§ 4206. Grants, contracts, etc., authority

The Secretary may carry out the purposes of this chapter, with existing facilities and funds otherwise available, through the use of grants, contracts, or such other means as the Secretary deems appropriate.

(Pub. L. 97–98, title XV, § 1545, Dec. 22, 1981, 95 Stat. 1343.)

§ 4207. Reporting requirement

On January 1, 1987, and at the beginning of each subsequent calendar year.[1] the Secretary of Agriculture shall report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives on the progress made in implementing the provisions of this chapter. Such report shall include information on—

(1) the effects, if any, of Federal programs, authorities, and administrative activities with respect to the protection of United States farmland; and

(2) the results of the reviews of existing policies and procedures required under section 4203(a) of this title.

(Pub. L. 97–98, title XV, § 1546, Dec. 22, 1981, 95 Stat. 1343; Pub. L. 99–198, title XII, § 1255(a), Dec. 23, 1985, 99 Stat. 1518.)

AMENDMENTS

1985—Pub. L. 99–198 substituted ''On January 1, 1987, and at the beginning of each subsequent calendar year.'' for ''Within one year after December 22, 1981,''.

§ 4208. Limitations

(a) This chapter does not authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land.

(b) None of the provisions or other requirements of this chapter shall apply to the acquisition or use of farmland for national defense purposes during a national emergency.

(Pub. L. 97–98, title XV, § 1547, Dec. 22, 1981, 95 Stat. 1344; Pub. L. 101–624, title XXV, § 2502, Nov. 28, 1990, 104 Stat. 4066.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–624 inserted before period at end ''during a national emergency''.

§ 4209. Prohibition on maintenance of actions

This chapter shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland: *Provided*, That the Governor of an affected State where a State policy or program exists to protect farmland may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 4202 of this title and regulations issued pursuant thereto.

(Pub. L. 97–98, title XV, § 1548, Dec. 22, 1981, 95 Stat. 1344; Pub. L. 99–198, title XII, § 1255(b), Dec. 23, 1985, 99 Stat. 1518.)

[1] So in original. The period probably should be a comma.

AMENDMENTS

1985—Pub. L. 99–198 substituted ''by any person'' for ''by any State, local unit of government, or any person'' and inserted proviso.

CHAPTER 74—FLORAL RESEARCH AND CONSUMER INFORMATION

Sec.
4301. Congressional findings and declaration of policy.
4302. Definitions.
4303. Floral research and promotion orders.
4304. Notice and hearing.
4305. Finding and issuance of orders.
4306. Required terms in orders.
4307. Permissive terms in orders.
4308. Referendum; necessity, etc.
4309. Suspension and termination of orders.
4310. Amendments to orders.
4311. Exemption from assessments.
4312. Refund of assessments.
4313. Administrative and judicial review; procedures applicable.
4314. Enforcement of provisions.
4315. Certification of organizations; applicable criteria and considerations.
4316. Regulations.
4317. Investigations; subpena powers, etc.; enforcement.
4318. Separability.
4319. Authorization of appropriations.

§ 4301. Congressional findings and declaration of policy

Flowers and plants are an integral part of American life, contributing a natural and beautiful element, especially in urban areas, to what is increasingly a manmade, artificial environment for this country's citizens. Providing comfort and pleasure for many special occasions as well as for everyday living, flowers and plants work against visual pollution and, in the case of green plants, generate oxygen within their environment. The flowers and plants to which this chapter refers are cut flowers, potted flowering plants, and foliage plants. These flowers and plants are produced by many individual producers throughout the United States and in foreign countries. These products move in interstate and foreign commerce, and those that do not move in such channels of commerce directly burden or affect interstate commerce of these products. The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of flower and plant producers, brokers, wholesalers, and retailers throughout the Nation. The floral industry within the United States is comprised mainly of small- and medium-sized businesses. The producers are primarily agriculturally-oriented companies rather than promotion-oriented companies. The development and implementation of coordinated programs of research and promotion necessary for the maintenance of markets and the development of new markets have been inadequate. Without cooperative action in providing for and financing such programs, individual flower and plant producers, wholesalers, and retailers are unable to implement programs of research, consumer and producer information, and promotion necessary to maintain and improve markets for these products. It is widely recognized that it is

