

–CITE–

7 USC CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT
GREENS PROMOTION AND INFORMATION 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND
INFORMATION

.

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CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND
INFORMATION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7401 of this title.

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TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

~~–HEAD–~~

Sec. 6801. Findings and declaration of policy

~~–STATUTE–~~

(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 December 14, 1993, 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 December 14, 1993, 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 chapter 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 chapter, to authorize the establishment, through the exercise of the powers provided in this chapter, 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.

–SOURCE–

(Pub. L. 103–190, Sec. 2, Dec. 14, 1993, 107 Stat. 2266.)

–MISC1–

SHORT TITLE

Section 1(a) of Pub. L. 103–190 provided that: "This Act (enacting this chapter) may be cited as the 'Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993'."

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6803, 6811 of this title.

–CITE–

7 USC Sec. 6802 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6802. Definitions

–STATUTE–

As used in this chapter:

(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 6804(b)(2)(B)(i)(I) of this title.

(bb) Producer

The term "producer" has the meaning provided in section 6804(b)(2)(B)(ii)(I) of this title.

(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 and without regard to sections 556 and 557 of such title.

(5) Order

The term "order" means an order issued under this chapter (other than sections 6808, 6809, and 6811 of this title).

(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) PromoFlor Council

The term "PromoFlor Council" means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established under section 6804(b) of this title.

(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.

–SOURCE–

(Pub. L. 103–190, Sec. 3, Dec. 14, 1993, 107 Stat. 2268.)

–REFTEXT–

REFERENCES IN TEXT

For ratification of Compact of Free Association with the Republic of Palau, referred to in par. (12), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6804, 6805, 6806 of this title.

–CITE–

7 USC Sec. 6803 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6803. Issuance of orders

–STATUTE–

(a) In general

(1) Issuance

To effectuate the policy of this chapter specified in section 6801(b) of this title, the Secretary, subject to the procedures provided in subsection (b) of this section, shall issue orders under this chapter 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 chapter, 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 chapter.

(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 chapter applicable to an order shall be applicable to any amendment to an order.

~~–SOURCE–~~

(Pub. L. 103–190, Sec. 4, Dec. 14, 1993, 107 Stat. 2271.)

~~–SECRETF–~~

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6804, 6806 of this title.

~~–CITE–~~

7 USC Sec. 6804 01/06/03

~~–EXPCITE–~~

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

~~–HEAD–~~

Sec. 6804. Required terms in orders

~~–STATUTE–~~

(a) In general

An order shall contain the terms and provisions specified in this section.

(b) PromoFlor 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 PromoFlor 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) of this section; and
(B) propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval under subsection (d) of this section 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) of this section; or
(B) contract or enter into agreements with appropriate persons to implement the plans and projects, as provided in subsection (e) of this section, 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 chapter 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 PromoFlor 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 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 6805(a) of this title.

(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 6802(4) and 6805(b) of this title.

(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 6802(4)(A)(ii)(II) of this title), 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 6802(4)(A)(iii) of this title), shall be treated as a sale of cut flowers or cut greens to a retailer subject to assessments under this subsection.

(II) Amount of sale in the case of non-sale transfers and direct sales by importers

Subject to subclause (IV), in the case of a non-sale transfer of cut flowers or cut greens from a distribution center, or a direct sale to a consumer by an importer, the amount of the sale shall be equal to the sum of –

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

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

(III) Direct sales by producers

Subject to subclause (IV), in the case of a direct sale to a consumer by a producer, the amount of the sale shall

be equal to an amount determined by multiplying the price paid by the consumer by a uniform percentage established by the order to represent the cost of producing the article and the mark-up of a wholesale handler on a sale to a retailer.

(IV) Changes in uniform percentages

Any change in a uniform percentage referred to in subclause (II) or (III) may become effective after –

- (aa) recommendation by the PromoFlor Council; and
- (bb) approval by the Secretary after public notice and opportunity for comment in accordance with section 553 of title 5 and without regard to sections 556 and 557 of such title.

