment on cut flowers and cut greens sold by handlers to retailers and related entities in the United States) of an effective and coordinated program of generic promotion, consumer information, and related research designed to strengthen the position of the cut flowers and cut greens industry in the marketplace and to maintain, develop, and expand markets for cut flowers and cut greens.

7 USC 6802.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) **CONSUMER INFORMATION.**—The term “consumer information” means any action or program that provides information to consumers and other persons on appropriate uses under varied circumstances, and on the care and handling, of cut flowers or cut greens.

(2) **CUT FLOWERS AND CUT GREENS.**—

(A) **IN GENERAL.**—

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

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

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

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

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

(4) **HANDLER.**—

(A) **QUALIFIED HANDLER.**—

(i) **IN GENERAL.**—The term “qualified handler” means a person (including a cooperative) operating in the cut flowers or cut greens marketing system—

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

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

(ii) INCLUSIONS AND EXCLUSIONS.—

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

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

(bb) an auction house that clears the sale of cut flowers and cut greens to retailers and exempt handlers through a central clearinghouse; and

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

(II) TRANSFERS.—For the purpose of determining sales of cut flowers and cut greens to a retailer from a distribution center described in subclause (I)(cc), each non-sale transfer to a retailer shall be treated as a sale in an amount calculated as provided in subparagraph (C).

(III) TRANSPORTATION OR DELIVERY.—The term “qualified handler” does not include a person who only physically transports or delivers cut flowers or cut greens.

(iii) CONSTRUCTION.—

(I) IN GENERAL.—The term “qualified handler” includes an importer or producer that sells cut flowers or cut greens that the importer or producer has imported into the United States or produced, respectively, directly to consumers and whose sales of the cut flowers and cut greens (as calculated under subparagraph (C)), together with sales of cut flowers and cut greens to retailers or exempt handlers, annually are \$750,000 or more.

(II) SALES.—Each direct sale to a consumer by a qualified handler described in subclause (I) shall be treated as a sale to a retailer or exempt handler in an amount calculated as provided in subparagraph (C).

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

(aa) IMPORTER.—The term “importer” has the meaning provided in section 5(b)(2)(B)(i)(I).

(bb) PRODUCER.—The term “producer” has the meaning provided in section 5(b)(2)(B)(ii)(I).

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

(C) ANNUAL SALES DETERMINED.—

(i) **IN GENERAL.**—Except as provided in clause (ii), for the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraphs (A) and (B), the amount of a sale shall be determined on the basis of the gross sales price of the cut flowers and cut greens sold.

(ii) **TRANSFERS.**—

(I) **NON-SALE TRANSFERS AND DIRECT SALES BY IMPORTERS.**—Subject to subclause (III), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center (as described in subparagraph (A)(ii)(II)), or a direct sale to a consumer by an importer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to the sum of—

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

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

(II) **DIRECT SALES BY PRODUCERS.**—Subject to subclause (III), in the case of a direct sale to a consumer by a producer (as described in subparagraph (A)(iii)), the amount of the sale shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by an order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

(III) **CHANGES IN UNIFORM PERCENTAGES.**—Any change in a uniform percentage referred to in subclause (I) or (II) may become effective after—

(aa) recommendation by the PromoFlor Council; and

(bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title.

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

(6) **PERSON.**—The term “person” means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

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

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

(9) **RESEARCH.**—The term “research” means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer

information efforts relating to cut flowers or cut greens, including educational activities.

(10) RETAILER.—

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

(B) DISTRIBUTION CENTERS.—

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

(I) owned or controlled by a person described in subparagraph (A), or owned or controlled cooperatively by a group of the persons, if the predominant retail business activity of the person is not floral sales; or

(II) independently owned but operated primarily to provide food products to retail stores.