in the public interest to provide an adequate, steady supply of fresh flowers and plants to the consumers of the Nation. The American consumer requires a continuing supply of quality and affordable flowers and plants as an important element in the quality of life. It is, therefore, declared to be the policy of Congress and the purpose of this chapter that it is essential and in the public interest to authorize the establishment of an orderly procedure for the development and financing, through an adequate assessment, of an effective and coordinated program of research, consumer and producer education, and promotion designed to strengthen the floral industry's position in the marketplace and maintain, develop, and expand markets for flowers, plants, and flowering plants. Nothing in this chapter may be construed to dictate quality standards or provide for control of production or otherwise limit the right of individual flower and plant producers to produce commercial flowers and plants. Nothing in this chapter may be construed as a trade barrier to flowers and plants produced in foreign countries, and this chapter treats foreign producers equitably.

(Pub. L. 97–98, title XVII, § 1702, Dec. 22, 1981, 95 Stat. 1348.)

SHORT TITLE

Section 1701 of title XVII of Pub. L. 97–98 provided that: ''This title [enacting this chapter] may be cited as the 'Floral Research and Consumer Information Act'.''

EFFECTIVE DATE

Section 1801 of Pub. L. 97–98 provided that: ''Except as otherwise provided herein, the provisions of this Act [see Tables for classification] shall become effective on enactment [Dec. 22, 1981].''

§ 4302. Definitions

As used in this chapter—

(1) The term ''Secretary'' means the Secretary of Agriculture of the United States Department of Agriculture.

(2) The term ''person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(3) The term ''cut flowers'' means all flowers and decorative foliage used as fresh-cut flowers, fresh-cut decorative foliage, dried, preserved, and processed flowers, or dried and preserved decorative foliage, produced either under cover or in field operations.

(4) The term ''potted flowering plants'' means those plants that normally produce flowers, primarily produced in pots or similar containers, that are primarily used for interior decoration, whether grown under cover or in field operations.

(5) The term ''foliage plants'' means those plants, normally without flowers, primarily produced in pots or similar containers, that are primarily used for interior decorations, whether grown under cover or in field operations.

(6) The term ''propagational material'' means any plant material used in the propagation of cut flowers, potted flowering plants, and foliage plants, including cuttings, bulbs and corms, seedlings, canes, liners, plants, cells or tissue cultures, air layers and bublets,[1] rhizomes, and root stocks. This term does not include seeds.

(7) The term ''flowers and plants'' means cut flowers, potted flowering plants, foliage plants, and propagational material.

(8) The term ''United States'' means the fifty States of the United States of America, the territories and possessions of the United States of America, and the District of Columbia.

(9) The term ''promotion'' means any action, including paid advertising, to advance the image or desirability of cut flowers, potted flowering plants, and foliage plants.

(10) The term ''research'' means any type of research to advance the image, desirability, or marketability of cut flowers, potted flowering plants, and foliage plants.

(11) The term ''consumer education'' means any action to provide information on the care and handling of cut flowers, potted flowering plants, and foliage plants.

(12) The term ''marketing'' means the sale or other disposition in commerce of cut flowers, potted flowering plants, and foliage plants.

(13) Unless otherwise noted, the term ''producer'' means any person who produces domestically, for sale in commerce, cut flowers, potted flowering plants, or foliage plants.

(14) The term ''Floraboard'' means the board provided for under section 4306 of this title.

(15) The term ''importer'' means any person who imports cut flowers, potted flowering plants, or foliage plants from outside of the United States or who acts as an agent, broker, or consignee of any person or nation that produces flowers and plants outside of the United States for sale in the United States.

(16) The term ''commodity group'' means that portion of the flower and plant industry devoted to the production and importation of any one of the following: (A) cut flowers; (B) potted flowering plants; or (C) foliage plants.

(17) The term ''cost of plant material'' means the actual price paid by a producer for any propagational material or any other flowers and plants used in the production of flowers and plants. This term does not include the cost of seeds.

(Pub. L. 97–98, title XVII, § 1703, Dec. 22, 1981, 95 Stat. 1349.)

