§ 7473. Authorization of appropriations 57

SUBCHAPTER V - POPCORN 58
§ 7481. Findings and declaration of policy 58
§ 7482. Definitions 59
§ 7483. Issuance of orders 60
§ 7484. Required terms in orders 60
§ 7485. Referenda 64
§ 7486. Petition and review 65
§ 7487. Enforcement 66
§ 7488. Investigations and power to subpoena 66
§ 7489. Relation to other programs 67
§ 7490. Regulations 67
§ 7491. Authorization of appropriations 67
## TITLE 7—AGRICULTURE

Chap. ...Sec.
1. Commodity Exchanges ...1
2. Cotton Standards ...51
3. Grain Standards ...71
4. Naval Stores ...91
5. Importation of Adulterated Seeds [Repealed] ...111
6. Insecticides and Environmental Pesticide Control ...121
6A. National Laboratory Accreditation ...138
7. Insect Pests Generally [Repealed, Omitted, or Transferred] ...141
7A. Golden Nematode [Repealed] ...150
7B. Plant Pests [Repealed] ...150aa
8. Nursery Stock and Other Plants and Plant Products [Repealed, Omitted, or Transferred] ...151
8A. Rubber and Other Critical Agricultural Materials ...171
9. Packers and Stockyards ...181
10. Warehouses ...241
11. Honeybees ...281
12. Associations of Agricultural Products Producers ...291
13. Agricultural and Mechanical Colleges ...301
14. Agricultural Experiment Stations ...361
15. Bureau of Animal Industry ...391
16. Bureau of Dairy Industry ...401
17. Miscellaneous Matters ...411
18. Cooperative Marketing ...451
19. Cotton Statistics and Estimates ...471
20. Dumping or Destruction of Interstate Produce ...491
20A. Perishable Agricultural Commodities ...499a
21. Tobacco Statistics ...501
21A. Tobacco Inspection ...511
21B. Tobacco Control [Repealed] ...515
21C. Tobacco Reform ...518
22. Agricultural Marketing [Omitted or Transferred] ...521
23. Foreign Agricultural Service [Repealed] ...541
24. Perishable Agricultural Commodities [Transferred to Chapter 20A] ...551
25. Export Standards for Apples ...581
25A. Export Standards for Grapes and Plums ...591
26. Agricultural Adjustment ...601
26A. Agricultural Marketing Agreements ...671
27. Cotton Marketing [Repealed or Omitted] ...701
28. Tobacco Industry [Repealed] ...751
29. Potato Act of 1935 [Repealed] ...801
30. Anti-Hog-Cholera Serum and Hog-Cholera Virus ...851
31. Rural Electrification and Telephone Service ...901
31A. Telemedicine and Distance Learning Services in Rural Areas ...950aaa
32. Peanut Statistics ...951
33. Farm Tenancy ...1000
34. Sugar Production and Control [Omitted or Repealed] ...1100
35. Agricultural Adjustment Act of 1938 ...1281
35A. Price Support of Agricultural Commodities ...1421
36. Crop Insurance ...1501
37. Seeds ...1551
38. Distribution and Marketing of Agricultural Products ...1621
39. Stabilization of International Wheat Market ...1641
40. Halogeton Glomeratus Control [Repealed] ...1651
41. Food for Peace ...1691
42. Agricultural Commodity Set-Aside ...1741
43. Foreign Market Development ...1761
44. Wool Program [Repealed] ...1781
45. Soil Bank Program ...1801
46. Surplus Disposal of Agricultural Commodities ...1851
47. Interchange of Department of Agriculture and State Employees [Repealed] ...1881
48. Humane Methods of Livestock Slaughter ...1901
49. Consultation on Agricultural Programs ...1911
50. Agricultural Credit ...1921
51. Supplemental Nutrition Assistance Program ...2011
52. Farm Labor Contractor Registration [Repealed] ...2041
53. Cotton Research and Promotion ...2101
54. Transportation, Sale, and Handling of Certain Animals ...2131
55. Department of Agriculture ...2201
55A. Department of Agriculture Advisory Committees ...2281
56. Unfair Trade Practices Affecting Producers of Agricultural Products ...2301
57. Plant Variety Protection ...2321
58. Potato Research and Promotion ...2611
59. Rural Fire Protection, Development, and Small Farm Research and Education ...2651
60. Egg Research and Consumer Information ...2701
61. Noxious Weeds ...2801
62. Beef Research and Information ...2901
63. Farmer-to-Consumer Direct Marketing ...3001
64. Agricultural Research, Extension, and Teaching ...3101
65. Wheat and Wheat Foods Research and Nutrition Education ...3401
66. Agricultural Foreign Investment Disclosure ...3501
67. Implementation of International Sugar Agreement, 1977 ...3601
68. Agricultural Subterminal Facilities ...3701
69. Swine Health Protection ...3801
70. Animal Cancer Research ...3901
71. Agricultural Trade Suspension Adjustment ...4001
72. National Agricultural Cost of Production Standards Review Board [Omitted] ...4101
73. Farmland Protection Policy ...4201
74. Floral Research and Consumer Information ...4301
75. International Carriage of Perishable Foodstuffs ...4401
76. Dairy Research and Promotion ...4501
77. Honey Research, Promotion, and Consumer Information ...4601
78. Agricultural Productivity Research [Repealed] ...4701
79. Pork Promotion, Research, and Consumer Information ...4801
80. Watermelon Research and Promotion ...4901
81. National Commission on Agriculture and Rural Development Policy [Omitted] ...5001
82. State Agricultural Loan Mediation Programs ...5101
83. Agricultural Competitiveness and Trade ...5201
84. National Nutrition Monitoring and Related Research ...5301
85. Administration of Environmental Programs ...5401
86. Water Quality Research, Education, and Coordination ...5501
87. Export Promotion ...5601
88. Research ...5801
89. Pecan Promotion and Research ...6001
90. Mushroom Promotion, Research, and Consumer Information ...6101
91. Lime Promotion, Research, and Consumer Information ...6201
92. Soybean Promotion, Research, and Consumer Information ...6301
93. Processor-Funded Milk Promotion Program ...6401
94. Organic Certification ...6501
95. Rural Revitalization Through Forestry ...6601
96. Global Climate Change ...6701
97. Fresh Cut Flowers and Fresh Cut Greens Promotion and Information ...6801
98. Department of Agriculture Reorganization ...6901
99. Sheep Promotion, Research, and Information ...7101
100. Agricultural Market Transition ...7201
101. Agricultural Promotion ...7401
102. Emergency Food Assistance ...7501
103. Agricultural Research, Extension, and Education Reform ...7601
104. Plant Protection ...7701
105. Hass Avocado Promotion, Research, and Information ...7801
106. Commodity Programs ...7901
107. Renewable Energy Research and Development ...8101
108. Tree Assistance Program ...8201
109. Animal Health Protection ...8301
110. Enhancing Controls on Dangerous Biological Agents and Toxins ...8401
111. Brown Tree Snake Control and Eradication ...8501
112. Biomass Research and Development [Repealed] ...8601
113. Agricultural Commodity Support Programs ...8701
114. Agricultural Security ...8901
CHAPTER 101—AGRICULTURAL PROMOTION

SUBCHAPTER I—COMMODITY PROMOTION AND EVALUATION
Sec.
7401. Commodity promotion and evaluation.

SUBCHAPTER II—ISSUANCE OF ORDERS FOR PROMOTION, RESEARCH, AND INFORMATION ACTIVITIES REGARDING AGRICULTURAL COMMODITIES

7411. Findings and purpose.
7412. Definitions.
7413. Issuance of orders.
7414. Required terms in orders.
7415. Permissive terms in orders.
7416. Assessments.
7416a. Confirmation of authority of Secretary of Agriculture to collect State commodity assessments.
7417. Referenda.
7418. Petition and review of orders.
7419. Enforcement.
7420. Investigations and power to subpoena.
7421. Suspension or termination.
7422. Amendments to orders.
7423. Effect on other laws.
7424. Regulations.
7425. Authorization of appropriations.

SUBCHAPTER III—CANOLA AND RAPESEED

7441. Findings and declaration of policy.
7442. Definitions.
7443. Issuance and amendment of orders.
7444. Required terms in orders.
7445. Assessments.
7446. Referenda.
7447. Petition and review.
7448. Enforcement.
7449. Investigations and power to subpoena.
7450. Suspension or termination.
7451. Regulations.
7452. Authorization of appropriations.

SUBCHAPTER IV—KIWIFRUIT

7461. Findings and purposes.
7462. Definitions.
7463. Issuance of orders.
7464. National Kiwifruit Board.
7465. Required terms in order.
7466. Permissive terms in order.
7467. Petition and review.
7468. Enforcement.
7469. Investigations and power to subpoena.
7470. Referenda.
7471. Suspension or termination.
7472. Regulations.
7473. Authorization of appropriations.
SUBCHAPTER V—POPCORN

7481. Findings and declaration of policy.
7482. Definitions.
7483. Issuance of orders.
7484. Required terms in orders.
7485. Referenda.
7486. Petition and review.
7487. Enforcement.
7488. Investigations and power to subpoena.
7489. Relation to other programs.
7490. Regulations.
7491. Authorization of appropriations.
§ 7401. Commodity promotion and evaluation

(a) “Commodity promotion law” defined

In this section, the term “commodity promotion law” means a Federal law that provides for the establishment and operation of a promotion program regarding an agricultural commodity that includes a combination of promotion, research, industry information, or consumer information activities, is funded by mandatory assessments on producers or processors, and is designed to maintain or expand markets and uses for the commodity (as determined by the Secretary). The term includes—

(1) the marketing promotion provisions under section 608c (6)(I) of this title;
(2) Public Law 89–502 (7 U.S.C. 2101 et seq.);
(3) title III of Public Law 91–670 (7 U.S.C. 2611 et seq.);
(4) Public Law 93–428 (7 U.S.C. 2701 et seq.);
(5) Public Law 94–294 (7 U.S.C. 2901 et seq.);
(6) subtitle B of title I of Public Law 98–180 (7 U.S.C. 4501 et seq.);
(7) Public Law 98–590 (7 U.S.C. 4601 et seq.);
(8) subtitle B of title XVI of Public Law 99–198 (7 U.S.C. 4801 et seq.);
(9) subtitle C of title XVI of Public Law 99–198 (7 U.S.C. 4901 et seq.);
(10) subtitle B of title XIX of Public Law 101–624 (7 U.S.C. 6101 et seq.);
(11) subtitle E of title XIX of Public Law 101–624 (7 U.S.C. 6301 et seq.);
(12) subtitle H of title XIX of Public Law 101–624 (7 U.S.C. 6401 et seq.);
(13) Public Law 103–190 (7 U.S.C. 6801 et seq.);
(14) Public Law 103–407 (7 U.S.C. 7101 et seq.);
(15) subchapter II of this chapter;
(16) subchapter III of this chapter;
(17) subchapter IV of this chapter;
(18) subchapter V of this chapter; or
(19) any other provision of law enacted after April 4, 1996, that provides for the establishment and operation of a promotion program described in the first sentence.

(b) Findings

Congress finds the following:

(1) It is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion programs established under commodity promotion laws.

(2) These generic commodity promotion programs, funded by the agricultural producers or processors who most directly reap the benefits of the programs and supervised by the Secretary of Agriculture, provide a unique opportunity for producers and processors to inform consumers about their products.

(3) The central congressional purpose underlying each commodity promotion law has always been to maintain and expand markets for the agricultural commodity covered by the law, rather than to maintain or expand the share of those markets held by any individual producer or processor.

(4) The commodity promotion laws were neither designed nor intended to prohibit or restrict, and the promotion programs established and funded pursuant to these laws do not prohibit or restrict, individual advertising or promotion of the covered commodities by any producer, processor, or group of producers or processors.
(5) It has never been the intent of Congress for the generic commodity promotion programs established and funded by the commodity promotion laws to replace the individual advertising and promotion efforts of producers or processors.

(6) An individual producer’s or processor’s own advertising initiatives are typically designed to increase the share of the market held by that producer or processor rather than to increase or expand the overall size of the market.

(7) In contrast, a generic commodity promotion program is intended and designed to maintain or increase the overall demand for the agricultural commodity covered by the program and increase the size of the market for that commodity, often by utilizing promotion methods and techniques that individual producers and processors typically are unable, or have no incentive, to employ.

(8) The commodity promotion laws establish promotion programs that operate as “self-help” mechanisms for producers and processors to fund generic promotions for covered commodities which, under the required supervision and oversight of the Secretary of Agriculture—

(A) further specific national governmental goals, as established by Congress; and

(B) produce nonideological and commercial communication the purpose of which is to further the governmental policy and objective of maintaining and expanding the markets for the covered commodities.

(9) While some commodity promotion laws grant a producer or processor the option of crediting individual advertising conducted by the producer or processor for all or a portion of the producer’s or processor’s marketing promotion assessments, all promotion programs established under the commodity promotion laws, both those programs that permit credit for individual advertising and those programs that do not contain such provisions, are very narrowly tailored to fulfill the congressional purposes of the commodity promotion laws without impairing or infringing the legal or constitutional rights of any individual producer or processor.

(10) These generic commodity promotion programs are of particular benefit to small producers who often lack the resources or market power to advertise on their own and who are otherwise often unable to benefit from the economies of scale available in promotion and advertising.

(11) Periodic independent evaluation of the effectiveness of these generic commodity promotion programs will assist Congress and the Secretary of Agriculture in ensuring that the objectives of the programs are met.

(c) Independent evaluation of promotion program effectiveness

Except as otherwise provided by law, each commodity board established under the supervision and oversight of the Secretary of Agriculture pursuant to a commodity promotion law shall, not less often than every 5 years, authorize and fund, from funds otherwise available to the board, an independent evaluation of the effectiveness of the generic commodity promotion programs and other programs conducted by the board pursuant to a commodity promotion law. The board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this subsection.

