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H. R. 1738

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 others, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1993

Mr. LEWIS of Florida (for himself, Mr. STENHOLM, Mr. DE LA GARZA, Mr. PAYNE of New Jersey, Mr. HASTERT, Mr. HOUGHTON, Mr. ENGLISH of Oklahoma, Ms. DANNER, Mr. KOPETSKI, Mr. CUNNINGHAM, Mr. PETERSON of Minnesota, Mr. CANADY, Mr. ALLARD, and Mr. BOEHNER) introduced the following bill; which was referred to the Committee on Agriculture

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 others, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fresh Cut Flowers
5 and Fresh Cut Greens Promotion and Information Act of
6 1993”.

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

2 (a) FINDINGS.—Congress finds that—

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

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

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

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

3 (4) it is widely recognized that it is in the pub-
4 lic interest and important to the Nation's agricul-
5 tural economy to provide an adequate, steady supply
6 of cut flowers and cut greens at reasonable prices to
7 the consumers of the Nation;

8 (5) cut flowers and cut greens move in inter-
9 state and foreign commerce, and cut flowers and cut
10 greens that do not move in such channels of com-
11 merce but only in intrastate commerce directly affect
12 interstate commerce in these articles;

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

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

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

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

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

1 programs of promotion and consumer information
2 necessary to maintain, expand, and develop markets
3 for these articles; and

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

8 (b) POLICY AND PURPOSE.—It is declared to be the
9 policy of Congress that it is in the public interest, and
10 it is the purpose of this Act, to authorize the establish-
11 ment, through the exercise of the powers provided in this
12 Act, of an orderly procedure for the development and fi-
13 nancing (through an adequate assessment on cut flowers
14 and cut greens sold by handlers to retailers and related
15 entities in the United States) of an effective and coordi-
16 nated program of generic promotion, consumer informa-
17 tion,; and related research designed to strengthen the cut
18 flowers and cut greens industry’s position in the market-
19 place and to maintain, develop, and expand markets for
20 cut flowers and cut greens.

21 **SEC. 3. DEFINITIONS.**

22 As used in this Act:

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

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

4 (2) CUT FLOWERS AND CUT GREENS.—

5 (A) IN GENERAL.—The term “cut flowers”
6 includes all flowers cut from growing plants and
7 used as fresh-cut flowers, produced either under
8 cover or in field operations; and the term “cut
9 greens” includes all cultivated or noncultivated
10 decorative foliage cut from growing plants and
11 used as fresh-cut decorative foliage (except
12 Christmas trees) produced either under cover or
13 in field operations. Neither term includes foli-
14 age plants, floral supplies, or flowering plants.

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 retailers, the PromoFlor Council may deter-
20 mine, under procedures set out 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 such de-
24 termination, such article shall not be treated as

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

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

7 (4) HANDLER DEFINITIONS.—

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) bouquet manufacturers (sub-
21 ject to the “substantial portion” rule
22 under paragraph (2)(B));

23 (II) auction houses that clear
24 sales of cut flowers and cut greens to

1 retailers and exempt handlers through
2 a central clearinghouse; and

3 (III) any distribution center that
4 is owned or controlled by a retailer
5 (aa) if the predominant retail business
6 activity of the retailer is floral sales or
7 (bb) when a majority of the cut flow-
8 ers and cut greens sales or transfers
9 from such center are to entities other
10 than entities owned or controlled by
11 the retailer. For purposes of deter-
12 mining sales of cut flowers and cut
13 greens to retailers from any such dis-
14 tribution center, each non-sale trans-
15 fer to a retailer shall be treated as a
16 sale in an amount calculated as pro-
17 vided in subparagraph (C).

18 The term “qualified handler” does not in-
19 clude a person who merely physically
20 transports or delivers cut flowers or cut
21 greens.

22 (iii) RULES OF CONSTRUCTION.—The
23 term “qualified handler” shall be deemed
24 to include an importer or producer that
25 sells cut flowers or cut greens that it has

1 imported into the United States or pro-
2 duced, respectively, directly to consumers
3 and whose sales of such articles (as cal-
4 culated under subparagraph (C)), along
5 with sales of cut flowers and cut greens to
6 retailers or exempt handlers, annually are
7 \$750,000 or more; and each direct sale to
8 consumers by any such qualified handler
9 shall be treated as a sale to a retailer or
10 exempt handler in an amount calculated as
11 provided in subparagraph (C). For pur-
12 poses of this paragraph, the term “pro-
13 ducer” has the same meaning as that pro-
14 vided for the term by section
15 5(b)(2)(B)(ii)(I) of this Act, and the term
16 “importer” has the same meaning as that
17 provided for the term by section
18 5(b)(2)(B)(iii)(I) of this Act.