(2) Assessment rates

With respect to assessment rates, the order shall contain the following terms:

(A) Initial rate

During the first 3 years the order is in effect, the rate of assessment on each sale or transfer of cut flowers or cut greens shall be 1/2 of 1 percent of –

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

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

(B) Changes in the rate

(i) In general

After the first 3 years the order is in effect, the uniform assessment rate may be increased or decreased annually by not more than .25 percent of –

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

(II) in the case of transactions described in paragraph

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

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

(ii) Requirements

Any change in the rate of assessment under this subparagraph –

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

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

(III) shall not be subject to a vote in a referendum conducted under section 6806 of this title.

(3) Timing of submitting assessments

The order shall provide that each person required to pay

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

(4) Refunds from escrow account

(A) Establishment of escrow account

The order shall provide that the PromoFlor Council shall –

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

(ii) place into the account an amount equal to 10 percent of the total amount of assessments collected during the period beginning on the date the order becomes effective, as provided in section 6803(b)(3)(B) of this title, and ending on the date the initial referendum on the order under section 6806(a) of this title is completed.

(B) Right to receive refund

(i) In general

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

- (I) the qualified handler is required to pay the assessments;
- (II) the qualified handler does not support the program established under this chapter;
- (III) the qualified handler demands the refund prior to the conduct of the referendum on the order under section 6806(a) of this title; and
- (IV) the order is not approved by qualified handlers in the referendum.

(ii) Conditions

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

- (I) The demand shall be made in accordance with regulations, on a form, and within a time period specified by the PromoFlor Council.
- (II) The refund shall be made only on submission of proof satisfactory to the PromoFlor Council that the qualified handler paid the assessment for which the refund is demanded.
- (III) If the amount in the escrow account required under subparagraph (A) is not sufficient to refund the total amount of assessments demanded by all qualified handlers determined eligible for refunds and the order is not approved in the referendum on the order under section 6806(a) of this title, the PromoFlor Council shall prorate the amount of all such refunds among all eligible qualified

handlers that demand the refund.

(C) Program approved

The order shall provide that, if the order is approved in the referendum conducted under section 6806(a) of this title, there shall be no refunds made, and all funds in the escrow account shall be returned to the PromoFlor Council for use by the PromoFlor Council in accordance with the other provisions of the order.

(5) Use of assessment funds

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

(6) Postponement of collections

(A) Authority

(i) In general

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

(ii) Requirements and procedures

A handler described in clause (i) shall establish that the

handler is financially unable to make the payment in accordance with application and documentation requirements and review procedures established under rules recommended by the PromoFlor Council, approved by the Secretary, and issued after public notice and opportunity for comment in accordance with section 553 of title 5 and without regard to sections 556 and 557 of such title.

(B) Criteria and responsibility for determinations

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

(C) Period of postponement

(i) In general

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

(ii) Extensions

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

(i) Prohibition

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

(j) Books and records; reports

(1) In general

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

(2) Confidentiality requirement

(A) In general

Information obtained from books, records, or reports under paragraph (1) or subsection (h)(6) of this section, or from reports required under section 6805(b)(3) of this title, shall be kept confidential by all officers and employees of the Department of Agriculture and by the staff and agents of the

PromoFlor Council.

(B) Suits and hearings

Information described in subparagraph (A) may be disclosed to the public only –

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

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

(C) General statements and publications

Nothing in this paragraph may be construed to prohibit –

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

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

(3) Lists of importers

(A) Review

The order shall provide that the staff of the PromoFlor Council shall periodically review lists of importers of cut flowers and cut greens to determine whether persons on the

lists are subject to the order.

(B) Customs service

On the request of the PromoFlor Council, the Commissioner of the United States Customs Service shall provide to the PromoFlor Council lists of importers of cut flowers and cut greens.