(ii) IMPORTERS AND PRODUCERS.—An independently owned distribution center described in clause (i)(II) that also is an importer or producer of cut flowers or cut greens shall be subject to the rules of construction specified in paragraph (4)(A)(iii) and, for the purpose of the rules of construction, be considered to be the seller of the articles directly to the consumer.

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

(12) STATE.—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

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

SEC. 4. ISSUANCE OF ORDERS.

7 USC 6803.

(a) IN GENERAL.—

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

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

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

(b) PROCEDURES.—

(1) PROPOSAL FOR AN ORDER.—

(A) SECRETARY.—The Secretary may propose the issuance of an order.

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

(2) PUBLICATION OF PROPOSAL.—The Secretary shall publish a proposed order and give notice and opportunity for public

comment on the proposed order not later than 60 days after the earlier of—

(A) the date on which the Secretary proposes an order, as provided in paragraph (1)(A); and

(B) the date of the receipt by the Secretary of a proposal for an order, as provided in paragraph (1)(B).

(3) ISSUANCE OF ORDER.—

(A) IN GENERAL.—After notice and opportunity for public comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this Act.

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

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

7 USC 6804.

SEC. 5. REQUIRED TERMS IN ORDERS.

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

(b) PROMOFLOL COUNCIL.—

(1) ESTABLISHMENT AND MEMBERSHIP.—

(A) ESTABLISHMENT.—The order shall provide for the establishment of a Fresh Cut Flowers and Fresh Cut Greens Promotion Council, consisting of 25 members, to administer the order.

(B) MEMBERSHIP.—

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

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

(I) participating qualified handlers representing qualified wholesale handlers and producers and importers that are qualified handlers;

(II) representatives of traditional retailers; and

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

(2) DISTRIBUTION OF APPOINTMENTS.—

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

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

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

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

(iv) 3 members representing traditional cut flowers and cut greens retailers; and

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

(I) 1 member shall represent persons who produce the flowers or greens in locations that are east of the Mississippi River; and

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

(B) DEFINITIONS.—As used in this subsection:

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

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

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

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

(I) is engaged—

(aa) in the domestic production, for sale in commerce, of cut flowers or cut greens and that owns or shares in the ownership and risk of loss of the cut flowers or cut greens; or

(bb) as a first processor of noncultivated cut greens, in receiving the cut greens from a person who gathers the cut greens for handling; and

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

(iii) QUALIFIED WHOLESALE HANDLER.—

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

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

(aa) FLORAL SUPPLIER.—The term “floral supplier” means a person engaged in acquiring cut flowers or cut greens to be manufactured into floral articles or otherwise processed for resale.

(bb) FLORAL WHOLESALE JOBBER.—The term “floral wholesale jobber” means a person who conducts a commission or other wholesale business in buying and selling cut flowers or cut greens.

(C) DISTRIBUTION OF QUALIFIED WHOLESALE HANDLER APPOINTMENTS.—The order shall provide that the appointments of qualified wholesale handlers to the PromoFlor Council made by the Secretary shall take into account the geographical distribution of cut flowers and cut greens markets in the United States.

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

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

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

(C) nominations for—

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

(ii) 2 of the retailer appointments shall be made by traditional retail florist organizations, in accordance with regulations issued by the Secretary;

(D) nominations for each appointment of a representative of persons who produce fresh cut flowers and fresh cut greens shall be made by the persons through an election process, in accordance with regulations issued by the Secretary; and

(E) in any case in which qualified wholesale handlers, producers that are qualified handlers, importers that are qualified handlers, persons who produce fresh cut flowers and fresh cut greens, or retailers fail to nominate individuals for an appointment to the PromoFlor Council, the Secretary may appoint an individual to fill the vacancy on a basis provided in the order or other regulations of the Secretary.

(4) **ALTERNATES.**—The order shall provide for the selection of alternate members of the PromoFlor Council by the Secretary in accordance with procedures specified in the order.