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

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 paragraphs (A) and (B), the amount of a sale
5 shall be determined on the basis of the gross
6 sales price, as that term is defined in paragraph
7 (3), of product sold, except that with respect to
8 non-sale transfers of cut flowers or cut greens
9 from a distribution center, as described in sub-
10 paragraph (A)(ii)(III), and direct sales to con-
11 sumers, as described in subparagraph (A)(iii),
12 the amount of the sale shall be the price paid
13 by the distribution center, or importer, respec-
14 tively, to acquire the cut flowers or cut greens
15 plus an amount determined by multiplying such
16 acquisition price by a uniform percentage estab-
17 lished by the PromoFlor Council to represent a
18 wholesale handler’s mark-up on a sale to a re-
19 tailer (or in the case of direct sales to consum-
20 ers by producers, an amount determined by ap-
21 plying to the price paid by the consumer a uni-
22 form percentage established by the PromoFlor
23 Council to represent the cost of producing the
24 article and a wholesale handler’s mark-up on a
25 sale to a retailer).

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

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

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

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

19 (9) RETAILER.—The term “retailer” means a
20 person, such as a retail florist, supermarket, mass
21 market retail outlet, or other end-use seller, as de-
22 scribed in an order issued under this Act, that sells
23 cut flowers or cut greens to consumers, and shall in-
24 clude any distribution center owned or controlled by
25 such person only if—

1 (A) the predominant retail business activ-
2 ity of the retailer is not floral sales, and

3 (B) the majority of the cut flowers and cut
4 greens sales or transfers from such center are
5 to entities owned or controlled by such person.

6 (10) SECRETARY.—The term “Secretary”
7 means the Secretary of Agriculture.

8 (11) UNITED STATES; STATE.—The terms
9 “United States” and “State” include the fifty States
10 of the United States, the District of Columbia, and
11 all the territories and possessions of the United
12 States.

13 **SEC. 4. ISSUANCE OF ORDERS.**

14 (a) IN GENERAL.—To effectuate the declared policy
15 of section 2(b), the Secretary, subject to the procedures
16 provided in subsection (b), shall issue orders under this
17 Act applicable to qualified handlers of cut flowers and cut
18 greens. Any such order shall be national in scope. Not
19 more than one order shall be in effect under this Act at
20 any one time.

21 (b) PROCEDURES.—

22 (1) PROPOSAL FOR AN ORDER.—The Secretary
23 may propose the issuance of an order under this
24 Act, or an industry group that represents a substan-
25 tial number of the industry members who are to be

1 assessed under the order, or any other person that
2 will be effected by this Act, may request the issuance
3 of, and submit a proposal for, such an order.

4 (2) PUBLICATION OF PROPOSAL.—Not later
5 than sixty days after the earlier of—

6 (A) the receipt by the Secretary of a pro-
7 posal for an order from an industry group or
8 interested person, as provided in paragraph (1)
9 of this subsection, or

10 (B) the determination of the Secretary to
11 propose an order, the Secretary shall publish
12 the proposed order and give due notice and op-
13 portunity for public comment on the proposed
14 order.

15 (3) ISSUANCE OF ORDER.—After notice and op-
16 portunity for public comment are given, as provided
17 in paragraph (2), the Secretary shall issue the order,
18 taking into consideration the comments received and
19 including in the order provisions necessary to ensure
20 that the order is in conformity with the require-
21 ments of this Act. Such order shall be issued and be-
22 come effective not later than one hundred fifty days
23 following publication of the proposed order.

24 (c) AMENDMENTS.—The Secretary, from time to
25 time, may amend any order issued under this Act. The

1 provisions of this Act applicable to an order shall be appli-
2 cable to amendments to the order.

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

4 (a) IN GENERAL.—Each order issued under this Act
5 shall contain the terms and provisions prescribed in this
6 section.

7 (b) PROMOLFLOR COUNCIL—

8 (1) ESTABLISHMENT AND MEMBERSHIP.—

9 (A) ESTABLISHMENT.—The order shall
10 provide for the establishment of a Fresh Cut
11 Flowers and Fresh Cut Greens Promotion
12 Council, consisting of twenty one members, to
13 administer the order.