(d) Administrative costs

The Secretary shall annually provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information on administrative expenses on programs established under commodity promotion laws.

(e) Exemption of certified organic products from assessments

(1) In general

Notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, shall be exempt from the payment of an assessment under a commodity promotion law
with respect to any agricultural commodity that is produced on a certified organic farm (as defined in section 6502 of this title).

(2) **Regulations**

Not later than 1 year after May 13, 2002, the Secretary shall promulgate regulations concerning eligibility and compliance for an exemption under paragraph (1).


**References in Text**


Public Law 93–428, referred to in subsec. (a)(4), is Pub. L. 93–428, Oct. 1, 1974, 88 Stat. 1171, as amended, known as the Egg Research and Consumer Information Act, which is classified generally to chapter 60 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.


Amendments


Short Title


Section 531 of title V of Pub. L. 104–127 provided that: “This subtitle [subtitle C (§§ 531–543) of title V of Pub. L. 104–127, enacting subchapter III of this chapter] may be cited as the ‘Canola and Rapeseed Research, Promotion, and Consumer Information Act’.”

Section 551 of title V of Pub. L. 104–127 provided that: “This subtitle [subtitle D (§§ 551–564) of title V of Pub. L. 104–127, enacting subchapter IV of this chapter] may be cited as the ‘National Kiwifruit Research, Promotion, and Consumer Information Act’.”

Section 571 of title V of Pub. L. 104–127 provided that: “This subtitle [subtitle E (§§ 571–582) of title V of Pub. L. 104–127, enacting subchapter V of this chapter] may be cited as the ‘Popcorn Promotion, Research, and Consumer Information Act’.”
§ 7411. Findings and purpose

(a) Findings

Congress finds the following:

(1) The production of agricultural commodities plays a significant role in the economy of the United States. Thousands of producers in the United States are involved in the production of agricultural commodities, and such commodities are consumed by millions of people throughout the United States and foreign countries.

(2) Agricultural commodities must be of high quality, readily available, handled properly, and marketed efficiently to ensure that consumers have an adequate supply.

(3) The maintenance and expansion of existing markets and the development of new markets for agricultural commodities through generic commodity promotion, research, and information programs are vital to the welfare of persons engaged in the production, marketing, and consumption of such commodities, as well as to the general economy of the United States.

(4) Generic promotion, research, and information activities for agricultural commodities play a unique role in advancing the demand for such commodities, since such activities increase the total market for a product to the benefit of consumers and all producers. These generic activities complement branded advertising initiatives, which are aimed at increasing the market share of individual competitors, and are of particular benefit to small producers who lack the resources or market power to advertise on their own. These generic activities do not impede the branded advertising efforts of individual firms, but instead increase general market demand for an agricultural commodity using methods that individual companies do not have the incentive to employ.

(5) Generic promotion, research, and information activities for agricultural commodities, paid by the producers and others in the industry who reap the benefits of such activities, provide a unique opportunity for producers to inform consumers about a particular agricultural commodity.

(6) It is important to ensure that generic promotion, research, and information activities for agricultural commodities be carried out in an effective and coordinated manner designed to strengthen the position of the commodities in the marketplace and to maintain and expand their markets and uses. Independent evaluation of the effectiveness of the generic promotion activities of these programs will assist the Secretary of Agriculture and Congress in ensuring that these objectives are met.

(7) The cooperative development, financing, and implementation of a coordinated national program of research, promotion, and information regarding agricultural commodities are necessary to maintain and expand existing markets and to develop new markets for these commodities.

(8) Agricultural commodities move in interstate and foreign commerce, and agricultural commodities and their products that do not move in such channels of commerce directly burden or affect interstate commerce in agricultural commodities and their products.

(9) Commodity promotion programs have the ability to provide significant conservation benefits to producers and the public.

(b) Purpose

The purpose of this subchapter is to authorize the establishment, through the exercise by the Secretary of Agriculture of the authority provided in this subchapter, of an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of generic promotion, research, and information regarding agricultural commodities designed to—
(1) strengthen the position of agricultural commodity industries in the marketplace;
(2) maintain and expand existing domestic and foreign markets and uses for agricultural commodities;
(3) develop new markets and uses for agricultural commodities; or
(4) assist producers in meeting their conservation objectives.

c) Rule of construction

Nothing in this subchapter provides for the control of production or otherwise limits the right of any person to produce, handle, or import an agricultural commodity.


§ 7412. Definitions

In this subchapter (unless the context otherwise requires):

(1) **Agricultural commodity**

The term “agricultural commodity” means—

(A) agricultural, horticultural, viticultural, and dairy products;
(B) livestock and the products of livestock;
(C) the products of poultry and bee raising;
(D) the products of forestry;
(E) other commodities raised or produced on farms, as determined appropriate by the Secretary; and
(F) products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary.

(2) **Board**

The term “board” means a board established under an order issued under section 7413 of this title.

(3) **Conflict of interest**

The term “conflict of interest” means a situation in which a member or employee of a board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a board for anything of economic value.

(4) **Department**

The term “Department” means the Department of Agriculture.

(5) **First handler**

The term “first handler” means the first person who buys or takes possession of an agricultural commodity from a producer for marketing. If a producer markets the agricultural commodity directly to consumers, the producer shall be considered to be the first handler with respect to the agricultural commodity produced by the producer.

(6) **Importer**

The term “importer” means any person who imports an agricultural commodity from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee of any person.

(7) **Information**

The term “information” means information and programs that are designed to increase—

(A) efficiency in processing; and
(B) the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of agricultural commodities on a national or international basis.
(8) **Market**

The term “market” means to sell or to otherwise dispose of an agricultural commodity in interstate, foreign, or intrastate commerce.

(9) **Order**

The term “order” means an order issued by the Secretary under section 7413 of this title that provides for a program of generic promotion, research, and information regarding agricultural commodities designed to—

(A) strengthen the position of agricultural commodity industries in the marketplace;
(B) maintain and expand existing domestic and foreign markets and uses for agricultural commodities;
(C) develop new markets and uses for agricultural commodities; or
(D) assist producers in meeting their conservation objectives.

(10) **Person**

The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(11) **Producer**

The term “producer” means any person who is engaged in the production and sale of an agricultural commodity in the United States and who owns, or shares the ownership and risk of loss of, the agricultural commodity.

(12) **Promotion**

The term “promotion” means any action taken by a board under an order, including paid advertising, to present a favorable image of an agricultural commodity to the public to improve the competitive position of the agricultural commodity in the marketplace and to stimulate sales of the agricultural commodity.

(13) **Research**

The term “research” means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of an agricultural commodity.

(14) **Secretary**

The term “Secretary” means the Secretary of Agriculture.

(15) **State**

The term “State” means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(16) **Suspend**

The term “suspend” means to issue a rule under section 553 of title 5 to temporarily prevent the operation of an order during a particular period of time specified in the rule.

(17) **Terminate**

The term “terminate” means to issue a rule under section 553 of title 5 to cancel permanently the operation of an order beginning on a date certain specified in the rule.

(18) **United States**

The term “United States” means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 7413. Issuance of orders

(a) Issuance authorized

(1) In general

To effectuate the purpose of this subchapter, the Secretary may issue, and amend from time to time, orders applicable to—

(A) the producers of an agricultural commodity;

(B) the first handlers of the agricultural commodity and other persons in the marketing chain as appropriate; and

(C) the importers of the agricultural commodity, if imports of the agricultural commodity are subject to assessment under section 7415 (f) of this title.

(2) National scope

Each order issued under this section shall be national in scope.

(b) Procedure for issuance

(1) Development or receipt of proposed order

A proposed order with respect to an agricultural commodity may be—

(A) prepared by the Secretary at any time; or

(B) submitted to the Secretary by—

(i) an association of producers of the agricultural commodity; or

(ii) any other person that may be affected by the issuance of an order with respect to the agricultural commodity.

(2) Consideration of proposed order

If the Secretary determines that a proposed order is consistent with and will effectuate the purpose of this subchapter, the Secretary shall publish the proposed order in the Federal Register and give due notice and opportunity for public comment on the proposed order.

(3) Existence of other orders

In deciding whether a proposal for an order is consistent with and will effectuate the purpose of this subchapter, the Secretary may consider the existence of other Federal promotion, research, and information programs or orders issued or developed pursuant to any other law.

(4) Preparation of final order

After notice and opportunity for public comment under paragraph (2) regarding a proposed order, the Secretary shall take into consideration the comments received in preparing a final order. The Secretary shall ensure that the final order is in conformity with the terms, conditions, and requirements of this subchapter.

(c) Issuance and effective date

If the Secretary determines that the final order developed with respect to an agricultural commodity is consistent with and will effectuate the purpose of this subchapter, the Secretary shall issue the final order. Except in the case of an order for which an initial referendum is conducted under section 7417 (a) of this title, the final order shall be issued and become effective not later than 270 days after the date of publication of the proposed order that was the basis for the final order.

(d) Amendments

From time to time the Secretary may amend any order, consistent with the requirements of section 7422 of this title.

§ 7414. Required terms in orders

(a) In general

Each order shall contain the terms and conditions specified in this section.

(b) Board

(1) Establishment

Each order shall establish a board to carry out a program of generic promotion, research, and information regarding the agricultural commodity covered by the order and intended to effectuate the purpose of this subchapter.

(2) Board membership

(A) Number of members

Each board shall consist of the number of members considered by the Secretary, in consultation with the agricultural commodity industry involved, to be appropriate to administer the order. In addition to members, the Secretary may also provide for alternates on the board.

(B) Appointment

The Secretary shall appoint the members and any alternates of a board from among producers of the agricultural commodity and first handlers and others in the marketing chain as appropriate. If imports of the agricultural commodity covered by an order are subject to assessment under section 7415 (f) of this title, the Secretary shall also appoint importers as members of the board and as alternates if alternates are included on the board. The Secretary may appoint 1 or more members of the general public to each board.

(C) Nominations

The Secretary may make appointments from nominations made pursuant to the method set forth in the order.

(D) Geographical representation

To ensure fair and equitable representation of the agricultural commodity industry covered by an order, the composition of each board shall reflect the geographical distribution of the production of the agricultural commodity involved in the United States and the quantity or value of the agricultural commodity imported into the United States.

(3) Reapportionment of board membership

In accordance with rules issued by the Secretary, at least once in each 5-year period, but not more frequently than once in each 3-year period, each board shall—

(A) review the geographical distribution in the United States of the production of the agricultural commodity covered by the order involved and the quantity or value of the agricultural commodity imported into the United States; and

(B) if warranted, recommend to the Secretary the reapportionment of the board membership to reflect changes in the geographical distribution of the production of the agricultural commodity and the quantity or value of the imported agricultural commodity.

(4) Notice

(A) Vacancies

Each order shall provide for notice of board vacancies to the agricultural commodity industry involved.

(B) Meetings
Each board shall provide the Secretary with prior notice of meetings of the board to permit
the Secretary, or a designated representative of the Secretary, to attend the meetings.

(5) Term of office

(A) In general

The members and any alternates of a board shall each serve for a term of 3 years, except that
the members and any alternates initially appointed to a board shall serve for terms of not more
than 2, 3, and 4 years, as specified by the order.

(B) Limitation on consecutive terms

A member or alternate may serve not more than 2 consecutive terms.

(C) Continuation of term

Notwithstanding subparagraph (B), each member or alternate shall continue to serve until a
successor is appointed by the Secretary.

(D) Vacancies

A vacancy arising before the expiration of a term of office of an incumbent member or alternate
of a board shall be filled in a manner provided for in the order.

(6) Compensation

(A) In general

Members and any alternates of a board shall serve without compensation.

(B) Travel expenses

If approved by a board, members or alternates shall be reimbursed for reasonable travel
expenses, which may include a per diem allowance or actual subsistence incurred while away
from their homes or regular places of business in the performance of services for the board.

(c) Powers and duties of board

Each order shall specify the powers and duties of the board established under the order, which shall
include the power and duty—

(1) to administer the order in accordance with its terms and conditions and to collect assessments;
(2) to develop and recommend to the Secretary for approval such bylaws as may be necessary for
the functioning of the board and such rules as may be necessary to administer the order, including
activities authorized to be carried out under the order;
(3) to meet, organize, and select from among the members of the board a chairperson, other
officers, and committees and subcommittees, as the board determines to be appropriate;
(4) to employ persons, other than the members, as the board considers necessary to assist the board
in carrying out its duties, and to determine the compensation and specify the duties of the persons;
(5) subject to subsection (e) of this section, to develop and carry out generic promotion, research,
and information activities relating to the agricultural commodity covered by the order;
(6) to prepare and submit for the approval of the Secretary, before the beginning of each fiscal
year, rates of assessment under section 7416 of this title and an annual budget of the anticipated
expenses to be incurred in the administration of the order, including the probable cost of each
promotion, research, and information activity proposed to be developed or carried out by the board;
(7) to borrow funds necessary for the startup expenses of the order;
(8) subject to subsection (f) of this section, to enter into contracts or agreements to develop
and carry out generic promotion, research, and information activities relating to the agricultural
commodity covered by the order;
(9) to pay the cost of the activities with assessments collected under section 7416 of this title,
earnings from invested assessments, and other funds;
(10) to keep records that accurately reflect the actions and transactions of the board, to keep and report minutes of each meeting of the board to the Secretary, and to furnish the Secretary with any information or records the Secretary requests;

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

(12) to recommend to the Secretary such amendments to the order as the board considers appropriate.