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

(A) each term of appointment to the PromoFlor Council shall be for 3 years, except that, of the initial appointments, 9 of the appointments shall be for 2-year terms, 8 of the appointments shall be for 3-year terms, and 8 of the appointments shall be for 4-year terms;

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

(C) members of the PromoFlor Council shall serve without compensation, but shall be reimbursed for the expenses of the members incurred in performing duties as members of the PromoFlor Council.

(6) **EXECUTIVE COMMITTEE.**—

(A) **ESTABLISHMENT.**—

(i) **IN GENERAL.**—The order shall authorize the PromoFlor Council to appoint, from among the members of the Council, an executive committee of not more than 9 members.

(ii) **INITIAL MEMBERSHIP.**—The membership of the executive committee initially shall be composed of—

(I) 4 members representing qualified wholesale handlers;

(II) 2 members representing producers that are qualified handlers;

(III) 2 members representing importers that are qualified handlers; and

(IV) 1 member representing traditional retailers.

(iii) **SUBSEQUENT MEMBERSHIP.**—After the initial appointments, each appointment to the executive committee shall be made so as to ensure that the committee reflects, to the maximum extent practicable, the membership composition of the PromoFlor Council as a whole.

(iv) **TERMS.**—Each initial appointment to the executive committee shall be for a term of 2 years. After the initial appointments, each appointment to the executive committee shall be for a term of 1 year.

(B) **AUTHORITY.**—The PromoFlor Council may delegate to the executive committee the authority of the PromoFlor Council under the order to hire and manage staff and conduct the routine business of the PromoFlor Council consistent with such policies as are determined by the PromoFlor Council.

(c) **GENERAL RESPONSIBILITIES OF THE PROMOFLOL COUNCIL.**—The order shall define the general responsibilities of the PromoFlor Council, which shall include the responsibility to—

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

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

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

(4) employ such persons as the PromoFlor Council determines are necessary, and set the compensation and define the duties of the persons;

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

(B) propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval under subsection (d) plans and projects for cut flowers or cut greens promotion, consumer information, or related research;

(6)(A) implement plans and projects for cut flowers or cut greens promotion, consumer information, or related research, as provided in subsection (d); or

(B) contract or enter into agreements with appropriate persons to implement the plans and projects, as provided in subsection (e), and pay the costs of the implementation, or contracts and agreements, with funds received under the order;

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

(8) receive, investigate, and report to the Secretary complaints of violations of the order;

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

(10) invest, pending disbursement under a plan or project, funds collected through assessments authorized under this Act only in—

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

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

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States,

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

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

(d) BUDGETS; PLANS AND PROJECTS.—

(1) SUBMISSION OF BUDGETS.—The order shall require the PromoFlor Council to submit to the Secretary for approval budgets, on a fiscal year basis, of the anticipated expenses and disbursements of the Council in the implementation of the order, including the projected costs of cut flowers and cut greens promotion, consumer information, and related research plans and projects.

(2) PLANS AND PROJECTS.—

(A) PROMOTION AND CONSUMER INFORMATION.—The order shall provide—

(i) for the establishment, implementation, administration, and evaluation of appropriate plans and projects for advertising, sales promotion, other promotion, and consumer information with respect to cut flowers and cut greens, and for the disbursement of necessary funds for the purposes described in this clause;

(ii) that any plan or project referred to in clause (i) shall be directed toward increasing the general demand for cut flowers or cut greens and may not make reference to a private brand or trade name, point of origin, or source of supply, except that this clause shall not preclude the PromoFlor Council from offering the plans and projects of the Council for use by commercial parties, under terms and conditions prescribed by the PromoFlor Council and approved by the Secretary; and

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

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

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

(I) market development research;

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

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

(ii) the dissemination of the information acquired through the plans and projects; and

(iii) the disbursement of such funds as are necessary to carry out this subparagraph.