14 (B) MEMBERSHIP.—The order shall pro-
15 vide that members of the PromoFlor Council
16 shall be participating qualified handlers rep-
17 resenting qualified wholesale handlers and pro-
18 ducers and importers that are qualified han-
19 dlers, and a member that represents retailers,
20 appointed by the Secretary from nominations
21 submitted by qualified wholesale handlers, pro-
22 ducers and importers that are qualified han-
23 dlers, and retailers, as provided in paragraphs
24 (2) and (3).

25 (2) DISTRIBUTION OF APPOINTMENTS.—

1 (A) IN GENERAL.—The order shall provide
2 that the membership of the PromoFlor Council
3 shall be made up of—

4 (i) fourteen members representing
5 qualified wholesale handlers of domestic or
6 imported cut flowers and cut greens;

7 (ii) three members representing pro-
8 ducers that are qualified handlers of cut
9 flowers and cut greens;

10 (iii) three members representing im-
11 porters that are qualified handlers of cut
12 flowers and cut greens; and

13 (iv) one member representing cut
14 flowers and cut greens retailers.

15 (B) MEANING OF TERMS.—For purposes
16 of this subsection:

17 (i) QUALIFIED WHOLESAL HAN-
18 DLERS.—The term “qualified wholesale
19 handler” means a person in business as a
20 floral wholesale jobber or floral supplier
21 and that is subject to assessments as a
22 qualified handler under the order. For pur-
23 poses of this clause, the term “floral
24 wholesale jobber” means a person that
25 conducts a commission or other wholesale

1 business in buying and selling cut flowers
2 or cut greens, and the term “floral sup-
3 plier” means a person engaged in acquir-
4 ing cut flowers or cut greens to be manu-
5 factured into floral articles or otherwise
6 processed for resale.

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

10 (I) is engaged—

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

17 (bb) as a first processor of
18 noncultivated cut greens, in re-
19 ceiving such cut greens from the
20 persons that gather them for
21 handling; and

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

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

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

12 (II) that is subject to assess-
13 ments as a qualified handler under
14 the order.

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

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

24 (A) two nominees be submitted for each
25 appointment to the PromoFlor Council;

1 (B) nominations for each appointment of a
2 qualified wholesale handler, producer that is a
3 qualified handler, or importer that is a qualified
4 handler to the PromoFlor Council shall be
5 made by qualified wholesale handlers, producers
6 that are qualified handlers, or importers that
7 are qualified handlers, respectively, through an
8 election process under regulations prescribed by
9 the Secretary;

10 (C) nominations for the retailer appoint-
11 ment shall be made by the American Floral
12 Marketing Council, or successor entity; and

13 (D) in any case in which qualified whole-
14 sale handlers, producers that are qualified han-
15 dlers, importers that are qualified handlers, or
16 retailers fail to nominate individuals for an ap-
17 pointment to the PromoFlor Council, the Sec-
18 retary may appoint a person to fill the vacancy
19 on a basis provided in the order or other regu-
20 lations of the Secretary.

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

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

3 (A) each term of appointment to the
4 PromoFlor Council shall be for three years, ex-
5 cept that, of the initial appointments, one-third
6 shall be for two-year terms, one-third for three-
7 year terms, and one-third for four-year terms;

8 (B) no member of the PromoFlor Council
9 may serve more than two consecutive terms of
10 three years, except that any member serving on
11 initial term of four years may serve an addi-
12 tional term of three years; and

13 (C) PromoFlor Council members shall
14 serve without compensation, but shall be reim-
15 bursed for their expenses incurred in perform-
16 ing their duties as members of the PromoFlor
17 Council.

18 (6) EXECUTIVE COMMITTEE.—

19 (A) ESTABLISHMENT.—The order shall au-
20 thorize the PromoFlor Council to appoint from
21 among its members an executive committee of
22 not more than nine members. The membership
23 of the executive committee initially shall be
24 composed of four members representing quali-
25 fied wholesale handlers, two members represent-

1 ing producers that are qualified handlers, two
2 members representing importers that are quali-
3 fied handlers, and one member representing re-
4 tailers; and thereafter appointments to the execu-
5 tive committee shall be made so as to ensure
6 that the committee reflects, to the maximum
7 extent practicable, the membership composition
8 of the PromoFlor Council as a whole. The ini-
9 tial appointments to the executive committee
10 each shall be for a term of two years. There-
11 after, appointments to the executive committee
12 each shall be for a term of one year.

13 (B) AUTHORITY.—The PromoFlor Council
14 may delegate to the executive committee its au-
15 thority under the order to hire and manage
16 staff and conduct the routine business of the
17 PromoFlor Council within the policies deter-
18 mined by the PromoFlor Council.