§ 4303. Floral research and promotion orders

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and, from time to time, may amend orders applicable to persons engaged in production, sale, importation, or handling of flowers and plants. Such orders shall be applicable to all production or marketing areas, or both, in the United States.

(Pub. L. 97–98, title XVII, § 1704, Dec. 22, 1981, 95 Stat. 1350.)

§ 4304. Notice and hearing

Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter, the

[1] So in original. Probably should be ''bulblets,''.

Secretary shall give due notice and opportunity for hearing upon a proposed order. Such hearing may be requested and a proposal for an order submitted by an organization certified pursuant to section 4315 of this chapter, or by any interested person affected by the provisions of this chapter, including the Secretary.

(Pub. L. 97–98, title XVII, § 1705, Dec. 22, 1981, 95 Stat. 1350.)

§ 4305. Finding and issuance of orders

After notice and opportunity for hearing as provided in section 4304 of this title, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 97–98, title XVII, § 1706, Dec. 22, 1981, 95 Stat. 1350.)

§ 4306. Required terms in orders

Orders issued pursuant to this chapter shall contain the following terms and conditions and, except as provided in section 4307 of this title, no others:

(1) Providing for the establishment and appointment by the Secretary of a board to be named ''Floraboard'', which shall consist of not more than seventy-five voting members, and defining its powers and duties, which shall include only the powers to (A) administer such order in accordance with its terms and provisions, (B) make rules and regulations to effectuate the terms and provisions of such order, (C) receive, investigate, and report to the Secretary complaints of violations of such order, and (D) recommend to the Secretary amendments of such order. The term of an appointment to the Floraboard shall be for three years with no member serving more than two consecutive three-year terms: *Provided*, That of the initial appointments, one-third shall be for a term of one year and one-third shall be for a term of two years. The Floraboard shall appoint from its members an executive committee, consisting of not more than fifteen members, whose membership shall, to the maximum extent practicable, reflect the membership composition of the Floraboard, and whose commodity group representation shall be proportional to that of the Floraboard. Such executive committee shall have the authority to employ a staff and conduct routine business within the policies determined by the Floraboard.

(2) Providing that the Floraboard shall be composed of producers and importers appointed by the Secretary from nominations submitted by organizations certified pursuant to section 4315 of this title or if the Secretary determines that a substantial number of producers or importers are not members of or their interests are not represented by any such certified organization then from nominations made by such producers or importers in a manner authorized by the Secretary. Certified organizations shall submit one nomination for each position on the Floraboard. Initially, the Floraboard shall be composed of one-third producers and importers of cut flowers, one-third producers and importers of potted flowering plants, and one-third producers and importers of foliage plants. Two years after assessment of funds commences pursuant to an order, and periodically thereafter, the Floraboard shall adjust the commodity group representation of these commodity groups on the basis of the amount of assessments, less refunds, collected from each commodity group. There shall at all times be more producers representing a particular commodity group on the Floraboard than importers representing that commodity group. In addition to commodity group representation, the periodic adjustment of the membership of the Floraboard shall reflect, to the maximum extent practicable, the proportionate share of assessments, less refunds, collected from producers in each of several geographic areas of the United States to be defined by the Secretary, and the proportionate share of assessments, less refunds, collected from importers of flowers and plants imported into the United States from each country.

(3) Providing that the Floraboard shall, subject to the provisions of paragraph 8 of this section, develop and submit to the Secretary for approval advertising, sales promotion, consumer education, research, and development plans or projects and that any such plan or project must be approved by the Secretary before becoming effective.

(4) Providing that the Floraboard shall, subject to the provisions of paragraph 8 of this section, submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising, promotion, consumer education, research, and development projects.

(5) Providing that—

(A) For each sale of flowers and plants by a producer within the United States, such producer shall pay an assessment to the Floraboard based on the dollar value of such sales transaction minus the cost of plant material. If the producer is a retailer, the assessment will be based on the then current wholesale value of the flowers and plants less the cost of plant material. In the case of consignment sales, the assessment shall be paid by the producer based on the dollar value of the sale of flowers and plants less the sales commission, freight cost, and cost of plant material.