(d) Prohibited activities

A board may not engage in, and shall prohibit the employees and agents of the board from engaging in—

(1) any action that would be a conflict of interest;

(2) using funds collected by the board under the order, any action undertaken for the purpose of influencing any legislation or governmental action or policy other than recommending to the Secretary amendments to the order; and

(3) any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or misleading or disparaging to another agricultural commodity.

(e) Activities and budgets

(1) Activities

Each order shall require the board established under the order to submit to the Secretary for approval plans and projects for promotion, research, or information relating to the agricultural commodity covered by the order.

(2) Budgets

(A) Submission to Secretary

Each order shall require the board established under the order to submit to the Secretary for approval a budget of its anticipated annual expenses and disbursements to be paid to administer the order. The budget shall be submitted before the beginning of a fiscal year and as frequently as may be necessary after the beginning of the fiscal year.

(B) Reimbursement of Secretary

Each order shall require that the Secretary be reimbursed for all expenses incurred by the Secretary in the implementation, administration, and supervision of the order, including all referenda costs incurred in connection with the order.

(3) Incurring expenses

A board may incur the expenses described in paragraph (2) and other expenses for the administration, maintenance, and functioning of the board as authorized by the Secretary.

(4) Payment of expenses

Expenses incurred under paragraph (3) shall be paid by a board using assessments collected under section 7416 of this title, earnings obtained from assessments, and other income of the board. Any funds borrowed by the board shall be expended only for startup costs and capital outlays.

(5) Limitation on spending

For fiscal years beginning 3 or more years after the date of the establishment of a board, the board may not expend for administration (except for reimbursements to the Secretary required under paragraph (2)(B)), maintenance, and functioning of the board in a fiscal year an amount that exceeds 15 percent of the assessment and other income received by the board for the fiscal year.

(f) Contracts and agreements

(1) In general
Each order shall provide that, with the approval of the Secretary, the board established under the order may—

(A) enter into contracts and agreements to carry out generic promotion, research, and information activities relating to the agricultural commodity covered by the order, including contracts and agreements with producer associations or other entities as considered appropriate by the Secretary; and

(B) pay the cost of approved generic promotion, research, and information activities using assessments collected under section 7416 of this title, earnings obtained from assessments, and other income of the board.

(2) Requirements

Each contract or agreement shall provide that any person who enters into the contract or agreement with the board shall—

(A) develop and submit to the board a proposed activity together with a budget that specifies the cost to be incurred to carry out the activity;

(B) keep accurate records of all of its transactions relating to the contract or agreement;

(C) account for funds received and expended in connection with the contract or agreement;

(D) make periodic reports to the board of activities conducted under the contract or agreement; and

(E) make such other reports as the board or the Secretary considers relevant.

(g) Records of board

(1) In general

Each order shall require the board established under the order—

(A) to maintain such records as the Secretary may require and to make the records available to the Secretary for inspection and audit;

(B) to collect and submit to the Secretary, at any time the Secretary may specify, any information the Secretary may request; and

(C) to account for the receipt and disbursement of all funds in the possession, or under the control, of the board.

(2) Audits

Each order shall require the board established under the order to have—

(A) its records audited by an independent auditor at the end of each fiscal year; and

(B) a report of the audit submitted directly to the Secretary.

(h) Periodic evaluation

In accordance with section 7401 (c) of this title, each order shall require the board established under the order to provide for the independent evaluation of all generic promotion, research, and information activities undertaken under the order.

(i) Books and records of persons covered by order

(1) In general

Each order shall require that producers, first handlers and other persons in the marketing chain as appropriate, and importers covered by the order shall—

(A) maintain records sufficient to ensure compliance with the order and regulations;

(B) submit to the board established under the order any information required by the board to carry out its responsibilities under the order; and

(C) make the records described in subparagraph (A) available, during normal business hours, for inspection by employees or agents of the board or the Department, including any records necessary to verify information required under subparagraph (B).
(2) Time requirement

Any record required to be maintained under paragraph (1) shall be maintained for such time period as the Secretary may prescribe.

(3) Other information

The Secretary may use, and may authorize the board to use under this subchapter, information regarding persons subject to an order that is collected by the Department under any other law.

(4) Confidentiality of information

(A) In general

Except as otherwise provided in this subchapter, all information obtained under paragraph (1) or as part of a referendum under section 7417 of this title shall be kept confidential by all officers, employees, and agents of the Department and of the board.

(B) Disclosure

Information referred to in subparagraph (A) may be disclosed only if—

(i) the Secretary considers the information relevant; and

(ii) the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party.

(C) Other exceptions

This paragraph shall not prohibit—

(i) the issuance of general statements based on reports or on information relating to a number of persons subject to an order 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 violating any order and a statement of the particular provisions of the order violated by the person.

(D) Penalty

Any person who willfully violates this subsection shall be subject, on conviction, to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both.

(5) Withholding information

This subsection shall not authorize the withholding of information from Congress.


§ 7415. Permissive terms in orders

(a) Exemptions

An order issued under this subchapter may contain—

(1) authority for the Secretary to exempt from the order any de minimis quantity of an agricultural commodity otherwise covered by the order; and

(2) authority for the board established under the order to require satisfactory safeguards against improper use of the exemption.

(b) Different payment and reporting schedules

An order issued under this subchapter may contain authority for the board established under the order to designate different payment and reporting schedules to recognize differences in agricultural commodity industry marketing practices and procedures used in different production and importing areas.

(c) Activities
An order issued under this subchapter may contain authority to develop and carry out research, promotion, and information activities designed to expand, improve, or make more efficient the marketing or use of the agricultural commodity covered by the order in domestic and foreign markets. Section 7414 (e) of this title shall apply with respect to activities authorized under this subsection.

(d) Reserve funds

An order issued under this subchapter may contain authority to reserve funds from assessments collected under section 7416 of this title to permit an effective and continuous coordinated program of research, promotion, and information in years when the yield from assessments may be reduced, except that the amount of funds reserved may not exceed the greatest aggregate amount of the anticipated disbursements specified in budgets approved under section 7414 (e) of this title by the Secretary for any 2 fiscal years.

(e) Credits

(1) Generic activities

An order issued under this subchapter may contain authority to provide credits of assessments for those individuals who contribute to other similar generic research, promotion, and information programs at the State, regional, or local level.

(2) Branded activities

(A) In general

The Secretary may permit a farmer cooperative that engages in branded activities relating to the marketing of the products of members of the cooperative to receive an annual credit for the activities and related expenditures in the form of a deduction of the total cost of the activities and related expenditures from the amount of any assessment that would otherwise be required to be paid by the producer members of the cooperative under an order issued under this subchapter.

(B) Election by cooperative

A farmer cooperative may elect to voluntarily waive the application of subparagraph (A) to the cooperative.

(f) Assessment of imports

An order issued under this subchapter may contain authority for the board established under the order to assess under section 7416 of this title an imported agricultural commodity, or products of such an agricultural commodity, at a rate comparable to the rate determined by the appropriate board for the domestic agricultural commodity covered by the order.

(g) Other authority

An order issued under this subchapter may contain authority to take any other action that—

(1) is not inconsistent with the purpose of this subchapter, any term or condition specified in section 7414 of this title, or any rule issued to carry out this subchapter; and

(2) is necessary to administer the order.


§ 7416. Assessments

(a) Assessments authorized

While an order issued under this subchapter is in effect with respect to an agricultural commodity, assessments shall be—

(1) paid by first handlers with respect to the agricultural commodity produced and marketed in the United States; and
(2) paid by importers with respect to the agricultural commodity imported into the United States, if the imported agricultural commodity is covered by the order pursuant to section 7415 (f) of this title.

(b) Collection

Assessments required under an order shall be remitted to the board established under the order at the time and in the manner prescribed by the order.

(c) Limitation on assessments

Not more than 1 assessment may be levied on a first handler or importer under subsection (a) of this section with respect to any agricultural commodity.

(d) Assessment rates

The board shall recommend to the Secretary 1 or more rates of assessment to be levied under subsection (a) of this section. If approved by the Secretary, the rates shall take effect. An order may provide that an assessment rate may not be increased unless approved by a referendum conducted pursuant to section 7417 of this title.

(e) Late-payment and interest charges

(1) In general

Late-payment and interest charges may be levied on each person subject to an order who fails to remit an assessment in accordance with subsection (b) of this section.

(2) Rate

The rate for the charges shall be specified by the Secretary.

(f) Investment of assessments

Pending disbursement of assessments under a budget approved by the Secretary, a board may invest assessments collected under this section in—

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

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

(3) interest-bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) obligations fully guaranteed as to principal and interest by the United States.

(g) Refund of assessments from escrow account

(1) Escrow account

During the period beginning on the effective date of an order and ending on the date the Secretary announces the results of a referendum that is conducted under section 7417 (b)(1) of this title with respect to the order, the board established under the order shall—

(A) establish and maintain an escrow account of the kind described in subsection (f)(3) of this section to be used to refund assessments; and

(B) deposit funds in the account in accordance with paragraph (2).

(2) Amount to be deposited

The board shall deposit in the account an amount equal to 10 percent of the assessments collected during the period referred to in paragraph (1).

(3) Right to receive refund

Subject to paragraphs (4), (5), and (6), persons subject to an order shall be eligible to demand a refund of assessments collected during the period referred to in paragraph (1) if—

(A) the assessments were remitted on behalf of the person; and

(B) the order is not approved in the referendum.
(4) Form of demand
The demand for a refund shall be made at such time and in such form as specified by the order.

(5) Payment of refund
A person entitled to a refund shall be paid promptly after the board receives satisfactory proof that the assessment for which the refund is demanded was paid on behalf of the person who makes the demand.

(6) Proration
If the funds in the escrow account required by paragraph (1) are insufficient to pay the amount of all refunds that persons subject to an order otherwise would have a right to receive under this subsection, the board shall prorate the amount of the funds among all the persons.

(7) Closing of escrow account
If the order is approved in a referendum conducted under section 7417(b)(1) of this title—

(A) the escrow account shall be closed; and

(B) the funds shall be available to the board for disbursement as authorized in the order.


§ 7416a. Confirmation of authority of Secretary of Agriculture to collect State commodity assessments

(a) Collection from marketing assistance loans
The Secretary of Agriculture shall collect commodity assessments from the proceeds of a marketing assistance loan for a producer if the assessment is required to be paid by the producer or the first purchaser of a commodity pursuant to a State law or pursuant to an authority administered by the Secretary. This collection authority does not extend to a State tax or other revenue collection activity by a State.

(b) Collection pursuant to agreement
The collection of an assessment under subsection (a) of this section shall be made as specified in an agreement between the Secretary of Agriculture and the State requesting the collection.

(c) Prohibition on charging certain fees
The Secretary may not charge any fees or related costs for the collection of commodity assessments pursuant to this section.


Codification

Section was not enacted as part of the Commodity Promotion, Research, and Information Act of 1996 which comprises this subchapter.

Amendments
2008—Subsec. (a). Pub. L. 110–246, § 1616(1), substituted “shall” for “may”.
§ 7417. Referenda

(a) Initial referendum

(1) Optional referendum

For the purpose of ascertaining whether the persons to be covered by an order favor the order going into effect, the order may provide for the Secretary to conduct an initial referendum among persons to be subject to an assessment under section 7416 of this title who, during a representative period determined by the Secretary, engaged in—

(A) the production or handling of the agricultural commodity covered by the order; or

(B) the importation of the agricultural commodity.

(2) Procedure

The results of the referendum shall be determined in accordance with subsection (e) of this section. The Secretary may require that the agricultural commodity industry involved post a bond or other collateral to cover the cost of the referendum.

(b) Required referendum

(1) In general

For the purpose of ascertaining whether the persons covered by an order favor the continuation, suspension, or termination of the order, the Secretary shall conduct a referendum among persons subject to assessments under section 7416 of this title who, during a representative period determined by the Secretary, have engaged in—

(A) the production or handling of the agricultural commodity covered by the order; or

(B) the importation of the agricultural commodity.

(2) Time for referendum

The referendum shall be conducted not later than 3 years after assessments first begin under the order.

(3) Exception

This subsection shall not apply if an initial referendum was conducted under subsection (a) of this section.

(c) Subsequent referendum

The Secretary shall conduct a subsequent referendum—

(1) not later than 7 years after assessments first begin under the order;

(2) at the request of the board established under the order; or

(3) at the request of 10 percent or more of the number of persons eligible to vote under subsection (b)(1) of this section;

to determine if the persons favor the continuation, suspension, or termination of the order.

(d) Other referendum

The Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the order or a provision of the order is favored by persons eligible to vote under subsection (b)(1) of this section.

(e) Approval of order
An order may provide for its approval in a referendum—
(1) by a majority of those persons voting;
(2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or
(3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

(f) Costs of referenda

The board established under an order with respect to which a referendum is conducted under this section shall reimburse the Secretary for any expenses incurred by the Secretary to conduct the referendum.

(g) Manner of conducting referenda

(1) In general

A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

(2) Advance registration

If the Secretary determines that an advance registration of eligible voters in a referendum is necessary before the voting period in order to facilitate the conduct of the referendum, the Secretary may institute the advance registration procedures by mail, or in person through the use of national and local offices of the Department.

(3) Voting

Eligible voters may vote by mail ballot in the referendum or in person if so prescribed by the Secretary.

(4) Notice

Not later than 30 days before a referendum is conducted under this section with respect to an order, the Secretary shall notify the agricultural commodity industry involved, in such manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this subsection.


§ 7418. Petition and review of orders

(a) Petition

(1) In general

A person subject to an order issued under this subchapter 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 established in accordance with law; and
(B) requesting a modification of the order or an exemption from the order.

(2) Hearing

The Secretary shall give the petitioner an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After the hearing, the Secretary shall make a ruling on the petition. The ruling shall be final, subject to review as set forth in subsection (b) of this section.