19 (c) GENERAL RESPONSIBILITIES OF THE
20 PROMOFLOR COUNCIL.—The order shall define the gen-
21 eral responsibilities of the PromoFlor Council, which shall
22 include the responsibilities to—

23 (1) administer the order in accordance with its
24 terms and provisions;

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

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

5 (4) employ such persons as the PromoFlor
6 Council determines are necessary, and set the com-
7 pensation and define the duties of such persons;

8 (5) develop budgets for the implementation of
9 the order and submit such budgets to the Secretary
10 for approval under subsection (d), and propose and
11 develop (or receive and evaluate), approve, and sub-
12 mit to the Secretary for approval under subsection
13 (d) plans and projects for cut flowers or cut greens
14 promotion, consumer information, or related re-
15 search;

16 (6) implement plans and projects for cut flow-
17 ers or cut greens promotion, consumer information,
18 or related research, as provided in subsection (d), or
19 contract or enter into agreements with appropriate
20 persons to implement such plans and projects, as
21 provided in subsection (e), and pay the costs of such
22 implementation, or contracts and agreements, with
23 funds received under the order;

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

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

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

8 (10) invest, pending disbursement under a plan
9 or project, funds collected through assessments au-
10 thORIZED under this Act only in—

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

13 (B) general obligations of any State or any
14 political subdivision thereof;

15 (C) any interest-bearing account or certifi-
16 cate of deposit of a bank that is a member of
17 the Federal Reserve System; or

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

20 Income from any such invested funds may only be
21 used for a purpose for which the invested funds may
22 be used; and

23 (11) furnish the Secretary with such informa-
24 tion as the Secretary may require.

25 (d) BUDGETS; PLANS AND PROJECTS.—

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

9 (2) PLANS OR PROJECTS.—

10 (A) PROMOTION AND CONSUMER INFORMA-
11 TION.—The order shall provide—

12 (i) for the establishment, implementa-
13 tion, administration, and evaluation of ap-
14 propriate plans and projects for advertis-
15 ing, sales promotion, other promotion, and
16 consumer information with respect to cut
17 flowers and cut greens, and for the dis-
18 bursement of necessary funds for such pur-
19 poses;

20 (ii) that any such plan or project shall
21 be directed toward increasing the general
22 demand for cut flowers or cut greens and
23 may make no reference to a private brand
24 or trade name, point of origin, or source of
25 supply, except that these limitations shall

1 not preclude the PromoFlor Council from
2 offering its plans and projects for use by
3 commercial parties, under terms and con-
4 ditions prescribed by the PromoFlor Coun-
5 cil and approved by the Secretary; and

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

9 (B) RESEARCH.—The order shall provide
10 for the establishment, implementation, adminis-
11 tration, and evaluation of plans and projects for
12 market development research, research with re-
13 spect to the sale, distribution, marketing, or use
14 of cut flowers or cut greens, and other research
15 with respect to cut flowers or cut greens mar-
16 keting, promotion, or consumer information; for
17 the dissemination of the information gained by
18 such activities; and for the disbursement of nec-
19 essary funds for such purposes.

20 (C) SUBMISSION TO SECRETARY.—The
21 order shall provide that the PromoFlor Council
22 shall submit to the Secretary for approval any
23 proposed plan or project for cut flowers or cut
24 greens promotion, consumer information, or re-

1 lated research, as described in subparagraphs
2 (A) and (B).

3 (3) APPROVAL BY SECRETARY.—No budget, or
4 plan or project for cut flowers or cut greens pro-
5 motion, consumer information, or related research,
6 shall be implemented prior to its approval by the
7 Secretary.

8 (e) CONTRACTS AND AGREEMENTS.—

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

11 (A) IN GENERAL.—To ensure efficient use
12 of funds, the order shall provide that the
13 PromoFlor Council, with the approval of the
14 Secretary, may enter into contracts or agree-
15 ments for the implementation of any plan or
16 project for promotion, consumer information, or
17 related research with respect to cut flowers or
18 cut greens, and for the payment of the cost
19 thereof with funds received by the PromoFlor
20 Council under the order.

21 (B) REQUIREMENTS.—The order shall pro-
22 vide that any such contract or agreement shall
23 provide that—

24 (i) the contracting or agreeing party
25 shall develop and submit to the PromoFlor

1 Council a plan or project together with a
2 budget or budgets that shall show esti-
3 mated costs to be incurred for such plan or
4 project;

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

8 (iii) the contracting or agreeing party
9 shall keep accurate records of all of its
10 transactions, account for funds received
11 and expended, make periodic reports to the
12 PromoFlor Council of activities conducted,
13 and make such other reports as the
14 PromoFlor Council or the Secretary may
15 require.