(B) For each sale of imported flowers and plants within the United States by the importer of such flowers and plants, such importer shall pay an assessment to the Floraboard based on the dollar value of such sales transaction, without deducting the cost of plant material. If the importer is a retailer, the assessment will be made on the purchase price. In the case of consignment sales, the assessment shall be paid by the importer and shall be based on the dollar value of the sale of flowers and plants less the sales commission and cost of transportation within the United States.

(C) The assessments provided for in this section shall be remitted to the Floraboard, at the time and in the manner prescribed in the

order and regulations thereunder, and shall be used for such expenses and expenditures (including provision for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after an order has been promulgated under this chapter) as the Secretary finds are reasonable and likely to be incurred by the Floraboard under the order during any period specified by the Secretary.

(6) Providing that the initial rate of assessment, which rate shall remain in effect for the first two years after an order is approved in a referendum, shall not exceed one-half of 1 per centum of the value of flowers and plants sold, as determined under the provisions of paragraph (5) of this section: *Provided*, That the Floraboard may thereafter increase or decrease the rate of assessment prescribed by the order by no more than one-quarter of 1 per centum of the value of flowers and plants sold per year: *Provided further*, That in no event shall the rate of assessment exceed 1½ per centum of the value of flowers and plants sold.

(7) Providing that the Floraboard shall maintain such books and records and shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and providing for appropriate accounting by the Floraboard with respect to the receipt and disbursement of all funds entrusted to it.

(8) Providing that the Floraboard, with the approval of the Secretary, may enter into contracts or agreements for development and carrying out of the activities authorized under the order pursuant to sections 4307(1) and (2) of this title and for the payment of the cost thereof with funds collected pursuant to the order. The Floraboard may contract with industry groups, profit or nonprofit companies, private and State colleges and universities, and governmental groups. Any such contract or agreement shall provide (A) that the contracting party shall develop and submit to the Floraboard a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, (B) that any such plan or project shall become effective upon the approval of the Secretary, and (C) that the contracting party shall keep accurate records of all its transactions and make periodic reports to the Floraboard of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require.

(9) Providing that the Floraboard may convene, from time to time, advisory panels drawn from the production, importation, wholesale, and retail segments of the flower and plant industry to assist in the development of marketing and research programs.

(10) Providing that no funds collected or received by the Floraboard shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by paragraph (1)(D) of this section.

(11) Providing that Floraboard members and members of any advisory panels convened shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Floraboard or advisory panel.

(Pub. L. 97–98, title XVII, § 1707, Dec. 22, 1981, 95 Stat. 1350.)

§ 4307. Permissive terms in orders

Orders issued pursuant to this chapter may contain one or more of the following terms and conditions:

(1) Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for advertising, sales promotion, urban beautification, and consumer education with respect to the use of flowers and plants, and for the disbursement of necessary funds for such purposes: *Provided*, That any such plan or project shall be directed toward increasing the general demand for flowers and plants and shall make no reference to a private brand or trade name: *Provided further*, That no such advertising, consumer education, urban beautification, or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(2) Providing for establishing and carrying on research, marketing, and development projects, and studies with respect to the sale, distribution, marketing, or utilization of flowers and plants, to the end that the marketing and utilization of flowers and plants may be encouraged, expanded, improved, or made more acceptable, for the dissemination of the data collected by such activities and for the disbursement of necessary funds for such purposes.

(3) Providing that producers, wholesalers, retailers, and importers of flowers and plants maintain and make available for inspection such books and records as are specified in the order and that such persons file reports at the time, in the manner, and having the content prescribed by the order, to the end that information and data shall be made available to the Floraboard and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of this chapter, or any order or regulation issued pursuant to this chapter: *Provided*, That all information so obtained shall be kept confidential by employees of the Department of Agriculture and the Floraboard, and only such information as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or in a suit or administrative hearing to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of the number of persons subject to an order, or statistical data collected therefrom, which statements do not identify the information furnished by any person, (B) the publication by the Floraboard of general statements relating to refunds made by the Floraboard during any specific period, including regional information on refunds, (C) the publication by the Floraboard of information on the amount of assessments collected from each commodity group and the rate of refund in each commodity group, or (D) the publication by direction of the Sec-

retary of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such persons. No information obtained pursuant to the authority of 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 and any investigatory or enforcement actions necessary for the implementation of this chapter. Any person violating the provisions of this paragraph shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and, if an officer or employee of the Floraboard or the Department of Agriculture, shall be removed from office.