(4) Limitation on petition
Any petition filed under this subsection challenging an order, any provision of the order, or any obligation imposed in connection with the order, shall be filed within 2 years after the effective date of the order, provision, or obligation subject to challenge in the petition.

(b) Review

(1) Commencement of action

The district court of the United States for any district in which a person who is a petitioner under subsection (a) of this section resides or carries on business shall have jurisdiction to review the final ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of the final ruling by the Secretary under subsection (a)(3) of this section.

(2) Process

Service of process in a proceeding may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) Remands

If the court determines that the ruling 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 determines to be in accordance with law; or

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

(c) Effect on enforcement proceedings

The pendency of a petition filed under subsection (a) of this section or an action commenced under subsection (b) of this section shall not operate as a stay of any action authorized by section 7419 of this title to be taken to enforce this subchapter, including any rule, order, or penalty in effect under this subchapter.


§ 7419. Enforcement

(a) Jurisdiction

The district courts of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation issued under this subchapter.

(b) Referral to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary shall not be required to refer to the Attorney General a violation of this subchapter if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by providing a suitable written notice or warning to the person who committed the violation or by an administrative action under this section.

(c) Civil penalties and orders

(1) Civil penalties

A person who willfully violates an order or regulation issued by the Secretary under this subchapter may be assessed by the Secretary a civil penalty of not less than $1,000 and not more than $10,000 for each violation.

(2) Separate offense

Each violation and each day during which there is a failure to comply with an order or regulation issued by the Secretary shall be considered to be a separate offense.

(3) Cease-and-desist orders
In addition to, or in lieu of, a civil penalty, the Secretary may issue an order requiring a person to cease and desist from violating the order or regulation.

(4) **Notice and hearing**

No order assessing a penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary provides notice and an opportunity for a hearing on the record with respect to the violation.

(5) **Finality**

An order assessing a penalty or a cease-and-desist order issued under this subsection by the Secretary shall be final and conclusive unless the person against whom the order is issued files an appeal from the order with the United States court of appeals, as provided in subsection (d) of this section.

(d) **Review by court of appeals**

(1) **In general**

A person against whom an order is issued under subsection (c) of this section may obtain review of the order by—

(A) filing, not later than 30 days after the person receives notice of the order, a notice of appeal in—

(i) the United States court of appeals for the circuit in which the person resides or carries on business; or

(ii) the United States Court of Appeals for the District of Columbia Circuit; and

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

(2) **Record**

The Secretary shall file with the court a certified copy of the record on which the Secretary has determined that the person has committed a violation.

(3) **Standard of review**

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

(e) **Failure to obey cease-and-desist orders**

A person who fails to obey a valid cease-and-desist order issued by the Secretary under this section, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not less than $1,000 and not more than $10,000 for each offense. Each day during which the failure continues shall be considered to be a separate violation of the cease-and-desist order.

(f) **Failure to pay penalties**

If a person fails to pay a civil penalty imposed under this section by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in the district court of the United States for any district in which the person resides or carries on business. In the action, the validity and appropriateness of the order imposing the civil penalty shall not be subject to review.

(g) **Additional remedies**

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

§ 7420. Investigations and power to subpoena

(a) Investigations

The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective administration of this subchapter; or

(2) to determine whether any person subject to this subchapter has engaged, or is about to engage, in any action that constitutes or will constitute a violation of this subchapter or any order or regulation issued under this subchapter.

(b) Subpoenas, oaths, and affirmations

For the purpose of any investigation under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records or documents that are relevant to the inquiry. The attendance of witnesses and the production of records or documents may be required from any place in the United States.

(c) Aid of courts

In the case of contumacy by, or refusal to obey a subpoena issued 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 carried on, or where the person resides or carries on business, in order to require the attendance and testimony of the person or the production of records or documents. The court may issue an order requiring the person to appear before the Secretary to produce records or documents or to give testimony regarding the matter under investigation.

(d) Contempt

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

(e) Process

Process in any case under this section may be served in the judicial district in which the person resides or carries on business or wherever the person may be found.


§ 7421. Suspension or termination

(a) Mandatory suspension or termination

The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the purpose of this subchapter, or if the Secretary determines that the order or a provision of an order is not favored by persons voting in a referendum conducted under section 7417 of this title.

(b) Implementation of suspension or termination

If, as a result of a referendum conducted under section 7417 of this title, the Secretary determines that an order is not approved, the Secretary shall—

(1) not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under the order; and
as soon as practicable, suspend or terminate, as the case may be, activities under the order in an orderly manner.


§ 7422. Amendments to orders

The provisions of this subchapter applicable to an order shall be applicable to any amendment to an order, except that section 7417 of this title shall not apply to an amendment.


§ 7423. Effect on other laws

This subchapter shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.


§ 7424. Regulations

The Secretary may issue such regulations as may be necessary to carry out this subchapter and the power vested in the Secretary under this subchapter.


§ 7425. Authorization of appropriations

(a) In general

There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

(b) Limitation on expenditures for administrative expenses

Funds appropriated to carry out this subchapter may not be expended for the payment of expenses incurred by a board to administer an order.

§ 7441. Findings and declaration of policy

(a) Findings

Congress finds that—

(1) canola and rapeseed products are an important and nutritious part of the human diet;

(2) the production of canola and rapeseed products plays a significant role in the economy of the United States in that—

(A) canola and rapeseed products are produced by thousands of canola and rapeseed producers and processed by numerous processing entities; and

(B) canola and rapeseed products produced in the United States are consumed by people throughout the United States and foreign countries;

(3) canola, rapeseed, and canola and rapeseed products should be readily available and marketed efficiently to ensure that consumers have an adequate supply of canola and rapeseed products at a reasonable price;

(4) the maintenance and expansion of existing markets and development of new markets for canola, rapeseed, and canola and rapeseed products are vital to the welfare of canola and rapeseed producers and processors and those persons concerned with marketing canola, rapeseed, and canola and rapeseed products, as well as to the general economy of the United States, and are necessary to ensure the ready availability and efficient marketing of canola, rapeseed, and canola and rapeseed products;

(5) there exist established State and national organizations conducting canola and rapeseed research, promotion, and consumer education programs that are valuable to the efforts of promoting the consumption of canola, rapeseed, and canola and rapeseed products;

(6) the cooperative development, financing, and implementation of a coordinated national program of canola and rapeseed research, promotion, consumer information, and industry information is necessary to maintain and expand existing markets and develop new markets for canola, rapeseed, and canola and rapeseed products; and

(7) canola, rapeseed, and canola and rapeseed products move in interstate and foreign commerce, and canola, rapeseed, and canola and rapeseed products that do not move in interstate or foreign commerce directly burden or affect interstate commerce in canola, rapeseed, and canola and rapeseed products.

(b) Policy

It is the policy of this subchapter to establish an orderly procedure for developing, financing through assessments on domestically produced canola and rapeseed, and implementing a program of research, promotion, consumer information, and industry information designed to strengthen the position in the marketplace of the canola and rapeseed industry, to maintain and expand existing domestic and foreign markets and uses for canola, rapeseed, and canola and rapeseed products; and

(c) Construction

Nothing in this subchapter provides for the control of production or otherwise limits the right of individual producers to produce canola, rapeseed, or canola or rapeseed products.


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- 28 -
§ 7442. Definitions

In this subchapter (unless the context otherwise requires):

1. **Board**
   The term “Board” means the National Canola and Rapeseed Board established under section 7444 (b) of this title.

2. **Canola; rapeseed**
   The terms “canola” and “rapeseed” mean any brassica plant grown in the United States for the production of an oilseed, the oil of which is used for a food or nonfood use.

3. **Canola or rapeseed product**
   The term “canola or rapeseed product” means a product produced, in whole or in part, from canola or rapeseed.

4. **Commerce**
   The term “commerce” includes interstate, foreign, and intrastate commerce.

5. **Conflict of interest**
   The term “conflict of interest” means a situation in which a member of the Board has a direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture, or other business entity dealing directly or indirectly with the Board.

6. **Consumer information**
   The term “consumer information” means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of canola, rapeseed, or canola or rapeseed products.

7. **Department**
   The term “Department” means the Department of Agriculture.

8. **First purchaser**
   The term “first purchaser” means—
   (A) except as provided in subparagraph (B), a person who buys or otherwise acquires canola, rapeseed, or canola or rapeseed products produced by a producer; or
   (B) the Commodity Credit Corporation, in a case in which canola or rapeseed is forfeited to the Commodity Credit Corporation as collateral for a loan issued under a price support loan program administered by the Commodity Credit Corporation.

9. **Industry information**
   The term “industry information” means information or a program that will lead to the development of new markets, new marketing strategies, or increased efficiency for the canola and rapeseed industry, or an activity to enhance the image of the canola or rapeseed industry.

10. **Industry member**
    The term “industry member” means a member of the canola and rapeseed industry who represents—
    (A) manufacturers of canola or rapeseed products; or
    (B) persons who commercially buy or sell canola or rapeseed.

11. **Marketing**
    The term “marketing” means the sale or other disposition of canola, rapeseed, or canola or rapeseed products in a channel of commerce.

12. **Order**
The term “order” means an order issued under section 7443 of this title.

(13) Person
The term “person” means an individual, partnership, corporation, association, cooperative, or any other legal entity.

(14) Producer
The term “producer” means a person engaged in the growing of canola or rapeseed in the United States who owns, or who shares the ownership and risk of loss of, the canola or rapeseed.

(15) Promotion
The term “promotion” means an action, including paid advertising, technical assistance, or a trade servicing activity, to enhance the image or desirability of canola, rapeseed, or canola or rapeseed products in domestic and foreign markets, or an activity designed to communicate to consumers, processors, wholesalers, retailers, government officials, or other persons information relating to the positive attributes of canola, rapeseed, or canola or rapeseed products or the benefits of use or distribution of canola, rapeseed, or canola or rapeseed products.

(16) Research
The term “research” means any type of test, study, or analysis to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of canola, rapeseed, or canola or rapeseed products, including research activity designed to identify and analyze barriers to export sales of canola or rapeseed produced in the United States.

(17) Secretary
The term “Secretary” means the Secretary of Agriculture.

(18) State
The term “State” means any of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

(19) United States
The term “United States” means collectively the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.


§ 7443. Issuance and amendment of orders

(a) In general
Subject to subsection (b) of this section, the Secretary shall issue 1 or more orders under this subchapter applicable to producers and first purchasers of canola, rapeseed, or canola or rapeseed products. The order shall be national in scope. Not more than 1 order shall be in effect under this subchapter at any 1 time.

(b) Procedure
(1) Proposal or request for issuance
The Secretary may propose the issuance of an order under this subchapter, or an association of canola and rapeseed producers or any other person that would be affected by an order issued pursuant to this subchapter may request the issuance of, and submit a proposal for, an order.

(2) Notice and comment concerning proposed order
Not later than 60 days after the receipt of a request and proposal for an order pursuant to paragraph (1), or whenever the Secretary determines to propose an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.
(3) **Issuance of order**

After notice and opportunity for public comment are given as provided in paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of this subchapter. The order shall be issued and become effective not later than 180 days following publication of the proposed order.

(c) **Amendments**

The Secretary may amend an order issued under this section.


§ 7444. Required terms in orders

(a) **In general**

An order issued under this subchapter shall contain the terms and conditions specified in this section.

(b) **Establishment and membership of National Canola and Rapeseed Board**

(1) **In general**

The order shall provide for the establishment of, and appointment of members to, a National Canola and Rapeseed Board to administer the order.

(2) **Service to entire industry**

The Board shall carry out programs and projects that will provide maximum benefit to the canola and rapeseed industry in all parts of the United States and only promote canola, rapeseed, or canola or rapeseed products.

(3) **Board membership**

The Board shall consist of 15 members, including—

(A) 11 members who are producers, including—
   (i) 1 member from each of the 6 geographic regions comprised of States where canola or rapeseed is produced, as determined by the Secretary; and
   (ii) 5 members from the geographic regions referred to in clause (i), allocated according to the production in each region; and

(B) 4 members who are industry members, including at least—
   (i) 1 member who represents manufacturers of canola or rapeseed end products; and
   (ii) 1 member who represents persons who commercially buy or sell canola or rapeseed.

(4) **Limitation on State residence**

There shall be no more than 4 producer members of the Board from any 1 State.

(5) **Modifying Board membership**

In accordance with regulations approved by the Secretary, at least once each 3 years and not more than once each 2 years, the Board shall review the geographic distribution of canola and rapeseed production throughout the United States and, if warranted, recommend to the Secretary that the Secretary—

(A) reapportion regions in order to reflect the geographic distribution of canola and rapeseed production; and

(B) reapportion the seats on the Board to reflect the production in each region.

(6) **Certification of organizations**

(A) **In general**
For the purposes of section 7445 of this title, the eligibility of any State organization to represent producers shall be certified by the Secretary.

(B) Criteria

The Secretary shall certify any State organization that the Secretary determines has a history of stability and permanency and meets at least 1 of the following criteria:

(i) Majority representation

The total paid membership of the organization—

(I) is comprised of at least a majority of canola or rapeseed producers; or

(II) represents at least a majority of the canola or rapeseed producers in the State.

(ii) Substantial number of producers represented

The organization represents a substantial number of producers that produce a substantial quantity of canola or rapeseed in the State.

(iii) Purpose

The organization is a general farm or agricultural organization that has as a stated objective the promotion and development of the United States canola or rapeseed industry and the economic welfare of United States canola or rapeseed producers.

(C) Report

The Secretary shall make a certification under this paragraph on the basis of a factual report submitted by the State organization.

(7) Terms of office

(A) In general

A member of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years, as determined by the Secretary.

(B) Limitation on terms

No individual may serve more than 2 consecutive 3-year terms as a member.