16 (2) OTHER CONTRACTS AND AGREEMENTS.—

17 The order shall provide that the PromoFlor Council
18 also may enter into contracts or agreements for ad-
19 ministrative services. Any such contract or agree-
20 ment shall include provisions comparable to those
21 provided in clauses (i), (ii), or (iii) of paragraph
22 (1)(B).

23 (f) BOOKS AND RECORDS OF THE PROMOFLO
24 R COUNCIL.—

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

3 (A) maintain such books and records
4 (which shall be available to the Secretary for in-
5 spection and audit) as the Secretary may pre-
6 scribe;

7 (B) prepare and submit to the Secretary,
8 from time to time, such reports as the Sec-
9 retary may prescribe; and

10 (C) account for the receipt and disburse-
11 ment of all funds entrusted to the PromoFlor
12 Council.

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

18 (g) CONTROL OF ADMINISTRATIVE COSTS.—The
19 order shall provide that the PromoFlor Council shall, as
20 soon as practicable after the order becomes effective and
21 after consultation with the Department of Agriculture and
22 other appropriate persons, implement a system of cost
23 controls based on normally accepted business practices
24 that will ensure that the PromoFlor Council's annual
25 budgets only include amounts for administrative expenses

1 that cover the minimum administrative activities and per-
2 sonnel needed to properly administer and enforce the
3 order and conduct, supervise, and evaluate plans and
4 projects under the order.

5 (h) ASSESSMENTS.—

6 (1) AUTHORITY.—

7 (A) IN GENERAL.—The order shall provide
8 that each qualified handler shall pay to the
9 PromoFlor Council, in the manner prescribed
10 by the order, an assessment on each sale of cut
11 flowers or cut greens to a retailer or an exempt
12 handler (including each transaction described in
13 subparagraph (C)(ii)), except to the extent such
14 sale is excluded from assessments under section
15 6(a).

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

21 (C) MAKING DETERMINATIONS.—

22 (i) QUALIFIED HANDLER STATUS.—

23 The order also shall contain provisions re-
24 garding the making of determinations to
25 determine status as a qualified handler or

1 exempt handler that include the rules and
2 requirements set out in sections 3(4) and
3 6(b).

4 (ii) COVERED TRANSACTIONS.—The
5 order shall provide that each non-sale
6 transfer of cut flowers or cut greens to a
7 retailer from a qualified handler that is a
8 distribution center, as described in section
9 3(4)(A)(ii)(III), and each direct sale of cut
10 flowers or cut greens to a consumer by a
11 qualified handler that is an importer or
12 producer, as described in section
13 3(4)(A)(iii), shall be treated as a sale of
14 cut flowers or cut greens to a retailer sub-
15 ject to assessments under this subsection,
16 in an amount equal to the price paid by
17 the distribution center or importer, respec-
18 tively, to acquire the cut flowers or cut
19 greens plus an amount determined by mul-
20 tiplying such acquisition price by a uni-
21 form percentage established by the
22 PromoFlor Council to represent a whole-
23 sale handler's mark-up on a sale to a re-
24 tailer (or in the case of direct sales to con-
25 sumers by producers, an amount deter-

1 mined by applying to the price paid by the
2 consumer a uniform percentage established
3 by the PromoFlor Council to represent the
4 cost of producing the article and a whole-
5 sale handler's mark-up on a sale to a
6 retailer).

7 (2) ASSESSMENT RATES.—The order shall pro-
8 vide as follows:

9 (A) INITIAL RATE.—The rate of assess-
10 ment on each sale or transfer of cut flowers or
11 cut greens, for the first three years the order is
12 in effect, shall be one-half of 1 per centum of
13 the gross sales price of product sold or (in the
14 case of transactions described in paragraph
15 (1)(C)(ii)) of the amount of each transaction
16 calculated as provided in paragraph (1)(C)(ii).