(k) Consultations with industry experts

(1) In general

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

(2) Special committees

(A) In general

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

(B) Consultation

A committee appointed under subparagraph (A) –

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

(ii) shall consult directly with the PromoFlor Council.

(l) Other terms of order

The order shall contain such other terms and provisions, consistent with this chapter, as are necessary to carry out this chapter (including provision for the assessment of interest and a charge for each late payment of assessments under subsection (h) of this section and for carrying out section 6805 of this title).

–SOURCE–

(Pub. L. 103–190, Sec. 5, Dec. 14, 1993, 107 Stat. 2272.)

–TRANS–

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6802, 6806, 6810 of this title.

–CITE–

7 USC Sec. 6805 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND

INFORMATION

–HEAD–

Sec. 6805. Exclusion; determinations

–STATUTE–

(a) Exclusion

An order shall exclude from assessments under the order any sale of cut flowers or cut greens for export from the United States.

(b) Making determinations

(1) In general

For the purpose of applying the \$750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler under section 6802(4) of this title, or to a specific facility in order to determine the status of the facility as an eligible separate facility under section 6806(b)(2) of this title, an order issued under this chapter shall provide that –

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

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

specified in the order.

(2) Rule of attribution

(A) In general

For the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include –

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

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

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

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

(B) Stock and ownership interest

For the purpose of this paragraph, stock or an ownership interest in an entity that is owned by the spouse, children, grandchildren, parents, grandparents, or partners of an

individual, or by a partnership in which a person is a partner,
or by a corporation more than 50 percent of the stock of which
is owned by a person, shall be treated as owned by the
individual or person.

(3) Reports

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

~~–SOURCE–~~

(Pub. L. 103–190, Sec. 6, Dec. 14, 1993, 107 Stat. 2283.)

~~–SECRETF–~~

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6804 of this title.

~~–CITE–~~

7 USC Sec. 6806 01/06/03

~~–EXPCITE–~~

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND
INFORMATION

~~–HEAD–~~

Sec. 6806. Referenda

~~–STATUTE–~~

(a) Requirement for initial referendum

(1) In general

Not later than 3 years after the issuance of an order under
section 6803(b)(3) of this title, the Secretary shall conduct a

referendum among qualified handlers required to pay assessments under the order, as provided in section 6804(h)(1) of this title, subject to the voting requirements of subsection (b) of this section, to ascertain whether the order then in effect shall be continued.

(2) Approval of order needed

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

(b) Votes permitted

(1) In general

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

(2) Eligible separate facility

For the purpose of paragraph (1):

(A) Separate facility

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

(B) Eligibility

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

(C) Annual sales determined

For the purpose of determining the amount of annual sales of cut flowers and cut greens under subparagraph (B), subparagraphs (A) and (C) of section 6802(4) of this title shall apply.

(c) Suspension or termination referenda

If an order is approved in a referendum conducted under subsection (a) of this section, effective beginning on the date that is 3 years after the date of the approval, the Secretary –

(1) at the discretion of the Secretary, may conduct at any time a referendum of qualified handlers required to pay assessments under the order, as provided in section 6804(h)(1) of this title, subject to the voting requirements of subsection (b) of this section, to ascertain whether qualified handlers favor suspension or termination of the order; and

(2) if requested by the PromoFlor Council or by a representative group comprising 30 percent or more of all qualified handlers required to pay assessments under the order, as provided in section 6804(h)(1) of this title, shall conduct a referendum of all qualified handlers required to pay assessments under the order, as provided in section 6804(h)(1) of this title,

subject to the voting requirements of subsection (b) of this section, to ascertain whether qualified handlers favor suspension or termination of the order.

(d) Suspension or termination

If, as a result of the referendum conducted under subsection (a) of this section, the Secretary determines that the order has not been approved by a simple majority of all votes cast in the referendum, or as a result of a referendum conducted under subsection (c) of this section, the Secretary determines that suspension or termination of the order is favored by a simple majority of all votes cast in the referendum, the Secretary shall –

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

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

(e) Manner of conducting referenda

Referenda under this section shall be conducted in such manner as is determined appropriate by the Secretary.