(C) Termination of terms

Notwithstanding subparagraph (B), each member shall continue to serve until a successor is appointed by the Secretary.

(8) Compensation

A member of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in the performance of duties for and approved by the Board.

(c) Powers and duties of Board

The order shall define the powers and duties of the Board, which shall include the power and duty—

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

(2) to issue regulations to effectuate the terms and conditions of the order;

(3) to meet, organize, and select from among members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines appropriate;

(4) to establish working committees of persons other than Board members;

(5) to employ such persons, other than Board members, as the Board considers necessary, and to determine the compensation and define the duties of the persons;

(6) to prepare and submit for the approval of the Secretary, when appropriate or necessary, a recommended rate of assessment under section 7445 of this title, and a fiscal period budget of the
anticipated expenses in the administration of the order, including the probable costs of all programs and projects;
(7) to develop programs and projects, subject to subsection (d) of this section;
(8) to enter into contracts or agreements, subject to subsection (e) of this section, to develop and carry out programs or projects of research, promotion, industry information, and consumer information;
(9) to carry out research, promotion, industry information, and consumer information projects, and to pay the costs of the projects with assessments collected under section 7445 of this title;
(10) to keep minutes, books, and records that reflect the actions and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;
(11) to appoint and convene, from time to time, working committees comprised of producers, industry members, and the public to assist in the development of research, promotion, industry information, and consumer information programs for canola, rapeseed, and canola and rapeseed products;
(12) to invest, pending disbursement under a program or project, funds collected through assessments authorized under section 7445 of this title, or funds earned from investments, only in—
   (A) obligations of the United States or an agency of the United States;
   (B) general obligations of a State or a political subdivision of a State;
   (C) an 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;
(13) to receive, investigate, and report to the Secretary complaints of violations of the order;
(14) to furnish the Secretary with such information as the Secretary may request;
(15) to recommend to the Secretary amendments to the order;
(16) to develop and recommend to the Secretary for approval such regulations as may be necessary for the development and execution of programs or projects, or as may otherwise be necessary, to carry out the order; and
(17) to provide the Secretary with advance notice of meetings.

(d) Programs and budgets

(1) Submission to Secretary

The order shall provide that the Board shall submit to the Secretary for approval any program or project of research, promotion, consumer information, or industry information. No program or project shall be implemented prior to approval by the Secretary.

(2) Budgets

The order shall require the Board, prior to the beginning of each fiscal year, or as may be necessary after the beginning of a fiscal year, to submit to the Secretary for approval budgets of anticipated expenses and disbursements in the implementation of the order, including projected costs of research, promotion, consumer information, and industry information programs and projects.

(3) Incurring expenses

The Board may incur such expenses for programs or projects of research, promotion, consumer information, or industry information, and other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any implementation, administrative, and referendum costs incurred by the Department.

(4) Paying expenses

The funds to cover the expenses referred to in paragraph (3) shall be paid by the Board from assessments collected under section 7445 of this title or funds borrowed pursuant to paragraph (5).
(5) Authority to borrow

To meet the expenses referred to in paragraph (3), the Board shall have the authority to borrow funds, as approved by the Secretary, for capital outlays and startup costs.

(e) Contracts and agreements

(1) In general

To ensure efficient use of funds, the order shall provide that the Board may enter into a contract or agreement for the implementation and carrying out of a program or project of canola, rapeseed, or canola or rapeseed products research, promotion, consumer information, or industry information, including a contract with a producer organization, and for the payment of the costs with funds received by the Board under the order.

(2) Requirements

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

(A) the contracting party shall develop and submit to the Board a program or project together with a budget that shall show the estimated costs to be incurred for the program or project;
(B) the program or project shall become effective on the approval of the Secretary; and
(C) the contracting party shall keep accurate records of all transactions, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(3) Producer organizations

The order shall provide that the Board may contract with a producer organization for any services required in addition to the services described in paragraph (1). The contract shall include provisions comparable to the provisions required by paragraph (2).

(f) Books and records of Board

(1) In general

The order shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;
(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and
(C) account for the receipt and disbursement of all funds entrusted to the Board.

(2) Audits

The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal year, and a report of the audit to be submitted to the Secretary.

(g) Prohibition

(1) In general

Subject to paragraph (2), the Board shall not engage in any action to, nor shall any funds received by the Board under this subchapter be used to—

(A) influence legislation or governmental action;
(B) engage in an action that would be a conflict of interest;
(C) engage in advertising that is false or misleading; or
(D) engage in promotion that would disparage other commodities.

(2) Action permitted

Paragraph (1) does not preclude—

(A) the development and recommendation of amendments to the order;
(B) the communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, or industry information activities under the order; or

(C) any action designed to market canola or rapeseed products directly to a foreign government or political subdivision of a foreign government.

(h) Books and records

(1) In general

The order shall require that each producer, first purchaser, or industry member shall—

(A) maintain and submit to the Board any reports considered necessary by the Secretary to ensure compliance with this subchapter; and

(B) make available during normal business hours, for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out this subchapter, including such records as are necessary to verify any required reports.

(2) Confidentiality

(A) In general

Except as otherwise provided in this subchapter, all information obtained from books, records, or reports required to be maintained under paragraph (1) shall be kept confidential, and shall not be disclosed to the public by any person.

(B) Disclosure

Information referred to in subparagraph (A) may be disclosed to the public if—

(i) the Secretary considers the information relevant;

(ii) the information is revealed in a suit or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party; and

(iii) the information relates to this subchapter.

(C) Misconduct

A knowing disclosure of confidential information in violation of subparagraph (A) by an officer or employee of the Board or Department, except as required by other law or allowed under subparagraph (B) or (D), shall be considered a violation of this subchapter.

(D) General statements

Nothing in this paragraph prohibits—

(i) the issuance of general statements based on the reports of a number of persons subject to an 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 a person violating the order, together with a statement of the particular provisions of the order violated by the person.

(3) Availability of information for law enforcement

Information obtained under this subchapter may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(4) Penalty

Any person knowingly violating this subsection, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if an officer or employee
of the Board or the Department, shall be removed from office or terminated from employment, as applicable.

(5) **Withholding of information**

Nothing in this subchapter authorizes the withholding of information from Congress.

(i) **Use of assessments**

The order shall provide that the assessments collected under section 7445 of this title shall be used for payment of the expenses in implementing and administering this subchapter, with provision for a reasonable reserve, and to cover administrative costs incurred by the Secretary in implementing and administering this subchapter.

(j) **Other terms and conditions**

The order shall contain such other terms and conditions, not inconsistent with this subchapter, as are determined necessary by the Secretary to effectuate this subchapter.


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§ 7445. Assessments

(a) **In general**

(1) **First purchasers**

During the effective period of an order issued pursuant to this subchapter, assessments shall be—

(A) levied on all canola or rapeseed produced in the United States and marketed; and

(B) deducted from the payment made to a producer for all canola or rapeseed sold to a first purchaser.

(2) **Direct processing**

The order shall provide that any person processing canola or rapeseed of that person’s own production and marketing the canola or rapeseed, or canola or rapeseed products, shall remit to the Board or a State organization certified to represent producers under section 7444 (b)(6) of this title, in the manner prescribed by the order, an assessment established at a rate equivalent to the rate provided for under subsection (d) of this section.

(b) **Limitation on assessments**

No more than 1 assessment may be assessed under subsection (a) of this section on any canola or rapeseed produced (as remitted by a first purchaser).

(c) **Remitting of assessments**

(1) **In general**

Assessments required under subsection (a) of this section shall be remitted to the Board by a first purchaser. The Board shall use State organizations certified to represent producers under section 7444 (b)(6) of this title to collect the assessments. If an appropriate certified State organization does not exist to collect an assessment, the assessment shall be collected by the Board. There shall be only 1 certified State organization in each State.

(2) **Times to remit assessment**

Each first purchaser shall remit the assessment to the Board as provided for in the order.

(d) **Assessment rate**

(1) **Initial rate**

The initial assessment rate shall be 4 cents per hundredweight of canola or rapeseed produced and marketed.

(2) **Increase**

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The assessment rate may be increased on recommendation by the Board to a rate not exceeding 10 cents per hundredweight of canola or rapeseed produced and marketed in a State, unless—

(A) after the initial referendum is held under section 7446 (a) of this title, the Board recommends an increase above 10 cents per hundredweight; and

(B) the increase is approved in a referendum under section 7446 (b) of this title.

(3) Credit

A producer who demonstrates to the Board that the producer is participating in a program of a State organization certified to represent producers under section 7444 (b)(6) of this title shall receive credit, in determining the assessment due from the producer, for contributions to the program of up to 2 cents per hundredweight of canola or rapeseed marketed.

(e) Late payment charge

(1) In general

There shall be a late payment charge imposed on any person who fails to remit, on or before the date provided for in the order, to the Board the total amount for which the person is liable.

(2) Amount of charge

The amount of the late payment charge imposed under paragraph (1) shall be prescribed by the Board with the approval of the Secretary.

(f) Refund of assessments from escrow account

(1) Establishment of escrow account

During the period beginning on the date on which an order is first issued under section 7443 (b)(3) of this title and ending on the date on which a referendum is conducted under section 7446 (a) of this title, the Board shall—

(A) establish and maintain an escrow account to be used for assessment refunds; and

(B) place funds in the account in accordance with paragraph (2).

(2) Placement of funds in account

The Board shall place in the account, from assessments collected during the period referred to in paragraph (1), an amount equal to the product obtained by multiplying the total amount of assessments collected during the period by 10 percent.

(3) Right to receive refund

The Board shall refund to a producer the assessments paid by or on behalf of the producer if—

(A) the producer is required to pay the assessment;

(B) the producer does not support the program established under this subchapter; and

(C) the producer demands the refund prior to the conduct of the referendum under section 7446 (a) of this title.

(4) Form of demand

The demand shall be made in accordance with such regulations, in such form, and within such time period as prescribed by the Board.

(5) Making of refund

The refund shall be made on submission of proof satisfactory to the Board that the producer paid the assessment for which the refund is demanded.

(6) Proration

If—

(A) the amount in the escrow account required by paragraph (1) is not sufficient to refund the total amount of assessments demanded by eligible producers; and
(B) the order is not approved pursuant to the referendum conducted under section 7446 (a) of this title; the Board shall prorate the amount of the refunds among all eligible producers who demand a refund.

(7) Program approved

If the plan is approved pursuant to the referendum conducted under section 7446 (a) of this title, all funds in the escrow account shall be returned to the Board for use by the Board in accordance with this subchapter.


§ 7446. Referenda

(a) Initial referendum

(1) Requirement

During the period ending 30 months after the date on which an order is first issued under section 7443 (b)(3) of this title, the Secretary shall conduct a referendum among producers who, during a representative period as determined by the Secretary, have been engaged in the production of canola or rapeseed for the purpose of ascertaining whether the order then in effect shall be continued.

(2) Advance notice

The Secretary shall, to the extent practicable, provide broad public notice in advance of any referendum. The notice shall be provided, without advertising expenses, by means of newspapers, county newsletters, the electronic media, and press releases, through the use of notices posted in State and county cooperative extension offices and county Consolidated Farm Service Agency offices, and by other appropriate means specified in the order. The notice shall contain information on when the referendum will be held, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

(3) Approval of order

The order shall be continued only if the Secretary determines that the order has been approved by not less than a majority of the producers voting in the referendum.

(4) Disapproval of order

If continuation of the order is not approved by a majority of the producers voting in the referendum, the Secretary shall terminate collection of assessments under the order within 180 days after the referendum and shall terminate the order in an orderly manner as soon as practicable.

(b) Additional referenda

(1) In general

(A) Requirement

After the initial referendum on an order, the Secretary shall conduct additional referenda, as described in subparagraph (C), if requested by a representative group of producers, as described in subparagraph (B).

(B) Representative group of producers

An additional referendum on an order shall be conducted if requested by 10 percent or more of the producers who, during a representative period as determined by the Secretary, have been engaged in the production of canola or rapeseed.

(C) Eligible producers
Each additional referendum shall be conducted among all producers who, during a representative period as determined by the Secretary, have been engaged in the production of canola or rapeseed to determine whether the producers favor the termination or suspension of the order.

(2) **Disapproval of order**

If the Secretary determines, in a referendum conducted under paragraph (1), that suspension or termination of the order is favored by a majority of the producers voting in the referendum, the Secretary shall suspend or terminate, as appropriate, collection of assessments under the order within 180 days after the determination, and shall suspend or terminate the order, as appropriate, in an orderly manner as soon as practicable after the determination.

(3) **Opportunity to request additional referenda**

(A) **In general**

Beginning on the date that is 5 years after the conduct of a referendum under this subchapter, and every 5 years thereafter, the Secretary shall provide canola and rapeseed producers an opportunity to request an additional referendum.

(B) **Method of making request**

(i) **In-person requests**

To carry out subparagraph (A), the Secretary shall establish a procedure under which a producer may make a request for a reconfirmation referendum in person at a county cooperative extension office or a county Consolidated Farm Service Agency office during a period established by the Secretary, or as provided in clause (ii).

(ii) **Mail-in requests**

In lieu of making a request in person, a producer may make a request by mail. To facilitate the submission of requests by mail, the Secretary may make mail-in request forms available to producers.

(C) **Notifications**

The Secretary shall publish a notice in the Federal Register, and the Board shall provide written notification to producers, not later than 60 days prior to the end of the period established under subparagraph (B)(i) for an in-person request, of the opportunity of producers to request an additional referendum. The notification shall explain the right of producers to an additional referendum, the procedure for a referendum, the purpose of a referendum, and the date and method by which producers may act to request an additional referendum under this paragraph. The Secretary shall take such other action as the Secretary determines is necessary to ensure that producers are made aware of the opportunity to request an additional referendum.