17 (B) CHANGES IN THE RATE.—After the
18 first three years the order is in effect, the uni-
19 form assessment rate may be increased or de-
20 creased annually by not more than .25 per cen-
21 tum of gross sales price of product sold or (in
22 the case of transactions described in paragraph
23 (1)(C)(ii)) of the amount of each transaction
24 calculated as provided in paragraph (1)(C)(ii),
25 except that the assessment rate may in no case

1 exceed 1 per centum of gross sales price or
2 transaction amount. Any such change in the
3 rate of assessment—

4 (i) may be made only if adopted by
5 the PromoFlor Council by a two-thirds ma-
6 jority vote and approved by the Secretary
7 as necessary to achieve the objectives of
8 this Act;

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

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

14 (3) WHEN ASSESSMENTS SUBMITTED.—The
15 order shall provide that each person required to pay
16 assessments under this subsection shall remit, to the
17 PromoFlor Council, the assessment due from each
18 sale by that person of cut flowers or cut greens that
19 is subject to an assessment within such time period
20 after the sale (not to exceed sixty days from the end
21 of the month in which the sale took place) as speci-
22 fied 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 such account an amount
8 equal to ten 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 such qualified handler during
24 the time period specified in subparagraph
25 (A)(ii), if—

1 (I) such qualified handler is re-
2 quired to pay such assessments;

3 (II) such qualified handler does
4 not support the program established
5 under this Act;

6 (III) such qualified handler de-
7 mands such refund prior to the con-
8 duct of the referendum on the order
9 under section 7(a); and

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

12 (ii) CONDITIONS.—The right of any
13 qualified handler to receive refunds under
14 clause (i) shall be subject to the following
15 conditions:

16 (I) Such demand shall be made
17 in accordance with regulations, on a
18 form, and within a time period pre-
19 scribed by the PromoFlor Council.

20 (II) Such refund shall be made
21 only on submission of proof satisfac-
22 tory to the Board that such 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 such 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 (net of any re-
22 funds paid out under the terms of the order con-
23 tained in paragraph (4)) shall be used for payment
24 of 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 Government em-
4 ployees 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 such 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) Information obtained from books,
25 records, or reports under the authority provided

1 in paragraph (1), or from reports required
2 under section 6(b)(3), shall be kept confidential
3 by all officers and employees of the Department
4 of Agriculture and by the staff and agents of
5 the PromoFlor Council, and only such informa-
6 tion so obtained as the Secretary considers rel-
7 evant may be disclosed to the public by them
8 and then only in a suit or administrative hear-
9 ing brought at the request of the Secretary, or
10 to which the Secretary or any officer of the
11 United States is a party, and involving the
12 order.

13 (B) Nothing in subparagraph (A) may be
14 construed to prohibit—

15 (i) the issuance of general statements,
16 based on the reports, of the number of per-
17 sons subject to the order or statistical data
18 collected therefrom, which statements do
19 not identify the information furnished by
20 any person; or

21 (ii) the publication, by direction of the
22 Secretary, of the name of any person vio-
23 lating the order, together with a statement
24 of the particular provisions of the order
25 violated by such person.

1 (3) LISTS OF IMPORTERS.—The order shall
2 provide that the staff of the PromoFlor Council peri-
3 odically shall review lists of importers of cut flowers
4 and cut greens to determine whether persons listed
5 therein are subject to the order; and the United
6 States Customs Service shall provide such lists at
7 the request of the PromoFlor Council.

8 (k) CONSULTATIONS WITH INDUSTRY EXPERTS.—
9 The order shall provide that the PromoFlor Council, from
10 time to time, may seek advice from and consult with ex-
11 perts from the production, import, wholesale, and retail
12 segments of the cut flowers and cut greens industry to
13 assist in the development of promotion, consumer informa-
14 tion, and related research plans and projects. For such
15 purpose, the order also shall authorize the appointment
16 of special committees composed of persons other than
17 PromoFlor Council members. No such committee may
18 provide advice or recommendations to an agency or officer
19 of the Federal Government, but shall consult directly with
20 the PromoFlor Council.

21 (1) OTHER TERMS OF THE ORDER.—The order shall
22 contain such other terms and provisions, not inconsistent
23 with this Act, as are necessary to effectuate this Act, (in-
24 cluding provision for the assessment of a charge for each

1 late payment of assessments under subsection (h)) and as
2 provided in section 6.

3 **SEC. 6. EXCLUSION; DETERMINATIONS.**

4 (a) EXCLUSION.—Any order issued under this Act
5 shall exclude from assessments under the order any sale
6 of cut flowers or cut greens for export from the United
7 States.

8 (b) MAKING DETERMINATIONS.—

9 (1) IN GENERAL.—For purposes of applying the
10 \$750,000 annual sales limitation to specific persons
11 in order to determine status as a qualified handler
12 or an exempt handler under section 3(4), or to spe-
13 cific facilities in order to determine status as an eli-
14 gible separate facility under section 7(b)(2), any
15 order issued under this Act shall provide that—

16 (A) a determination of a person's or facili-
17 ty's annual sales volume shall be based on the
18 sales of cut flowers and cut greens by such per-
19 son or facility during the most recently-com-
20 pleted calendar year, except as provided in sub-
21 paragraph (B); and

22 (B) with respect to new businesses and
23 other operations for which complete data on
24 sales during all or part of the most recently-
25 completed calendar year are not available to the

1 PromoFlor Council, the determination may be
2 made using an alternative time period or other
3 alternative procedures specified in the order.