–SOURCE–

(Pub. L. 103–190, Sec. 7, Dec. 14, 1993, 107 Stat. 2284.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6804, 6805 of this title.

–CITE–

7 USC Sec. 6807 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND
INFORMATION

–HEAD–

Sec. 6807. Petition and review

–STATUTE–

(a) Petition and hearing

(1) Petition

A person subject to an order may file with the Secretary a
petition –

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

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

(2) Hearing

The petitioner shall be given the opportunity for a hearing on
a petition filed under paragraph (1), in accordance with
regulations issued by the Secretary. Any such hearing shall be
conducted in accordance with section 6809(b)(2) of this title and
be held within the United States judicial district in which the
residence or principal place of business of the person is
located.

(3) Ruling

After a hearing under paragraph (2), the Secretary shall make a

ruling on the petition, which shall be final if in accordance with law.

(b) Review

(1) Commencement of action

The district courts of the United States in any district in which a person who is a petitioner under subsection (a) of this section resides or conducts business shall have jurisdiction to review the ruling of the Secretary on the petition of the person, if a complaint requesting the review is filed not later than 20 days after the date of the entry of the ruling by the Secretary.

(2) Process

Service of process in proceedings under this subsection shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remand

If the court in a proceeding under this subsection determines that the ruling of the Secretary on the petition of the person is not in accordance with law, the court shall remand the matter to the Secretary with directions –

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

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

(c) Enforcement

The pendency of proceedings instituted under this section shall not impede, hinder, or delay the Attorney General or the Secretary

from obtaining relief under section 6808 of this title.

–SOURCE–

(Pub. L. 103–190, Sec. 8, Dec. 14, 1993, 107 Stat. 2285.)

–REFTEXT–

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6809 of this title.

–CITE–

7 USC Sec. 6808 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6808. Enforcement

–STATUTE–

(a) Jurisdiction

A district court of the United States shall have jurisdiction to enforce, and to prevent and restrain any person from violating, this chapter or an order or regulation issued by the Secretary under this chapter.

(b) Referral to Attorney General

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

(c) Civil penalties and orders

(1) Civil penalties

(A) In general

A person who violates a provision of this chapter, or an order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person under an order or regulation issued under this chapter, may be assessed by the Secretary –

(i) a civil penalty of not less than \$500 nor more than

\$5,000 for each violation; and

(ii) in the case of a willful failure to remit an

assessment as required by an order or regulation, an

additional penalty equal to the amount of the assessment.

(B) Separate offenses

Each violation shall be a separate offense.

(2) Cease and desist orders

In addition to or in lieu of a civil penalty under paragraph (1), the Secretary may issue an order requiring a person to cease and desist from continuing a violation of this chapter, or an order or regulation issued under this chapter.

(3) Notice and hearing

No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for a hearing before the Secretary with respect to the violation. Any such hearing shall be conducted in accordance with section 6809(b)(2) of this title and shall be held within the United States judicial district in which the residence or principal place of business of the person is located.

(4) Finality

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

(d) Review by district court

(1) Commencement of action

(A) In general

Any person against whom a violation is found and a civil penalty is assessed or a cease and desist order is issued under subsection (c) of this section may obtain review of the penalty

or order by, within the 30-day period beginning on the date the penalty is assessed or order issued –

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

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

(B) Copy of record

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

(2) Standard of review

A finding of the Secretary shall be set aside under this subsection only if the finding is found to be unsupported by substantial evidence.

(e) Failure to obey order

(1) In general

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

(2) Separate violations

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

(f) Failure to pay penalty

(1) In general

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

(2) Scope of review

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

(g) Additional remedies

The remedies provided in this chapter shall be in addition to, and not exclusive of, other remedies that may be available.

–SOURCE–

(Pub. L. 103–190, Sec. 9, Dec. 14, 1993, 107 Stat. 2286.)