(D) **Action by Secretary**

As soon as practicable following the submission of a request for an additional referendum, the Secretary shall determine whether a sufficient number of producers have requested the referendum, and take such steps as are necessary to conduct the referendum, as required under paragraph (1).

(E) **Time limit**

An additional referendum requested under the procedures provided in this paragraph shall be conducted not later than 1 year after the Secretary determines that a representative group of producers, as described in paragraph (1)(B), have requested the conduct of the referendum.

(c) **Procedures**

(1) **Reimbursement of Secretary**
The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Secretary in connection with the conduct of an activity required under this section.

(2) Date

Each referendum shall be conducted for a reasonable period of time not to exceed 3 days, established by the Secretary, under a procedure under which producers intending to vote in the referendum shall certify that the producers were engaged in the production of canola, rapeseed, or canola or rapeseed products during the representative period and, at the same time, shall be provided an opportunity to vote in the referendum.

(3) Place

Referenda under this section shall be conducted at locations determined by the Secretary. On request, absentee mail ballots shall be furnished by the Secretary in a manner prescribed by the Secretary.


Codification


Amendments


Effective Date of 2008 Amendment


§ 7447. Petition and review

(a) Petition

(1) In general

A person subject to an order issued under this subchapter may file with the Secretary a petition—

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

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

(2) Hearings

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.

(3) Ruling

After a hearing under paragraph (2), the Secretary shall issue a ruling on the petition that is the subject of the hearing, which shall be final if the ruling is in accordance with applicable law.

(4) Limitation on petition
Any petition filed under this subchapter challenging an order, or any obligation imposed in connection with an order, shall be filed not later than 2 years after the effective date of the order or imposition of the obligation.

(b) Review

(1) Commencement of action

The district court of the United States for any district in which the person who is a petitioner under subsection (a) of this section resides or carries on business shall have jurisdiction to review a ruling on the petition, if a complaint is filed by the person not later than 20 days after the date of the entry of a ruling by the Secretary under subsection (a)(3) of this section.

(2) Process

Service of process in a proceeding under paragraph (1) shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines, under paragraph (1), that a ruling issued under subsection (a)(3) of this section is not in accordance with applicable law, the court shall remand the matter to the Secretary with directions either—

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

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

(4) Enforcement

The pendency of proceedings instituted under subsection (a) of this section shall not impede, hinder, or delay the Attorney General or the Secretary from taking any action under section 7448 of this title.


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.

§ 7448. Enforcement

(a) Jurisdiction

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, an order or regulation made or issued under this subchapter.

(b) Referral to Attorney General

A civil action authorized to be commenced under this section shall be referred to the Attorney General for appropriate action, except that the Secretary shall not be required to refer to the Attorney General a violation of this subchapter if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by providing a suitable written notice or warning to the person committing the violation or by administrative action under subsection (c) of this section.

(c) Civil penalties and orders

(1) Civil penalties

(A) In general

Any person who willfully violates any provision of an order or regulation issued by the Secretary under this subchapter, or who fails or refuses to pay, collect, or remit an assessment or fee required of the person under an order or regulation, may be assessed—
(i) a civil penalty by the Secretary of not more than $1,000 for each violation; and
(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order or regulation, an additional penalty equal to the amount of the assessment.

(B) Separate offense

Each violation under subparagraph (A) 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.

(3) Notice and hearing

No penalty shall be assessed, or cease-and-desist order issued, by the Secretary under this subsection unless the person against whom the penalty is assessed or the cease-and-desist order is issued is given notice and opportunity for a hearing before the Secretary with respect to the violation.

(4) Finality

The order of the Secretary assessing a penalty or imposing a cease-and-desist order under this subsection shall be final and conclusive unless the affected person files an appeal of the order in 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

Any person who has been determined to be in violation of this subchapter, or against whom a civil penalty has been assessed or a cease-and-desist order issued under subsection (c) of this section, may obtain review of the penalty or cease-and-desist order by—

(A) filing, within the 30-day period beginning on the date the penalty is assessed or cease-and-desist order issued, a notice of appeal in—

(i) the district court of the United States for the district in which the person resides or carries on business; or

(ii) the United States District Court for the District of Columbia; and

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

(2) Record

The Secretary shall file promptly, in the appropriate court referred to in paragraph (1), a certified copy of the record on which the Secretary determined that the person committed the violation.

(3) Standard of review

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

(e) Failure to obey cease-and-desist orders

Any person who fails to obey a cease-and-desist order issued under this section after the cease-and-desist 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, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d) of this section, of not more than $5,000 for each offense. Each day during which the failure continues shall be considered as a separate violation of the cease-and-desist order.

(f) Failure to pay penalties

If a person fails to pay an assessment of a civil penalty under this section after the assessment has become a final and unappealable order, 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
TITLE 7 - Section 7449 - Investigations and power to subpoena

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see http://www.law.cornell.edu/uscode/uscprint.html).

recovery of the amount assessed in the district court of the United States for any district in which the person resides or carries on business. In an action for recovery, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(g) Additional remedies

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


§ 7449. Investigations and power to subpoena

(a) Investigations

The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective administration of this subchapter; and

(2) to determine whether any person has engaged or is engaging in an act that constitutes a violation of this subchapter, or an order, rule, or regulation issued under this subchapter.

(b) Subpoenas, oaths, and affirmations

(1) In general

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

(2) Administrative hearings

For the purpose of an administrative hearing held under section 7447 or 7448 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena and 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 records may be required from any place in the United States.

(c) Aid of courts

In the case of contumacy by, or refusal to obey a subpoena issued 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 carried on, or where the person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring the person to comply with the subpoena.

(d) Contempt

A failure to obey an order of the court under this section may be punished by the court as contempt of the court.

(e) Process

Process may be served on a person in the judicial district in which the person resides or carries on business or wherever the person may be found.

(f) Hearing site

The site of a hearing held under section 7447 or 7448 of this title shall be in the judicial district where the person affected by the hearing resides or has a principal place of business.

§ 7450. Suspension or termination

The Secretary shall, whenever the Secretary finds that an order or a provision of an order obstructs or does not tend to effectuate the declared policy of this subchapter, suspend or terminate the operation of the order or provision. The suspension or termination of an order shall not be considered an order within the meaning of this subchapter.


§ 7451. Regulations

The Secretary may issue such regulations as are necessary to carry out this subchapter.


§ 7452. Authorization of appropriations

(a) In general

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

(b) Administrative expenses

Funds appropriated under subsection (a) of this section shall not be available for payment of the expenses or expenditures of the Board in administering a provision of an order issued under this subchapter.

§ 7461. Findings and purposes

(a) Findings

Congress finds that—

(1) domestically produced kiwifruit are grown by many individual producers;
(2) virtually all domestically produced kiwifruit are grown in the State of California, although there is potential for production in many other areas of the United States;
(3) kiwifruit move in interstate and foreign commerce, and kiwifruit that do not move in channels of commerce directly burden or affect interstate commerce;
(4) in recent years, large quantities of kiwifruit have been imported into the United States;
(5) the maintenance and expansion of existing domestic and foreign markets for kiwifruit, and the development of additional and improved markets for kiwifruit, are vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit;
(6) a coordinated program of research, promotion, and consumer information regarding kiwifruit is necessary for the maintenance and development of the markets; and
(7) kiwifruit producers, handlers, and importers are unable to implement and finance such a program without cooperative action.

(b) Purposes

The purposes of this subchapter are—

(1) to authorize the establishment of an orderly procedure for the development and financing (through an assessment) of an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit;
(2) to use the program to strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and
(3) to treat domestically produced kiwifruit and imported kiwifruit equitably.


§ 7462. Definitions

In this subchapter (unless the context otherwise requires):

(1) Board

The term “Board” means the National Kiwifruit Board established under section 7464 of this title.

(2) Consumer information

The term “consumer information” means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of kiwifruit.

(3) Exporter

The term “exporter” means any person from outside the United States who exports kiwifruit into the United States.

(4) Handler

The term “handler” means any person, excluding a common carrier, engaged in the business of buying and selling, packing, marketing, or distributing kiwifruit as specified in the order.

(5) Importer
The term “importer” means any person who imports kiwifruit into the United States.

(6) **Kiwifruit**

The term “kiwifruit” means all varieties of fresh kiwifruit grown in or imported into the United States.

(7) **Marketing**

The term “marketing” means the sale or other disposition of kiwifruit into interstate, foreign, or intrastate commerce by buying, marketing, distribution, or otherwise placing kiwifruit into commerce.

(8) **Order**

The term “order” means a kiwifruit research, promotion, and consumer information order issued by the Secretary under section 7463 of this title.

(9) **Person**

The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

(10) **Processing**

The term “processing” means canning, fermenting, distilling, extracting, preserving, grinding, crushing, or in any manner changing the form of kiwifruit for the purpose of preparing the kiwifruit for market or marketing the kiwifruit.

(11) **Producer**

The term “producer” means any person who grows kiwifruit in the United States for sale in commerce.

(12) **Promotion**

The term “promotion” means any action taken under this subchapter (including paid advertising) to present a favorable image of kiwifruit to the general public for the purpose of improving the competitive position of kiwifruit and stimulating the sale of kiwifruit.

(13) **Research**

The term “research” means any type of research relating to the use, nutritional value, and marketing of kiwifruit conducted for the purpose of advancing the image, desirability, marketability, or quality of kiwifruit.

(14) **Secretary**

The term “Secretary” means the Secretary of Agriculture.

(15) **United States**

The term “United States” means the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.


§ 7463. Issuance of orders

(a) **Issuance**

To effectuate the purposes of this subchapter specified in section 7461 (b) of this title, the Secretary shall issue an order applicable to producers, handlers, and importers of kiwifruit. Any such order shall be national in scope. Not more than 1 order shall be in effect under this subchapter at any 1 time.

(b) **Procedure**

(1) **Proposal for issuance of order**

Any person that will be affected by this subchapter may request the issuance of, and submit a proposal for, an order under this subchapter.
(2) Proposed order

Not later than 90 days after the receipt of a request and proposal for an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) Issuance of order

After notice and opportunity for public comment are provided under paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with this subchapter.

(c) Amendments

The Secretary may amend any order issued under this section. The provisions of this subchapter applicable to an order shall be applicable to an amendment to an order, except that an amendment to an order shall not require a referendum to become effective.


Amendments

1998—Subsec. (c). Pub. L. 105–185 inserted “, except that an amendment to an order shall not require a referendum to become effective” before period at end.

§ 7464. National Kiwifruit Board

(a) Membership

An order issued by the Secretary under section 7463 of this title shall provide for the establishment of a National Kiwifruit Board that consists of the following 11 members:

(1) 10 members who are producers, exporters, or importers (or their representatives), based on a proportional representation of the level of domestic production and imports of kiwifruit (as determined by the Secretary).

(2) 1 member appointed from the general public.

(b) Adjustment of membership

Subject to the 11-member limit, the Secretary may adjust membership on the Board to accommodate changes in production and import levels of kiwifruit.

(c) Appointment and nomination

(1) Appointment

The Secretary shall appoint the members of the Board from nominations submitted in accordance with this subsection.

(2) Producers

The members who are producers referred to in subsection (a)(1) of this section shall be appointed from individuals nominated by producers.

(3) Importers and exporters

The members who are importers or exporters referred to in subsection (a)(1) of this section shall be appointed from individuals nominated by importers or exporters.

(4) Public representative

The public representative shall be appointed from nominations submitted by other members of the Board.
(5) Failure to nominate
If producers, importers, and exporters fail to nominate individuals for appointment, the Secretary may appoint members and alternates on a basis provided for in the order. If the Board fails to nominate a public representative, the member and alternate may be appointed by the Secretary without a nomination.

(d) Alternates
The Secretary shall appoint an alternate for each member of the Board. An alternate shall—
(1) be appointed in the same manner as the member for whom the individual is an alternate; and
(2) serve on the Board if the member is absent from a meeting or is disqualified under subsection (f) of this section.

(e) Terms
A member of the Board shall be appointed for a term of 3 years. No member may serve more than 2 consecutive 3-year terms, except that of the members first appointed—
(1) 5 members shall be appointed for a term of 2 years; and
(2) 6 members shall be appointed for a term of 3 years.

(f) Disqualification
If a member or alternate of the Board who was appointed as a producer, importer, exporter, or public representative member ceases to belong to the group for which the member was appointed, the member or alternate shall be disqualified from serving on the Board.

(g) Compensation
A member or alternate of the Board shall serve without pay.

(h) General powers and duties
The Board shall—
(1) administer an order issued by the Secretary under section 7463 of this title, and an amendment to the order, in accordance with the order and amendment and this subchapter;
(2) prescribe rules and regulations to carry out the order;
(3) meet, organize, and select from among members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines appropriate;
(4) receive, investigate, and report to the Secretary accounts of violations of the order;
(5) make recommendations to the Secretary with respect to an amendment that should be made to the order; and
(6) employ or contract with a manager and staff to assist in administering the order, except that, to reduce administrative costs and increase efficiency, the Board shall seek, to the extent practicable, to employ or contract with personnel who are already associated with organizations involved in promoting kiwifruit that are chartered by a State, the District of Columbia, or the Commonwealth of Puerto Rico.


Amendments
1998—Subsec. (a). Pub. L. 105–185, § 603(b)(1), added pars. (1) and (2) and struck out former pars. (1) to (3) which read as follows:
“(1) 6 members who are producers (or representatives of producers) and who are not exempt from an assessment under section 7465 (b) of this title.
§ 7465. Required terms in order

(a) Budgets and plans

(1) In general

An order issued under section 7463 of this title shall provide for periodic budgets and plans in accordance with this subsection.