(C) **SUBMISSION TO SECRETARY.**—The order shall provide that the PromoFlor Council shall submit to the Secretary for approval a proposed plan or project for cut flowers or cut greens promotion, consumer information, or related research, as described in subparagraphs (A) and (B).

(3) **APPROVAL BY SECRETARY.**—A budget, or plan or project for cut flowers or cut greens promotion, consumer information, or related research may not be implemented prior to approval of the budget, plan, or project by the Secretary.

(e) **CONTRACTS AND AGREEMENTS.**—

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

(A) **IN GENERAL.**—To ensure efficient use of funds, the order shall provide that the PromoFlor Council, with the approval of the Secretary, may enter into a contract or an agreement for the implementation of a plan or project for promotion, consumer information, or related research with respect to cut flowers or cut greens, and for the payment of the cost of the contract or agreement with funds received by the PromoFlor Council under the order.

(B) **REQUIREMENTS.**—The order shall provide that any contract or agreement entered into under this paragraph shall provide that—

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

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

(iii) the contracting or agreeing party shall—

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

(II) account for funds received and expended;

(III) make periodic reports to the PromoFlor Council of activities conducted; and

(IV) make such other reports as the PromoFlor Council or the Secretary may require.

(2) **OTHER CONTRACTS AND AGREEMENTS.**—The order shall provide that the PromoFlor Council may enter into a contract or agreement for administrative services. Any contract or agreement entered into under this paragraph shall include provisions comparable to the provisions described in paragraph (1)(B).

(f) **BOOKS AND RECORDS OF THE PROMOFLOL COUNCIL.**—

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

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

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may require; and

(C) account for the receipt and disbursement of all funds entrusted to the PromoFlor Council.

(2) **AUDITS.**—The PromoFlor Council shall cause the books and records of the Council to be audited by an independent

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auditor at the end of each fiscal year. A report of each audit shall be submitted to the Secretary.

(g) **CONTROL OF ADMINISTRATIVE COSTS.**—The order shall provide that the PromoFlor Council shall, as soon as practicable after the order becomes effective and after consultation with the Secretary and other appropriate persons, implement a system of cost controls based on normally accepted business practices that will ensure that the annual budgets of the PromoFlor Council include only amounts for administrative expenses that cover the minimum administrative activities and personnel needed to properly administer and enforce the order, and conduct, supervise, and evaluate plans and projects under the order.

(h) **ASSESSMENTS.**—

(1) **AUTHORITY.**—

(A) **IN GENERAL.**—The order shall provide that each qualified handler shall pay to the PromoFlor Council, in the manner provided in the order, an assessment on each sale of cut flowers or cut greens to a retailer or an exempt handler (including each transaction described in subparagraph (C)(ii)), except to the extent that the sale is excluded from assessments under section 6(a).

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

(C) **MAKING DETERMINATIONS.**—

(i) **QUALIFIED HANDLER STATUS.**—The order shall contain provisions regarding the determination of the status of a person as a qualified handler or exempt handler that include the rules and requirements specified in sections 3(4) and 6(b).

(ii) **CERTAIN COVERED TRANSACTIONS.**—

(I) **IN GENERAL.**—The order shall provide that each non-sale transfer of cut flowers or cut greens to a retailer from a qualified handler that is a distribution center (as described in section 3(4)(A)(ii)(II)), and each direct sale of cut flowers or cut greens to a consumer by a qualified handler that is an importer or a producer (as described in section 3(4)(A)(iii)), shall be treated as a sale of cut flowers or cut greens to a retailer subject to assessments under this subsection.

(II) **AMOUNT OF SALE IN THE CASE OF NON-SALE TRANSFERS AND DIRECT SALES BY IMPORTERS.**—Subject to subclause (IV), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center, or a direct sale to a consumer by an importer, the amount of the sale shall be equal to the sum of—

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

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

(III) **DIRECT SALES BY PRODUCERS.**—Subject to subclause (IV), in the case of a direct sale to a consumer by a producer, the amount of the sale shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by the order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

(IV) **CHANGES IN UNIFORM PERCENTAGES.**—Any change in a uniform percentage referred to in subclause (II) or (III) may become effective after—

(aa) recommendation by the PromoFlor Council; and

(bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title.