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6802, 6807, 6809 of this title.

–CITE–

7 USC Sec. 6809 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6809. Investigations and power to subpoena

–STATUTE–

(a) Investigations

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

(b) Subpoenas, oaths, and affirmations

(1) Investigations

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

(2) Administrative hearings

For the purpose of an administrative hearing held under section 6807(a)(2) or 6808(c)(3) of this title, the presiding officer may administer oaths and affirmations, subpoena witnesses, compel the

attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of the records may be required from any place in the United States.

(c) Aid of courts

(1) In general

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

(2) Order

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

(3) Failure to obey

Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) Process

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

–SOURCE–

(Pub. L. 103–190, Sec. 10, Dec. 14, 1993, 107 Stat. 2288.)

~~–SECRET–~~

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6802, 6807, 6808 of this title.

~~–CITE–~~

7 USC Sec. 6810 01/06/03

~~–EXPCITE–~~

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

~~–HEAD–~~

Sec. 6810. Confidentiality

~~–STATUTE–~~

(a) Prohibition

No information on how a person voted in a referendum conducted under this chapter shall be made public.

(b) Penalty

Any person who knowingly violates subsection (a) of this section or the confidentiality terms of an order, as described in section 6804(j)(2) of this title, shall be subject to a fine of not less than \$1,000 nor more than \$10,000 or to imprisonment for not more than 1 year, or both. If the person is an officer or employee of the Department of Agriculture or the PromoFlor Council, the person shall be removed from office.

(c) Additional prohibition

No information obtained under this chapter may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this chapter or an investigatory or enforcement action necessary for the implementation of this chapter.

(d) Withholding information from Congress prohibited

Nothing in this chapter shall be construed to authorize the withholding of information from Congress.

–SOURCE–

(Pub. L. 103–190, Sec. 11, Dec. 14, 1993, 107 Stat. 2288.)

–CITE–

7 USC Sec. 6811 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6811. Authority for Secretary to suspend or terminate order

–STATUTE–

If the Secretary finds that an order, or any provision of the order, obstructs or does not tend to effectuate the policy of this chapter specified in section 6801(b) of this title, the Secretary shall terminate or suspend the operation of the order or provision under such terms as the Secretary determines are appropriate.

–SOURCE–

(Pub. L. 103–190, Sec. 12, Dec. 14, 1993, 107 Stat. 2289.)

~~–SECRET–~~

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6802 of this title.

~~–CITE–~~

7 USC Sec. 6812 01/06/03

~~–EXPCITE–~~

TITLE 7 – AGRICULTURE

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~~–HEAD–~~

Sec. 6812. Construction

~~–STATUTE–~~

(a) Termination or suspension not an order

The termination or suspension of an order, or a provision of an order, shall not be considered an order under the meaning of this chapter.

(b) Producer rights

This chapter –

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

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

(c) Other programs

Nothing in this chapter may be construed to preempt or supersede

any other program relating to cut flowers or cut greens promotion and consumer information organized and operated under the laws of the United States or a State.

–SOURCE–

(Pub. L. 103–190, Sec. 13, Dec. 14, 1993, 107 Stat. 2289.)

–CITE–

7 USC Sec. 6813 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6813. Regulations

–STATUTE–

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

–SOURCE–

(Pub. L. 103–190, Sec. 14, Dec. 14, 1993, 107 Stat. 2289.)

–CITE–

7 USC Sec. 6814 01/06/03

–EXPCITE–

TITLE 7 – AGRICULTURE

CHAPTER 97 – FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

–HEAD–

Sec. 6814. Authorization of appropriations

–STATUTE–

(a) In general

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this chapter.

(b) Administrative expenses

Funds appropriated under subsection (a) of this section may not be used for the payment of the expenses or expenditures of the PromoFlor Council in administering a provision of an order.

–SOURCE–

(Pub. L. 103–190, Sec. 15, Dec. 14, 1993, 107 Stat. 2289.)

–CITE–