

- (3) in the last sentence, by striking “the handler or other person” and inserting “the person”.
- (i) REFERENDUM.—Subsection (a) of section 1653 of such Act (7 U.S.C. 4912), as amended by section 2, is further amended—
- (1) in the first sentence—
 - (A) by striking “and handlers” both places it appears and inserting “, handlers, and importers”; and
 - (B) by striking “or handling” and inserting “, handling, or importing”;
 - (2) by striking the second sentence; and
 - (3) in the sentence beginning with “The ballots”—
 - (A) by striking “or handler” and inserting “, handler, or importer”; and
 - (B) by striking “or handled” and inserting “, handled, or imported”.
- (j) TERMINATION OF PLANS.—Section 1654(b) of such Act (7 U.S.C. 4913(b)) is amended—
- (1) in the first sentence—
 - (A) by striking “10 per centum or more” and inserting “at least 10 percent of the combined total”; and
 - (B) by striking “and handlers” both places it appears and inserting “, handlers, and importers”;
 - (2) in the second sentence—
 - (A) by striking “or handle” and inserting “, handle, or import”;
 - (B) by striking “50 per centum” and inserting “50 percent of the combined total”; and
 - (C) by striking “or handled by the handlers,” and inserting “, handled by the handlers, or imported by the importers”; and
 - (3) by striking the last sentence.
- (k) CONFORMING AND TECHNICAL AMENDMENTS.—Such Act is further amended—
- (1) in section 1642(a)(5) (7 U.S.C. 4901(a)(5)), by striking “and handling” and inserting “handling, and importing”;
 - (2) in the first sentence of section 1642(b) (7 U.S.C. 4901(b))—
 - (A) by inserting “, or imported into the United States,” after “harvested in the United States”; and
 - (B) by striking “produced in the United States”;
 - (3) in section 1643 (7 U.S.C. 4902), as amended by subsection (a) and section 3(a)—
 - (A) by striking “subtitle—” and inserting “subtitle.”;
 - (B) in paragraphs (1) through (5), by striking “the term” each place it appears and inserting “The term”;
 - (C) in paragraphs (1), (2), (4), and (5), by striking the semicolon at the end of each paragraph and inserting a period;
 - (D) in paragraph (8), as redesignated by subsection (a)(2)—
 - (i) by striking “the term” and inserting “The term”; and
 - (ii) by striking “; and” and inserting a period;

- (E) in paragraph (9), as redesignated by subsection (a)(2)—
 - (i) by striking “the term” and inserting “The term”; and
 - (ii) by striking “1644” and inserting “1647”; and
- (4) in section 1647(g) (7 U.S.C. 4906(g)), as amended by subsection (e) and section 5(2)—
 - (A) by striking “that—” and inserting “the following:”;
 - (B) in paragraph (1)—
 - (i) by striking “(1) funds” and inserting “(1) Funds”; and
 - (ii) by striking the semicolon at the end and inserting a period;
 - (C) in paragraph (2)—
 - (i) by striking “(2) no” and inserting “(2) No”; and
 - (ii) by striking the semicolon at the end and inserting a period;
 - (D) in paragraph (3)—
 - (i) by striking “(3) no” and inserting “(3) No”; and
 - (ii) by striking “; and” and inserting a period.

SEC. 9. DEFINITION OF PRODUCER.

(a) IN GENERAL.—Section 1643(5) of the Watermelon Research and Promotion Act (7 U.S.C. 4902(5)) is amended by striking “five” and inserting “10”.

(b) CERTIFICATION.—Section 1647 of such Act (7 U.S.C. 4906) is amended by adding at the end the following new subsection:

“(1) The plan shall provide that the Board shall have the authority to establish rules for certifying whether a person meets the definition of a producer under section 1643(5).”

SEC. 10. AMENDMENT PROCEDURE.

Section 1655 of the Watermelon Research and Promotion Act (7 U.S.C. 4914) is amended to read as follows:

“SEC. 1655. AMENDMENT PROCEDURE.

“(a) IN GENERAL.—Before a plan issued by the Secretary under this subtitle may be amended, the Secretary shall publish the proposed amendments for public comment and conduct a referendum in accordance with section 1653.