4 (2) RULE OF ATTRIBUTION.—For purposes of
5 determining the annual sales volume of a person or
6 a separate facility of a person, sales attributable to
7 a person shall include—

8 (A) in those cases in which the person is
9 an individual, sales attributable to such per-
10 son’s spouse, children, grandchildren, parents,
11 and grandparents;

12 (B) in those cases in which the person is
13 a partnership or member of a partnership, sales
14 attributable to the partnership and other part-
15 ners of the partnership;

16 (C) for both individuals and partnerships,
17 sales attributable to any corporation or other
18 entity in which the person owns more than 50
19 per centum of the stock or (if the entity is not
20 a corporation) that the person controls; and

21 (D) in those cases in which the person is
22 a corporation, sales attributable to any cor-
23 porate subsidiary or other corporation or entity
24 in which the corporation owns more than 50 per

1 centum of the stock or (if the entity is not a
2 corporation) that the corporation controls.

3 For purposes of this paragraph, stock or an owner-
4 ship interest in an entity that is owned by the
5 spouse, children, grandchildren, parents, grand-
6 parents, or partners of an individual, or by a part-
7 nership in which a person is a partner, or by a cor-
8 poration more than 50 per centum of the stock of
9 which is owned by a person, shall be treated as
10 owned by the individual or person.

11 (3) REPORTS.—For purposes of this subsection,
12 the order may require each person that sells cut
13 flowers or cut greens to retailers to submit reports
14 to the PromoFlor Council on annual sales by such
15 person. Such reports shall be subject to the con-
16 fidentiality requirements provided in section 5(j)(2).

17 **SEC. 7. REFERENDA.**

18 (a) REQUIREMENT FOR INITIAL REFERENDUM.—

19 (1) CONDUCT.—Not later than thirty-six
20 months after the issuance of an order under section
21 4(b)(3), the Secretary shall conduct a referendum
22 among qualified handlers required to pay assess-
23 ments under the order, as provided in section
24 5(h)(1), subject to the rules on voting provided in

1 subsection (b), to ascertain whether or not the order
2 then in effect shall be continued.

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

9 (b) VOTES PERMITTED.—

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

15 (2) ELIGIBLE SEPARATE FACILITY.—

16 (A) SEPARATE FACILITY.—A handling or
17 marketing facility of a qualified handler shall be
18 considered a separate facility if it is physically
19 located away from other facilities of the quali-
20 fied handler or its business function is substan-
21 tially different than the functions of other fa-
22 cilities owned or operated by the qualified han-
23 dler.

24 (B) ELIGIBILITY.—A separate facility of a
25 qualified handler shall be considered an eligible

1 separate facility if the annual sales of cut flow-
2 ers and cut greens to retailers and exempt han-
3 dlers from such facility are \$750,000 or more.

4 (C) ANNUAL SALES DETERMINED.—For
5 purposes of determining the amount of annual
6 sales of cut flowers and cut greens under sub-
7 paragraph (B) of this paragraph, the rules set
8 out in subparagraphs (A) and (C) of section
9 3(4) shall be applicable.

10 (c) SUSPENSION OR TERMINATION REFERENDA.—
11 Effective beginning three years after an order issued
12 under this Act is approved in a referendum conducted
13 under subsection (a), the Secretary—

14 (1) at the Secretary's discretion, may conduct
15 at any time a referendum of qualified handlers re-
16 quired to pay assessments under the order, as pro-
17 vided in section 5(h)(1), subject to the rules on vot-
18 ing provided in subsection (b), to ascertain whether
19 or not qualified handlers favor suspension or termi-
20 nation of the order; and

21 (2) whenever requested by the PromoFlor
22 Council or by a representative group comprising
23 thirty percent or more of all qualified handlers re-
24 quired to pay assessments under the order, as pro-
25 vided in section 5(h)(1), shall conduct a referendum

1 of all qualified handlers required to pay assessments
2 under the order, as provided section 5(h)(1), subject
3 to the rules on voting provided in subsection (b), to
4 ascertain whether or not qualified handlers favor
5 suspension or termination of the order.

