

103^D CONGRESS
1ST SESSION

H. R. 3515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Received

NOVEMBER 23, 1993

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

AN ACT

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

TITLE I—EGG RESEARCH AND CONSUMER INFORMATION

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

TITLE II—WATERMELON RESEARCH AND PROMOTION

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

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

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

TITLE IV—LIME RESEARCH, PROMOTION, AND CONSUMER
INFORMATION

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

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

3 **SEC. 101. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **TITLE II—WATERMELON**

12 **RESEARCH AND PROMOTION**

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

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

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

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

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

21 (2) by striking the third sentence; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) by striking the second sentence; and

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

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

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

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

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

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

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

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

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

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

20 (1) in paragraph (4)—

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

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

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

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

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

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

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

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

19 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

4 (1) in the first sentence—

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

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

10 (2) by striking the second sentence; and

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

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

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

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

18 (1) in the first sentence—

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

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

25 (2) in the second sentence—

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

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

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

8 (3) by striking the last sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (B) in paragraph (1)—

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

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

3 (C) in paragraph (2)—

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

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

8 (D) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 303. DEFINITIONS.**

2 For purposes of this title:

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

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

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

11 (2) CUT FLOWERS AND CUT GREENS.—

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

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

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

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

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

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

18 (4) HANDLER DEFINITIONS.—

19 (A) QUALIFIED HANDLER.—

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

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

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

6 (I) Bouquet manufacturers.

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

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

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

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

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

7 (C) ANNUAL SALES DETERMINED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (b) PROCEDURES.—

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

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

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

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

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

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

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

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

25 (a) ESTABLISHMENT OF PROMOFLOR COUNCIL.—

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

8 (2) APPOINTMENT OF MEMBERS.—

9 (A) DISTRIBUTION OF APPOINTMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) NOMINATION PROCESS.—

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

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

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

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

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

18 (7) EXECUTIVE COMMITTEE.—

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

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

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

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

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

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

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

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

19 (c) BUDGETS.—

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

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

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

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

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

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

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

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

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

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

12 (d) PLANS AND PROJECTS.—

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

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

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

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

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

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

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

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

9 (e) CONTRACTS AND AGREEMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (h) CONSULTATIONS WITH INDUSTRY EXPERTS.—

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

19 **SEC. 306. ASSESSMENTS.**

20 (a) AUTHORITY TO IMPOSE ASSESSMENT.—

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

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

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

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

17 (4) CERTAIN COVERED TRANSACTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (2) CHANGES IN ASSESSMENT RATE.—

12 (A) AUTHORIZED AMOUNT OF CHANGE.—

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

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

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

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

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

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

23 (d) REFUNDS FROM ESCROW ACCOUNT.—

1 (1) ESTABLISHMENT OF ESCROW ACCOUNT.—

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

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

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

13 (2) RIGHT TO RECEIVE REFUND.—

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) POSTPONEMENT OF COLLECTIONS.—

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

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

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

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

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

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

18 (a) DETERMINATION OF ANNUAL SALES.—

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

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

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

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

20 (b) RULE OF ATTRIBUTION.—

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

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

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

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

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

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

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

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

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

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

18 (d) CONFIDENTIALITY REQUIRED.—

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

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

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

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

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

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

23 **SEC. 308. REFERENDA.**

24 (a) REQUIREMENT FOR INITIAL REFERENDUM.—

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

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

13 (b) VOTES PERMITTED.—

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

19 (2) ELIGIBLE SEPARATE FACILITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (a) **PETITION AND HEARING.**—

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

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

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

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

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

21 (b) REVIEW.—

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

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

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

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

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

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

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

21 **SEC. 310. ENFORCEMENT.**

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

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

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

13 (c) CIVIL PENALTIES AND ORDERS.—

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

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

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

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

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

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

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

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

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

4 (d) REVIEW BY DISTRICT COURT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (c) AID OF COURTS.—

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

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

20 **SEC. 312. CONFIDENTIALITY.**

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

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

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

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

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

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

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

1 **SEC. 314. CONSTRUCTION.**

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

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

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

18 **SEC. 315. REGULATIONS.**

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

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

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

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

6 **SEC. 317. SEPARABILITY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) in subparagraph (B), by striking “4” and
2 inserting “2”; and

3 (4) in subparagraph (C), by striking “4” and
4 inserting “3”.

5 (d) DE MINIMIS EXCEPTION.—Subsection (d)(5) of
6 such section is amended by striking “35,000” each place
7 it appears and inserting “200,000”.

8 **SEC. 405. INITIAL REFERENDUM.**

9 Section 1960(a) of the Lime Research, Promotion,
10 and Consumer Information Act of 1990 (7 U.S.C.
11 6209(a)) is amended by striking “Not later than 2 years
12 after the date on which the Secretary first issues an order
13 under section 1954(a),” and inserting “Not later than 30
14 months after the date on which the collection of assess-
15 ments begins under the order pursuant to section
16 1955(d),”.

 Passed the House of Representatives November 20,
1993.

Attest: DONNALD K. ANDERSON,
Clerk.

By DALLAS L. DENDY, JR.,
Assistant to the Clerk.

HR 3515 RFS—2

HR 3515 RFS—3

HR 3515 RFS—4

HR 3515 RFS—5

HR 3515 RFS—6