(2) **ASSESSMENT RATES.**—With respect to assessment rates, the order shall contain the following terms:

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

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

(ii) in the case of transactions described in paragraph (1)(C)(ii), the amount of each transaction calculated as provided in paragraph (1)(C)(ii).

(B) **CHANGES IN THE RATE.**—

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

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

or

(II) in the case of transactions described in paragraph (1)(C)(ii), the amount of each transaction calculated as provided in paragraph (1)(C)(ii),

except that the assessment rate may in no case exceed 1 percent of the gross sales price or 1 percent of the transaction amount.

(ii) **REQUIREMENTS.**—Any change in the rate of assessment under this subparagraph—

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

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

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

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

(4) **REFUNDS FROM ESCROW ACCOUNT.**—

(A) **ESTABLISHMENT OF ESCROW ACCOUNT.**—The order shall provide that the PromoFlor Council shall—

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

(ii) place into the account an amount equal to 10 percent of the total amount of assessments collected during the period beginning on the date the order becomes effective, as provided in section 4(b)(3)(B), and ending on the date the initial referendum on the order under section 7(a) is completed.

(B) **RIGHT TO RECEIVE REFUND.**—

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

(I) the qualified handler is required to pay the assessments;

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

(III) the qualified handler demands the refund prior to the conduct of the referendum on the order under section 7(a); and

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

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

(I) The demand shall be made in accordance with regulations, on a form, and within a time period specified by the PromoFlor Council.

(II) The refund shall be made only on submission of proof satisfactory to the PromoFlor Council that the qualified handler paid the assessment for which the refund is demanded.

(III) If the amount in the escrow account required under subparagraph (A) is not sufficient to refund the total amount of assessments demanded by all qualified handlers determined eligible for refunds and the order is not approved in the referendum on the order under section 7(a), the PromoFlor Council shall prorate the amount

of all such refunds among all eligible qualified handlers that demand the refund.

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

(5) USE OF ASSESSMENT FUNDS.—The order shall provide that assessment funds (less any refunds expended under the terms of the order required under paragraph (4)) shall be used for payment of costs incurred in implementing and administering the order, with provision for a reasonable reserve, and to cover the administrative costs incurred by the Secretary in implementing and administering this Act.

(6) POSTPONEMENT OF COLLECTIONS.—

(A) AUTHORITY.—

(i) IN GENERAL.—Subject to the other provisions of this paragraph and notwithstanding any other provision of this Act, the PromoFlor Council may grant a postponement of the payment of an assessment under this subsection for any qualified handler that establishes that the handler is financially unable to make the payment.

(ii) REQUIREMENTS AND PROCEDURES.—A handler described in clause (i) shall establish that the handler is financially unable to make the payment in accordance with application and documentation requirements and review procedures established under rules recommended by the PromoFlor Council, approved by the Secretary, and issued after public notice and opportunity for comment in accordance with section 553 of title 5, United States Code, and without regard to sections 556 and 557 of such title.

(B) CRITERIA AND RESPONSIBILITY FOR DETERMINATIONS.—The PromoFlor Council may grant a postponement under subparagraph (A) only if the handler demonstrates by the submission of an opinion of an independent certified public accountant, and by submission of other documentation required under the rules established under subparagraph (A)(ii), that the handler is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when otherwise due.

(C) PERIOD OF POSTPONEMENT.—

(i) IN GENERAL.—The time period of a postponement and the terms and conditions of the payment of each assessment that is postponed under this paragraph shall be established by the PromoFlor Council, in accordance with rules established under the procedures specified in subparagraph (A)(ii), so as to appropriately reflect the demonstrated needs of the qualified handler.