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

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

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

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

23 **SEC. 8. PETITION AND REVIEW.**

24 (a) PETITION AND HEARING.—

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

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

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

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

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

21 (b) REVIEW.—

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

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

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

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

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

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

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

21 **SEC. 9. ENFORCEMENT.**

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

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

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

13 (c) CIVIL PENALTIES AND ORDERS.—

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

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

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

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

3 Each violation shall be a separate offense.

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

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

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

1 (d) REVIEW BY DISTRICT COURT.—

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

7 (A) filing, within the thirty-day period be-
8 ginning on the date such penalty is assessed or
9 order issued, a notice of appeal in the district
10 court of the United States for the district in
11 which such person resides or carries on busi-
12 ness, or in the United States district court for
13 the District of Columbia; and

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

16 The Secretary promptly shall file in such court a
17 certified copy of the record on which the Secretary
18 found that the person had committed a violation.

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

23 (e) FAILURE TO OBEY AN ORDER.—A person that
24 fails to obey a cease and desist order issued under sub-
25 section (c) after the order has become final and

1 unappealable, or after the appropriate United States dis-
2 trict court has entered a final judgment in favor of the
3 Secretary, shall be subject to a civil penalty assessed by
4 the Secretary of not more than \$5,000 for each offense,
5 after opportunity for a hearing and for judicial review
6 under the procedures specified in subsections (c) and (d).
7 Each day during which such failure continues shall be con-
8 sidered as a separate violation of such order.

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

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

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

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

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

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

5 (1) IN GENERAL.—For the purpose of an inves-
6 tigation under subsection (a), the Secretary may ad-
7 minister oaths and affirmations, and issue subpoe-
8 nas to require the production of any records that are
9 relevant to the inquiry. The production of any such
10 records may be required from any place in the
11 United States.

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

21 (c) AID OF COURTS.—

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

1 investigation or proceeding is carried on, or where
2 such person resides or carries on business, in order
3 to enforce a subpoena issued under subsection (b).
4 The court may issue an order requiring such person
5 to comply with such a subpoena. Any failure to obey
6 such order of the court may be punished by such
7 court as a contempt thereof.

8 (2) PROCESS.—Process in any proceeding
9 under this subsection may be served in the United
10 States judicial district in which the person being
11 proceeded against resides or carries on business or
12 wherever such person may be found.

13 **SEC. 11. CONFIDENTIALITY.**

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

17 (b) PENALTY.—Any person knowingly violating sub-
18 section (a) or the confidentiality terms of an order, as de-
19 scribed in section 5(j)(2), on conviction shall be subject
20 to a fine of not less than \$1,000 nor more than \$10,000
21 or to imprisonment for not more than one year, or both,
22 and, if an officer or employee of the Department of Agri-
23 culture or the PromoFlor Council, shall be removed from
24 office.

1 (c) ADDITIONAL PROHIBITION.—No information ob-
2 tained under this Act may be made available to any agency
3 or officer of the Federal Government for any purpose
4 other than the implementation of this Act and any inves-
5 tigatory or enforcement actions necessary for the imple-
6 mentation of this Act.

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

10 **SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR**
11 **TERMINATE ORDER.**

12 Whenever the Secretary finds that an order issued
13 under this Act, or any provision of the order, obstructs
14 or does not tend to effectuate the declared policy of this
15 Act, the Secretary shall terminate or suspend the oper-
16 ation of such order or provision under such terms as the
17 Secretary determines appropriate.

18 **SEC. 13. CONSTRUCTION.**

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

23 (b) PRODUCER RIGHTS.—Nothing in this Act may be
24 construed to provide for control of production or otherwise
25 limit the right of individual cut flowers and cut greens

1 producers to produce cut flowers and cut greens. This Act
2 seeks to treat all persons producing cut flowers and cut
3 greens fairly and to implement any order established here-
4 under equitably in every respect.

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

10 **SEC. 14. REGULATIONS.**

11 The Secretary may issue such regulations as are nec-
12 essary to carry out this Act and the powers vested in the
13 Secretary by this Act, including regulations relating to the
14 assessment of late payment charges.

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

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

19 (b) ADMINISTRATIVE EXPENSES.—Funds appro-
20 priated under subsection (a) may not be used for payment
21 of the expenses or expenditures of the PromoFlor Council
22 in administering any provision of an order issued under
23 this Act.

1 **SEC. 16. SEPARABILITY.**

2 If any provision of this Act or the application thereof
3 to any person or circumstances is held invalid, the validity
4 of the remainder of the Act and of the application of such
5 provision to other persons and circumstances shall not be
6 affected thereby.

○

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