(4) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter and necessary to effectuate the other provisions of such order.

(Pub. L. 97–98, title XVII, § 1708, Dec. 22, 1981, 95 Stat. 1352.)

§ 4308. Referendum; necessity, etc.

(a) The Secretary shall conduct a referendum among domestic producers and importers not exempt under section 4311 of this title who, during a representative period determined by the Secretary, have been engaged in the production or importation of flowers and plants, for the purpose of ascertaining whether the issuance of an order is approved or favored by such domestic producers and importers. No order issued pursuant to this chapter shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers and importers voting in such referendum, or by a majority of the producers and importers voting in such referendum if such majority produced and imported not less than two-thirds of the total value of the flowers and plants produced and imported by those producers and importers voting in such referendum during a representative period defined by the Secretary.

(b) The Secretary shall be reimbursed from assessments for all costs incurred by the Government in connection with the conduct of the referendum, except for the salaries of Government employees.

(Pub. L. 97–98, title XVII, § 1709, Dec. 22, 1981, 95 Stat. 1354.)

§ 4309. Suspension and termination of orders

(a) Prerequisites

Whenever the Secretary finds that any order issued under this chapter, or any provisions thereof, obstructs or does not tend to effectuate the declared policy of this chapter, the Secretary shall terminate or suspend the operation of such order or such provisions thereof.

(b) Referendum

The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of producers and importers voting in the referendum approving the order, to determine whether such producers and importers favor the termination or suspension of the order, and shall suspend or terminate such order six months after the Secretary determines that suspension or termination of the order is approved or favored by a majority of the producers and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of flowers and plants.

(c) Nature of order

The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this chapter.

(Pub. L. 97–98, title XVII, § 1710, Dec. 22, 1981, 95 Stat. 1354.)

§ 4310. Amendments to orders

The provisions of this chapter applicable to orders shall be applicable to amendments to orders.

(Pub. L. 97–98, title XVII, § 1711, Dec. 22, 1981, 95 Stat. 1354.)

§ 4311. Exemption from assessments

Any producer or importer whose total sales of flowers and plants do not exceed $100,000 during a twelve consecutive month period prior to the date an assessment is due and payable shall be exempt from assessments under this chapter under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder and shall not vote in any referendum under this chapter: *Provided*, That the Floraboard shall have the discretion to make annual adjustments in the level of exemption to account for inflation. For the purpose of this section, a producer's or importer's total sales shall include, in those cases in which the producer or importer is an individual, sales attributable to such person's spouse, children, grandchildren, and parents; in those cases in which the producer or importer is a partnership or a member of a partnership, sales attributable to the other partners; and, in those cases in which the producer or importer is a corporation, sales attributable to any corporate subsidiaries of which such corporation owns 50 per centum or more of the stock, or if such subsidiaries are not corporations, subsidiaries which are controlled by such corporation. In addition, in determining a producer's or importer's total sales, the sales of any corporation in which such producer or importer owns 50 per centum or more of the stock shall be attributed to such producer or importer. For these purposes stock in the same corporation which is owned by such producer's or importer's spouse, children, grandchildren, parents, partners, and any corporation 50 per centum or more of whose stock is owned by the producer or importer shall be treated as owned by the producer or importer.

(Pub. L. 97–98, title XVII, § 1712, Dec. 22, 1981, 95 Stat. 1354.)

§ 4312. Refund of assessments

Notwithstanding any other provisions of this chapter, any producer or importer who pays an assessment shall have the right to demand and

receive from the Floraboard a refund of such assessment: *Provided*, That such demand shall be made by such producer or importer in accordance with regulations and on a form and within a time period prescribed by the Floraboard and approved by the Secretary, but in no event more than sixty days after the end of the month in which the assessment was paid. Such refund shall be made not later than sixty days after submission of proof satisfactory to the Floraboard that the producer or importer paid the assessment for which refund is sought.