(ii) EXTENSIONS.—A postponement may be extended under rules established under the procedures specified in subparagraph (A)(ii) for the grant of initial postponements.

(i) **PROHIBITION.**—The order shall prohibit the use of any funds received by the PromoFlor Council in any manner for the purpose of influencing legislation or government action or policy, except that the funds may be used by the PromoFlor Council for the development and recommendation to the Secretary of amendments to the order.

(j) **BOOKS AND RECORDS; REPORTS.**—

(1) **IN GENERAL.**—The order shall provide that each qualified handler shall maintain, and make available for inspection, such books and records as are required by the order and file reports at the time, in the manner, and having the content required by the order, to the end that such information is made available to the Secretary and the PromoFlor Council as is appropriate for the administration or enforcement of this Act, the order, or any regulation issued under this Act.

(2) **CONFIDENTIALITY REQUIREMENT.**—

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

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

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

(ii) to the extent the Secretary considers the information relevant to the suit or hearing.

(C) **GENERAL STATEMENTS AND PUBLICATIONS.**—Nothing in this paragraph may be construed to prohibit—

(i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected from the reports, if the statements do not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of any person who violates the order, together with a statement of the particular provisions of the order violated by the person.

(3) **LISTS OF IMPORTERS.**—

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

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

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

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

(2) SPECIAL COMMITTEES.—

(A) **IN GENERAL.**—For the purposes described in paragraph (1), the order shall authorize the appointment of special committees composed of persons other than PromoFlor Council members.

(B) **CONSULTATION.**—A committee appointed under subparagraph (A)—

(i) may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government; and

(ii) shall consult directly with the PromoFlor Council.

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

SEC. 6. EXCLUSION; DETERMINATIONS.

7 USC 6805.

(a) **EXCLUSION.**—An order shall exclude from assessments under the order any sale of cut flowers or cut greens for export from the United States.

Exports.

(b) MAKING DETERMINATIONS.—

(1) **IN GENERAL.**—For the purpose of applying the \$750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler under section 3(4), or to a specific facility in order to determine the status of the facility as an eligible separate facility under section 7(b)(2), an order issued under this Act shall provide that—

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

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

(2) RULE OF ATTRIBUTION.—

(A) **IN GENERAL.**—For the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include—

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

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

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

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

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

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

7 USC 6806.

SEC. 7. REFERENDA.

(a) REQUIREMENT FOR INITIAL REFERENDUM.—

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

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

(b) VOTES PERMITTED.—

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

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

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

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

(C) ANNUAL SALES DETERMINED.—For the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraph (B), subparagraphs (A) and (C) of section 3(4) shall apply.

(c) SUSPENSION OR TERMINATION REFERENDA.—If an order is approved in a referendum conducted under subsection (a), effective

beginning on the date that is 3 years after the date of the approval, the Secretary—

(1) at the discretion of the Secretary, may conduct at any time a referendum of qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), subject to the voting requirements of subsection (b), to ascertain whether qualified handlers favor suspension or termination of the order; and

(2) if requested by the PromoFlor Council or by a representative group comprising 30 percent or more of all qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), shall conduct a referendum of all qualified handlers required to pay assessments under the order, as provided in section 5(h)(1), subject to the voting requirements of subsection (b), to ascertain whether qualified handlers favor suspension or termination of the order.

(d) **SUSPENSION OR TERMINATION.**—If, as a result of the referendum conducted under subsection (a), the Secretary determines that the order has not been approved by a simple majority of all votes cast in the referendum, or as a result of a referendum conducted under subsection (c), the Secretary determines that suspension or termination of the order is favored by a simple majority of all votes cast in the referendum, the Secretary shall—

(1) not later than 180 days after the referendum, suspend or terminate, as appropriate, collection of assessments under the order; and

(2) suspend or terminate, as appropriate, activities under the order as soon as practicable and in an orderly manner.