(2) Budgets

The Board shall prepare and submit to the Secretary a budget prior to the beginning of the fiscal year of the anticipated expenses and disbursements of the Board in the administration of the order, including probable costs of research, promotion, and consumer information. A budget shall become effective on a 2/3-vote of a quorum of the Board and approval by the Secretary.

(3) Plans

Each budget shall include a plan for research, promotion, and consumer information regarding kiwifruit. A plan under this paragraph shall become effective on approval by the Secretary. The Board may enter into contracts and agreements, on approval by the Secretary, for—

(A) the development and carrying out of the plan; and

(B) the payment of the cost of the plan, with funds collected pursuant to this subchapter.

(b) Assessments

(1) In general

The order shall provide for the imposition and collection of assessments with regard to the production and importation of kiwifruit in accordance with this subsection.

(2) Rate

The assessment rate shall be the rate that is recommended by a 2/3-vote of a quorum of the Board and approved by the Secretary, except that the rate shall not exceed $0.10 per 7-pound tray of kiwifruit or an equivalent rate.

(3) Collection by first handlers

Except as provided in paragraph (5), the first handler of kiwifruit shall—

(A) be responsible for the collection from the producer, and payment to the Board, of assessments required under this subsection; and

(B) maintain a separate record of the kiwifruit of each producer whose kiwifruit are so handled, including the kiwifruit owned by the handler.

(4) Importers

The assessment on imported kiwifruit shall be paid by the importer to the United States Customs Service at the time of entry into the United States and shall be remitted to the Board.
(5) Exemption from assessment

The following persons or activities are exempt from an assessment under this subsection:

(A) A producer who produces less than 500 pounds of kiwifruit per year.
(B) An importer who imports less than 10,000 pounds of kiwifruit per year.
(C) A sale of kiwifruit made directly from the producer to a consumer for a purpose other than resale.
(D) The production or importation of kiwifruit for processing.

(6) Claim of exemption

To claim an exemption under paragraph (5) for a particular year, a person shall—

(A) submit an application to the Board stating the basis for the exemption and certifying that the quantity of kiwifruit produced, imported, or sold by the person will not exceed any poundage limitation required for the exemption in the year; or
(B) be on a list of approved processors developed by the Board.

(c) Use of assessments

(1) Authorized uses

The order shall provide that funds paid to the Board as assessments under subsection (b) of this section may be used by the Board—

(A) to pay for research, promotion, and consumer information described in the budget of the Board under subsection (a) of this section and for other expenses incurred by the Board in the administration of an order;
(B) to pay such other expenses for the administration, maintenance, and functioning of the Board (including any enforcement efforts for the collection of assessments) as may be authorized by the Secretary, including interest and penalties for late payments; and
(C) to fund a reserve established under section 7466 (d) of this title.

(2) Required uses

The order shall provide that funds paid to the Board as assessments under subsection (b) of this section shall be used by the Board—

(A) to pay the expenses incurred by the Secretary, including salaries and expenses of Federal Government employees, in implementing and administering the order; and
(B) to reimburse the Secretary for any expenses incurred by the Secretary in conducting referenda under this subchapter.

(3) Limitation on use of assessments

Except for the first year of operation of the Board, expenses for the administration, maintenance, and functioning of the Board may not exceed 30 percent of the budget for a year.

(d) False claims

The order shall provide that any promotion funded with assessments collected under subsection (b) of this section may not make—

(1) any false claims on behalf of kiwifruit; and
(2) any false statements with respect to the attributes or use of any product that competes with kiwifruit for sale in commerce.

(e) Prohibition on use of funds

The order shall provide that funds collected by the Board under this subchapter through assessments may not, in any manner, be used for the purpose of influencing legislation or governmental policy or action, except for making recommendations to the Secretary as provided for under this subchapter.

(f) Books, records, and reports
(1) Board

The order shall require the Board—

(A) to maintain books and records with respect to the receipt and disbursement of funds received by the Board;

(B) to submit to the Secretary from time to time such reports as the Secretary may require for appropriate accounting; and

(C) to submit to the Secretary at the end of each fiscal year a complete audit report by an independent auditor regarding the activities of the Board during the fiscal year.

(2) Others

To make information and data available to the Board and the Secretary that is appropriate or necessary for the effectuation, administration, or enforcement of this subchapter (or any order or regulation issued under this subchapter), the order shall require handlers and importers who are responsible for the collection, payment, or remittance of assessments under subsection (b) of this section—

(A) to maintain and make available for inspection by the employees and agents of the Board and the Secretary such books and records as may be required by the order; and

(B) to file, at the times and in the manner and content prescribed by the order, reports regarding the collection, payment, or remittance of the assessments.

(g) Confidentiality

(1) In general

The order shall require that all information obtained pursuant to subsection (f)(2) of this section be kept confidential by all officers, employees, and agents of the Department of Agriculture and of the Board. Only such information as the Secretary considers relevant shall be disclosed to the public and only 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 with respect to which the information was furnished or acquired.

(2) Limitations

Nothing in this subsection prohibits—

(A) the issuance of general statements based on the reports of a number of handlers and importers subject to an order, if the statements do not identify the information furnished by any person; or

(B) the publication, by direction of the Secretary, of the name of any person violating an order issued under section 7463 (a) of this title, together with a statement of the particular provisions of the order violated by the person.

(3) Penalty

Any person who willfully violates this subsection, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and, if the person is a member, officer, or agent of the Board or an employee of the Department of Agriculture, shall be removed from office.

(h) Withholding of information

Nothing in this subchapter authorizes the withholding of information from Congress.


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
§ 7466. Permissive terms in order

(a) Permissive terms

On the recommendation of the Board and with the approval of the Secretary, an order issued under section 7463 of this title may include the terms and conditions specified in this section and such additional terms and conditions as the Secretary considers necessary to effectuate the other provisions of the order and are incidental to, and not inconsistent with, this subchapter.

(b) Alternative payment and reporting schedules

The order may authorize the Board to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

(c) Working groups

The order may authorize the Board to convene working groups drawn from producers, handlers, importers, exporters, or the general public and utilize the expertise of the groups to assist in the development of research and marketing programs for kiwifruit.

(d) Reserve funds

The order may authorize the Board to accumulate reserve funds from assessments collected pursuant to section 7465 (b) of this title to permit an effective and continuous coordinated program of research, promotion, and consumer information in years in which production and assessment income may be reduced, except that any reserve fund may not exceed the amount budgeted for operation of this subchapter for 1 year.

(e) Promotion activities outside United States

The order may authorize the Board to use, with the approval of the Secretary, funds collected under section 7465 (b) of this title and funds from other sources for the development and expansion of sales in foreign markets of kiwifruit produced in the United States.


§ 7467. Petition and review

(a) Petition

(1) In general

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

(A) stating that the order, a provision of the order, or an 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) Hearings

A person submitting a petition under paragraph (1) shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After the hearing, the Secretary shall issue a ruling on the petition which shall be final if the petition is in accordance with law.

(4) Limitation on petition
Any petition filed under this subchapter challenging an order, or any obligation imposed in connection with an order, shall be filed not later than 2 years after the effective date of the order or imposition of the obligation.

(b) Review
   (1) Commencement of action
   The district court of the United States for any district in which the person who is a petitioner under subsection (a) of this section resides or carries on business is vested with jurisdiction to review the ruling on the petition of the person, if a complaint for that purpose is filed not later than 20 days after the date of the entry of a ruling by the Secretary under subsection (a) of this section.
   (2) Process
   Service of process in the proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.
   (3) Remands
   If the court determines that the ruling 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.
   (4) Enforcement
   The pendency of a proceeding instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 7468 of this title.


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.

§ 7468. Enforcement
   (a) Jurisdiction
   A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this subchapter.
   (b) Referral to Attorney General
   A civil action authorized to be brought under 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 subchapter, or any order or regulation issued under this subchapter, if the Secretary believes that the administration and enforcement of this subchapter would be adequately served by administrative action under subsection (c) of this section or suitable written notice or warning to the person committing the violation.
   (c) Civil penalties and orders
      (1) Civil penalties
      Any person who willfully violates any provision of any order or regulation issued by the Secretary under this subchapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under the order or regulation, may be assessed a civil penalty by the Secretary
of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense.

(2) Cease-and-desist orders

In addition to or in lieu of the civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation.

(3) Notice and hearing

No order assessing a civil penalty or cease-and-desist order may be issued by the Secretary under this subsection unless the Secretary gives the person against whom the order is issued notice and opportunity for a hearing on the record before the Secretary with respect to the violation.

(4) Finality

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

(d) Review by United States district court

(1) Commencement of action

Any person against whom a violation is found and a civil penalty assessed or cease-and-desist order issued under subsection (c) of this section may obtain review of the penalty or cease-and-desist order in the district court of the United States for the district in which the person resides or carries on business, or the United States District Court for the District of Columbia, by—

(A) filing a notice of appeal in the court not later than 30 days after the date on which the penalty is assessed or cease-and-desist order issued; and

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

(2) Record

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

(3) Standard of review

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

(e) Failure to obey cease-and-desist orders

Any person who fails to obey a cease-and-desist order issued by the Secretary after the cease-and-desist 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, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d) of this section, of not more than $500 for each offense. Each day during which the failure continues shall be considered a separate violation of the cease-and-desist order.

(f) Failure to pay penalties

If a person fails to pay an assessment of a civil penalty after the assessment has become a final and unappealable order issued by the Secretary, 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 the district court of the United States for any district in which the person resides or carries on business. In an action for recovery, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

§ 7469. Investigations and power to subpoena

(a) In general

The Secretary may make such investigations as the Secretary considers necessary—
(1) for the effective carrying out of the responsibilities of the Secretary under this subchapter; or
(2) to determine whether a person subject to this subchapter has engaged or is engaging in any
act that constitutes a violation of this subchapter, or any order, rule, or regulation issued under
this subchapter.

(b) Power to subpoena

(1) Investigations

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

(2) Administrative hearings

For the purpose of an administrative hearing held under section 7467 or 7468 of this title, the
presiding officer is authorized to 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 any such records may
be required from any place in the United States.

(c) Aid of courts

In the case of contumacy by, or refusal to obey a subpoena 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 carried on, or where the person resides or carries on business, to enforce a subpoena issued by the
Secretary under subsection (b) of this section. The court may issue an order requiring the person to
comply with the subpoena.

(d) Contempt

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

(e) Process

Process in any such case may be served in the judicial district in which the person resides or carries on
business or wherever the person may be found.

(f) Hearing site

The site of any hearing held under section 7467 or 7468 of this title shall be in the judicial district where
the person affected by the hearing resides or has a principal place of business.


§ 7470. Referenda

(a) Initial referendum

(1) Referendum required

During the 60-day period immediately preceding the proposed effective date of an order issued
under section 7463 of this title, the Secretary shall conduct a referendum among kiwifruit producers
and importers who will be subject to assessments under the order, to ascertain whether producers
and importers approve the implementation of the order.
(2) Approval of order

The order shall become effective, as provided in section 7463 of this title, if the Secretary determines that—

(A) the order has been approved by a majority of the producers and importers voting in the referendum; and

(B) the producers and importers favoring approval produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

(b) Subsequent referenda

The Secretary may periodically conduct a referendum to determine if kiwifruit producers and importers favor the continuation, termination, or suspension of any order issued under section 7463 of this title that is in effect at the time of the referendum.

(c) Required referenda

The Secretary shall hold a referendum under subsection (b) of this section—

(1) at the end of the 6-year period beginning on the effective date of the order and at the end of each subsequent 6-year period;

(2) at the request of the Board; or

(3) if not less than 30 percent of the kiwifruit producers and importers subject to assessments under the order submit a petition requesting the referendum.

(d) Vote

On completion of a referendum under subsection (b) of this section, the Secretary shall suspend or terminate the order that was subject to the referendum at the end of the marketing year if—

(1) the suspension or termination of the order is favored by not less than a majority of the producers and importers voting in the referendum; and

(2) the producers and importers produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

(e) Confidentiality

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person under this subchapter and the voting list shall be held strictly confidential and shall not be disclosed.


§ 7471. Suspension or termination

(a) In general

If the Secretary finds that an order issued under section 7463 of this title, or a provision of the order, obstructs or does not tend to effectuate the purposes of this subchapter, the Secretary shall suspend or terminate the operation of the order or provision.

(b) Limitation

The suspension or termination of any order, or any provision of an order, shall not be considered an order under this subchapter.


§ 7472. Regulations

The Secretary may issue such regulations as are necessary to carry out this subchapter.
§ 7473. Authorization of appropriations

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

§ 7481. Findings and declaration of policy

(a) Findings

Congress finds that—

(1) popcorn is an important food that is a valuable part of the human diet;
(2) the production and processing of popcorn plays a significant role in the economy of the United States in that popcorn is processed by several popcorn processors, distributed through wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;
(3) popcorn must be of high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of popcorn are available to the people of the United States;
(4) the maintenance and expansion of existing markets and uses and the development of new markets and uses for popcorn are vital to the welfare of processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States;
(5) the cooperative development, financing, and implementation of a coordinated program of popcorn promotion, research, consumer information, and industry information is necessary to maintain and expand markets for popcorn; and
(6) popcorn moves in interstate and foreign commerce, and popcorn that does not move in those channels of commerce directly burdens or affects interstate commerce in popcorn.

(b) Policy

It is the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subchapter, of an orderly procedure for developing, financing (through adequate assessments on unpopped popcorn processed domestically), and carrying out an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to—

(1) strengthen the position of the popcorn industry in the marketplace; and
(2) maintain and expand domestic and foreign markets and uses for popcorn.