“(b) SEPARATE CONSIDERATION OF AMENDMENTS.—

“(1) IN GENERAL.—The amendments described in paragraph (2) that are required to be made by the Secretary to a plan as a result of the amendments made by the Watermelon Research and Promotion Improvement Act of 1993 shall be subject to separate line item voting and approval in a referendum conducted pursuant to section 1653 before the Secretary alters the plan as in effect on the day before the date of the enactment of such Act.

“(2) AMENDMENTS.—The amendments referred to in paragraph (1) are the amendments to a plan required under—

“(A) section 7 of the Watermelon Research and Promotion Improvement Act of 1993 relating to the elimination of the assessment refund; and

“(B) section 8 of such Act relating to subjecting importers to the terms and conditions of the plan.

Publication.

“(3) IMPORTERS.—When conducting the referendum relating to subjecting importers to the terms and conditions of a plan, the Secretary shall include as eligible voters in the referendum producers, handlers, and importers who would be subject to the plan if the amendments to a plan were approved.”

Approved December 14, 1993.

LEGISLATIVE HISTORY—S. 778 (H.R. 3515):

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

Nov. 20, S. 778 considered and passed Senate. H.R. 3515 considered and passed House.

Nov. 21, S. 778 considered and passed House.

Public Law 103-190
103d Congress

An Act

Dec. 14, 1993
[S. 994]

To authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry and other persons, and for other purposes.

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

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

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

7 USC 6801.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

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

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

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

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

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

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

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

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

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

7 USC 6802.

SEC. 3. DEFINITIONS.

As used in this Act:

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

(2) **CUT FLOWERS AND CUT GREENS.**—

(A) **IN GENERAL.**—

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

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

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

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

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

(4) **HANDLER.**—

(A) **QUALIFIED HANDLER.**—

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

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

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

(ii) INCLUSIONS AND EXCLUSIONS.—

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

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

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

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

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

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

(iii) CONSTRUCTION.—

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

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

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

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

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

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

(C) ANNUAL SALES DETERMINED.—

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

(ii) **TRANSFERS.**—

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

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

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

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

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

(aa) recommendation by the PromoFlor Council; and

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

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

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

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

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

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

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

(10) **RETAILER.**—

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

(B) **DISTRIBUTION CENTERS.**—

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

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

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

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

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

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

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

SEC. 4. ISSUANCE OF ORDERS.

7 USC 6803.

(a) **IN GENERAL.**—

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

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

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

(b) **PROCEDURES.**—

(1) **PROPOSAL FOR AN ORDER.**—

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

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

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

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

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

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

(3) ISSUANCE OF ORDER.—

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

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

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

7 USC 6804.

SEC. 5. REQUIRED TERMS IN ORDERS.

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

(b) PROMOFLOL COUNCIL.—

(1) ESTABLISHMENT AND MEMBERSHIP.—

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

(B) MEMBERSHIP.—

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

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

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

(II) representatives of traditional retailers; and

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

(2) DISTRIBUTION OF APPOINTMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) is engaged—

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

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

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

(iii) QUALIFIED WHOLESALE HANDLER.—

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

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

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

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

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

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

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

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

(C) nominations for—

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

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

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

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

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

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

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

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

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

(6) EXECUTIVE COMMITTEE.—

(A) ESTABLISHMENT.—

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

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

(I) 4 members representing qualified wholesale handlers;

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

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

(IV) 1 member representing traditional retailers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) BUDGETS; PLANS AND PROJECTS.—

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

(2) PLANS AND PROJECTS.—

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

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

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

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

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

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

(I) market development research;

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

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

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

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

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

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

(e) **CONTRACTS AND AGREEMENTS.**—

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

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

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

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

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

(iii) the contracting or agreeing party shall—

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

(II) account for funds received and expended;

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

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

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

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

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

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

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

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

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

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

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

(h) **ASSESSMENTS.**—

(1) **AUTHORITY.**—

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

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

(C) **MAKING DETERMINATIONS.**—

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

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

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

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

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

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