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

SEC. 8. PETITION AND REVIEW.

7 USC 6807.

(a) **PETITION AND HEARING.**—

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

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law; and

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

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

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

(b) **REVIEW.**—

(1) **COMMENCEMENT OF ACTION.**—The district courts of the United States in any district in which a person who is a petitioner under subsection (a) resides or conducts business shall have jurisdiction to review the ruling of the Secretary on the petition of the person, if a complaint requesting the

review is filed not later than 20 days after the date of the entry of the ruling by the Secretary.

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

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

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

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

(c) **ENFORCEMENT.**—The pendency of proceedings instituted under this section shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief under section 9.

7 USC 6808.

SEC. 9. ENFORCEMENT.

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

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

(c) **CIVIL PENALTIES AND ORDERS.**—

(1) **CIVIL PENALTIES.**—

(A) **IN GENERAL.**—A person who violates a provision of this Act, or an order or regulation issued by the Secretary under this Act, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person under an order or regulation issued under this Act, may be assessed by the Secretary—

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

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

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

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

(3) **NOTICE AND HEARING.**—No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to the

violation. Any such hearing shall be conducted in accordance with section 10(b)(2) and shall be held within the United States judicial district in which the residence or principal place of business of the person is located.

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

(d) REVIEW BY DISTRICT COURT.—

(1) COMMENCEMENT OF ACTION.—

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

(i) filing a notice of appeal in the district court of the United States for the district in which the person resides or conducts business, or in the United States District Court for the District of Columbia; and

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

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

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

(e) FAILURE TO OBEY AN ORDER.—

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

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

(f) FAILURE TO PAY A PENALTY.—

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

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

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

7 USC 6809.

SEC. 10. INVESTIGATIONS AND POWER TO SUBPOENA.

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

(b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

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

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

(c) AID OF COURTS.—

(1) **IN GENERAL.**—In the case of contumacy by, or refusal to obey a subpoena issued under subsection (b) to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is conducted, or where the person resides or conducts business, in order to enforce a subpoena issued under subsection (b).

(2) **ORDER.**—The court may issue an order requiring the person referred to in paragraph (1) to comply with a subpoena referred to in paragraph (1).

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

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

7 USC 6810.

SEC. 11. CONFIDENTIALITY.

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

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

(c) **ADDITIONAL PROHIBITION.**—No information obtained under this Act may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this Act or an investigatory or enforcement action necessary for the implementation of this Act.

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

SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR TERMINATE ORDER. 7 USC 6811.

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

SEC. 13. CONSTRUCTION. 7 USC 6812.

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

(b) **PRODUCER RIGHTS.**—This Act—

(1) may not be construed to provide for control of production or otherwise limit the right of individual cut flowers and cut greens producers to produce cut flowers and cut greens; and

(2) shall be construed to treat all persons producing cut flowers and cut greens fairly and to implement any order in an equitable manner.

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

SEC. 14. REGULATIONS. 7 USC 6813.

The Secretary may issue such regulations as are necessary to carry out this Act and the powers vested in the Secretary by this Act, including regulations relating to the assessment of late payment charges and interest.

SEC. 15. AUTHORIZATION OF APPROPRIATIONS. 7 USC 6814.

(a) **IN GENERAL.**—There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this Act.

(b) **ADMINISTRATIVE EXPENSES.**—Funds appropriated under subsection (a) may not be used for the payment of the expenses or

expenditures of the PromoFlor Council in administering a provision of an order.

Approved December 14, 1993.

LEGISLATIVE HISTORY—S. 994 (H.R. 3515):

HOUSE REPORTS: No. 103-394 accompanying H.R. 3515 (Comm. on Agriculture).
CONGRESSIONAL RECORD, Vol. 139 (1993):

Nov. 20, S. 994 considered and passed Senate. H.R. 3515 considered and passed House.

Nov. 21, S. 994 considered and passed House.