(Pub. L. 97–98, title XVII, § 1713, Dec. 22, 1981, 95 Stat. 1355.)

§ 4313. Administrative and judicial review; procedures applicable

(a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provisions of such order or any obligations imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. Such person shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations prescribed by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 4314(a) of this title.

(Pub. L. 97–98, title XVII, § 1714, Dec. 22, 1981, 95 Stat. 1355.)

§ 4314. Enforcement of provisions

(a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued pursuant to this chapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action: *Provided*, That nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of the program would be adequately served by administrative action pursuant to subsection (b) of this section or suitable written notice or warning to any person committing such violations.

(b)(1) Any person who violates any provisions of any order or regulation issued by the Secretary pursuant to this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required thereunder, may be assessed a civil penalty by the Secretary of not less than $500 or more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violation or violations. No penalty may be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review pursuant to the procedures specified in paragraphs (1) and (2) of this subsection, of not more than $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 97–98, title XVII, § 1715, Dec. 22, 1981, 95 Stat. 1356.)

§ 4315. Certification of organizations; applicable criteria and considerations

The eligibility of any organization to represent producers of flowers and plants of any producing area of the United States or importers of flowers and plants, for purposes of re-

questing the issuance of an order under section 4304 of this title, or making nominations under section 4306(2) of this title, shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(1) geographic territory covered by the organization's active membership;

(2) nature and size of the organization's active membership, the proportion of such active membership accounted for by producers and importers, and information as to the volume of production by State or the volume of importation by country accounted for by the organization's producer and importer members;

(3) the extent to which the producer and importer membership of such organization is represented in setting the organization's policies;

(4) evidence of stability and permanency of the organization;

(5) sources from which the organization's operating funds are derived;

(6) functions of the organization;

(7) whether the majority of the governing board of the organization is composed of producers and importers; and

(8) the organization's ability and willingness to further the aims and objectives of this chapter.

The primary consideration in determining the eligibility of any organization shall be whether its membership consists of a substantial number of producers and importers who produce and import a substantial volume of flowers and plants. The Secretary shall certify any organization which is found to be eligible under this section, and the Secretary's determination as to eligibility shall be final. Whenever more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 4306(2) of this title.

(Pub. L. 97–98, title XVII, § 1716, Dec. 22, 1981, 95 Stat. 1357.)

§ 4316. Regulations

The Secretary may issue such regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 97–98, title XVII, § 1717, Dec. 22, 1981, 95 Stat. 1357.)

§ 4317. Investigations; subpena powers, etc.; enforcement

The Secretary may make such investigations as are deemed necessary to carry out the Secretary's responsibilities under this chapter or to determine whether a producer, importer, wholesaler, retailer, or other seller of flowers and plants, or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this chapter, or of any order, or rule or regulation issued under this chapter. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, including a producer of flowers and plants, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All processes in any such cases may be served in the judicial district wherein such person is an inhabitant or wherever such person may be found.

(Pub. L. 97–98, title XVII, § 1718, Dec. 22, 1981, 95 Stat. 1357.)

§ 4318. Separability

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

(Pub. L. 97–98, title XVII, § 1719, Dec. 22, 1981, 95 Stat. 1358.)

§ 4319. Authorization of appropriations

There are authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this chapter. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Floraboard in administering any provisions of any order issued pursuant to the terms of this chapter.

(Pub. L. 97–98, title XVII, § 1720, Dec. 22, 1981, 95 Stat. 1358.)

CHAPTER 75—INTERNATIONAL CARRIAGE OF PERISHABLE FOODSTUFFS

Sec.
4401. Congressional findings and declaration of purpose.
4402. Definitions.
4403. Duties of Secretary of Agriculture.
4404. Duties of Secretary of State.
4405. Fees and charges.
4406. Authorization of appropriations.

§ 4401. Congressional findings and declaration of purpose

Congress hereby finds and declares that—

(1) the United States, as a member of the Economic Commission for Europe of the United Nations, participated in development by that Commission of the Agreement on the