(c) Purposes

The purposes of this subchapter are to—

(1) maintain and expand the markets for all popcorn products in a manner that—
(A) is not designed to maintain or expand any individual share of a producer or processor of the market;
(B) does not compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name popcorn products; and
(C) authorizes and funds programs that result in government speech promoting government objectives; and
(2) establish a nationally coordinated program for popcorn promotion, research, consumer information, and industry information.

(d) Statutory construction

This subchapter treats processors equitably. Nothing in this subchapter—

(1) provides for the imposition of a trade barrier to the entry into the United States of imported popcorn for the domestic market; or
(2) provides for the control of production or otherwise limits the right of any individual processor to produce popcorn.
§ 7482. Definitions

In this subchapter (unless the context otherwise requires):

1. **Board**
   The term “Board” means the Popcorn Board established under section 7484 (b) of this title.

2. **Commerce**
   The term “commerce” means interstate, foreign, or intrastate commerce.

3. **Consumer information**
   The term “consumer information” means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of popcorn.

4. **Department**
   The term “Department” means the Department of Agriculture.

5. **Industry information**
   The term “industry information” means information or a program that will lead to the development of—
   - **A** new markets, new marketing strategies, or increased efficiency for the popcorn industry; or
   - **B** activities to enhance the image of the popcorn industry.

6. **Marketing**
   The term “marketing” means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce, but does not include a sale or disposition to or between processors.

7. **Order**
   The term “order” means an order issued under section 7483 of this title.

8. **Person**
   The term “person” means an individual, group of individuals, partnership, corporation, association, or cooperative, or any other legal entity.

9. **Popcorn**
   The term “popcorn” means unpopped popcorn (Zea Mays L) that is—
   - **A** commercially grown;
   - **B** processed in the United States by shelling, cleaning, or drying; and
   - **C** introduced into a channel of commerce.

10. **Process**
    The term “process” means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

11. **Processor**
    The term “processor” means a person engaged in the preparation of unpopped popcorn for the market who owns or shares the ownership and risk of loss of the popcorn and who processes and distributes over 4,000,000 pounds of popcorn in the market per year.

12. **Promotion**
    The term “promotion” means an action, including paid advertising, to enhance the image or desirability of popcorn.

13. **Research**
The term “research” means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

(14) Secretary

The term “Secretary” means the Secretary of Agriculture.

(15) State

The term “State” means each of the 50 States and the District of Columbia.

(16) United States

The term “United States” means all of the States.


§ 7483. Issuance of orders

(a) In general

To effectuate the policy described in section 7481 (b) of this title, the Secretary, subject to subsection (b) of this section, shall issue 1 or more orders applicable to processors. An order shall be applicable to all popcorn production and marketing areas in the United States. Not more than 1 order shall be in effect under this subchapter at any 1 time.

(b) Procedure

(1) Proposal or request for issuance

The Secretary may propose the issuance of an order, or an association of processors or any other person that would be affected by an order may request the issuance of, and submit a proposal for, an order.

(2) Notice and comment concerning proposed order

Not later than 60 days after the receipt of a request and proposal for an order under paragraph (1), or at such time as the Secretary determines to propose an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) Issuance of order

After notice and opportunity for public comment under paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order conforms to this subchapter. The order shall be issued and become effective not later than 150 days after the date of publication of the proposed order.

(c) Amendments

The Secretary, as appropriate, may amend an order. The provisions of this subchapter applicable to an order shall be applicable to any amendment to an order, except that an amendment to an order may not require a referendum to become effective.


§ 7484. Required terms in orders

(a) In general

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

(b) Establishment and membership of Popcorn Board

(1) In general
The order shall provide for the establishment of, and appointment of members to, a Popcorn Board that shall consist of not fewer than 4 members and not more than 9 members.

(2) Nominations

The members of the Board shall be processors appointed by the Secretary from nominations submitted by processors in a manner authorized by the Secretary, subject to paragraph (3). Not more than 1 member may be appointed to the Board from nominations submitted by any 1 processor.

(3) Geographical diversity

In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of popcorn production throughout the United States.

(4) Terms

The term of appointment of each member of the Board shall be 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 2, 3, and 4 years, as determined by the Secretary.

(5) Compensation and expenses

A member of the Board shall serve without compensation, but shall be reimbursed for the expenses of the member incurred in the performance of duties for the Board.

(c) Powers and duties of Board

The order shall define the powers and duties of the Board, which shall include the power and duty—

(1) to administer the order in accordance with the terms and provisions of the order;
(2) to issue regulations to effectuate the terms and provisions of the order;
(3) to appoint members of the Board to serve on an executive committee;
(4) to propose, receive, evaluate, and approve budgets, plans, and projects of promotion, research, consumer information, and industry information, and to contract with appropriate persons to implement the plans or projects;
(5) to accept and receive voluntary contributions, gifts, and market promotion or similar funds;
(6) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under subsection (f) of this section, only in—
   (A) obligations of the United States or an agency of the United States;
   (B) general obligations of a State or a political subdivision of a State;
   (C) an 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;
(7) to receive, investigate, and report to the Secretary complaints of violations of the order; and
(8) to recommend to the Secretary amendments to the order.

(d) Plans and budgets

(1) In general

The order shall provide that the Board shall submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

(2) Budgets

The order shall require the Board to submit to the Secretary for approval budgets on a fiscal year basis of the anticipated expenses and disbursements of the Board in the implementation of the order, including projected costs of plans and projects of promotion, research, consumer information, and industry information.

(e) Contracts and agreements
(1) **In general**

The order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of plans or projects of promotion, research, consumer information, or industry information, including contracts with a processor organization, and for the payment of the cost of the plans or projects with funds collected by the Board under the order.

(2) **Requirements**

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

(A) the contracting party shall develop and submit to the Board a plan or project, together with a budget that shows the estimated costs to be incurred for the plan or project;

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

(C) the contracting party shall keep accurate records of each transaction of the party, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(3) **Processor organizations**

The order shall provide that the Board may contract with processor organizations for any services required in addition to the services described in paragraph (1). The contract shall include provisions comparable to the provisions required by paragraph (2).

(f) **Assessments**

(1) **Processors**

The order shall provide that each processor marketing popcorn in the United States or for export shall, in the manner prescribed in the order, pay assessments and remit the assessments to the Board.

(2) **Direct marketers**

A processor that markets popcorn produced by the processor directly to consumers shall pay and remit the assessments on the popcorn directly to the Board in the manner prescribed in the order.

(3) **Rate**

(A) **In general**

The rate of assessment prescribed in the order shall be a rate established by the Board but not more than $.08 per hundredweight of popcorn.

(B) **Adjustment of rate**

The order shall provide that the Board, with the approval of the Secretary, may raise or lower the rate of assessment annually up to a maximum of $.08 per hundredweight of popcorn.

(4) **Use of assessments**

(A) **In general**

Subject to subparagraphs (B) and (C) and subsection (c)(5) of this section, the order shall provide that the assessments collected shall be used by the Board—

(i) to pay expenses incurred in implementing and administering the order, with provision for a reasonable reserve; and

(ii) to cover such administrative costs as are incurred by the Secretary, except that the administrative costs incurred by the Secretary (other than any legal expenses incurred to defend and enforce the order) that may be reimbursed by the Board may not exceed 15 percent of the projected annual revenues of the Board.

(B) **Expenditures based on source of assessments**

In implementing plans and projects of promotion, research, consumer information, and industry information, the Board shall expend funds on—
(i) plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments collected on domestically marketed popcorn; and
(ii) plans and projects for exported popcorn in proportion to the amount of assessments collected on exported popcorn.

(C) Notification

If the administrative costs incurred by the Secretary that are reimbursed by the Board exceed 10 percent of the projected annual revenues of the Board, the Secretary shall notify as soon as practicable the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(g) Prohibition on use of funds

The order shall prohibit any funds collected by the Board under the order from being used to influence government action or policy, other than the use of funds by the Board for the development and recommendation to the Secretary of amendments to the order.

(h) Books and records of Board

The order shall require the Board to—

(1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;
(2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and
(3) account for the receipt and disbursement of all funds entrusted to the Board.

(i) Books and records of processors

(1) Maintenance and reporting of information

The order shall require that each processor of popcorn for the market shall—

(A) maintain, and make available for inspection, such books and records as are required by the order; and
(B) file reports at such time, in such manner, and having such content as is prescribed in the order.

(2) Use of information

The Secretary shall authorize the use of information regarding processors that may be accumulated under a law or regulation other than this subchapter or a regulation issued under this subchapter. The information shall be made available to the Secretary as appropriate for the administration or enforcement of this subchapter, the order, or any regulation issued under this subchapter.

(3) Confidentiality

(A) In general

Subject to subparagraphs (B), (C), and (D), all information obtained by the Secretary under paragraphs (1) and (2) shall be kept confidential by all officers, employees, and agents of the Board and the Department.

(B) Disclosure by Secretary

Information referred to in subparagraph (A) may be disclosed if—

(i) the Secretary considers the information relevant;
(ii) the information is revealed 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; and
(iii) the information relates to the order.

(C) Disclosure to other agency of Federal Government

(i) In general
No information obtained under the authority of this subchapter may be made available to another agency or officer of the Federal Government for any purpose other than the implementation of this subchapter and any investigatory or enforcement activity necessary for the implementation of this subchapter.

(ii) Penalty

A person who knowingly violates this subparagraph shall, on conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if an officer, employee, or agent of the Board or the Department, shall be removed from office or terminated from employment, as applicable.

(D) General statements

Nothing in this paragraph prohibits—

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

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

(j) Other terms and conditions

The order shall contain such other terms and conditions, consistent with this subchapter, as are necessary to effectuate this subchapter, including regulations relating to the assessment of late payment charges.


§ 7485. Referenda

(a) Initial referendum

(1) In general

Within the 60-day period immediately preceding the effective date of an order, as provided in section 7483 (b)(3) of this title, the Secretary shall conduct a referendum among processors who, during a representative period as determined by the Secretary, have been engaged in processing, for the purpose of ascertaining whether the order shall go into effect.

(2) Approval of order

The order shall become effective, as provided in section 7483 (b) of this title, only if the Secretary determines that the order has been approved by not less than a majority of the processors voting in the referendum and if the majority processed more than 50 percent of the popcorn certified as having been processed, during the representative period, by the processors voting.

(b) Additional referenda

(1) In general

Not earlier than 3 years after the effective date of an order approved under subsection (a) of this section, on the request of the Board or a representative group of processors, as described in paragraph (2), the Secretary may conduct additional referenda to determine whether processors favor the suspension or termination of the order.

(2) Representative group of processors

An additional referendum on an order shall be conducted if the referendum is requested by 30 percent or more of the number of processors who, during a representative period as determined by the Secretary, have been engaged in processing.

(3) Disapproval of order
If the Secretary determines, in a referendum conducted under paragraph (1), that suspension or termination of the order is favored by at least 2/3 of the processors voting in the referendum, the Secretary shall—

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

(B) suspend or terminate the order, as appropriate, in an orderly manner as soon as practicable after the date of determination.

(c) Costs of referendum

The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Secretary in connection with the conduct of any referendum under this section.

(d) Method of conducting referendum

Subject to this section, a referendum conducted under this section shall be conducted in such manner as is determined by the Secretary.

(e) Confidentiality of ballots and other information

(1) In general

The ballots and other information or reports that reveal or tend to reveal the vote of any processor, or any business operation of a processor, shall be considered to be strictly confidential and shall not be disclosed.

(2) Penalty for violations

An officer or employee of the Department who knowingly violates paragraph (1) shall be subject to the penalties described in section 7484 (i)(3)(C)(ii) of this title.


§ 7486. Petition and review

(a) Petition

(1) In general

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

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

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

(2) Statute of limitations

A petition under paragraph (1) concerning an obligation may be filed not later than 2 years after the date of imposition of the obligation.

(3) Hearings

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.

(4) Ruling

After a hearing under paragraph (3), the Secretary shall issue a ruling on the petition that is the subject of the hearing, which shall be final if the ruling is in accordance with applicable law.

(b) Review

(1) Commencement of action
The district court of the United States for any district in which a person who is a petitioner under subsection (a) of this section resides or carries on business shall have jurisdiction to review a ruling on the petition, if the person files a complaint not later than 20 days after the date of issuance of the ruling under subsection (a)(4) of this section.

(2) Process

Service of process in a proceeding under paragraph (1) may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) Remands

If the court determines, under paragraph (1), that a ruling issued under subsection (a)(4) of this section is not in accordance with applicable 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 proceedings as, in the opinion of the court, the law requires.

(c) Enforcement

The pendency of proceedings instituted under subsection (a) of this section may not impede, hinder, or delay the Secretary or the Attorney General from taking action under section 7487 of this title.


§ 7487. Enforcement

(a) In general

The Secretary may issue an enforcement order to restrain or prevent any person from violating an order or regulation issued under this subchapter and may assess a civil penalty of not more than $1,000 for each violation of the enforcement order, after an opportunity for an administrative hearing, if the Secretary determines that the administration and enforcement of the order and this subchapter would be adequately served by such a procedure.

(b) Jurisdiction

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, an order or regulation issued under this subchapter.

(c) Referral to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action.


§ 7488. Investigations and power to subpoena

(a) Investigations

The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective administration of this subchapter; and

(2) to determine whether any person subject to this subchapter has engaged, or is about to engage, in an act that constitutes or will constitute a violation of this subchapter or of an order or regulation issued under this subchapter.

(b) Oaths, affirmations, and subpoenas

For the purpose of an investigation under subsection (a) of this section, the Secretary 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 records may be required from any place in the United States.

(c) **Aid of courts**

(1) **Request**

In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may request the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, in requiring the attendance and testimony of the person and the production of records.

(2) **Enforcement order of the court**

The court may issue an enforcement order requiring the person to appear before the Secretary to produce records or to give testimony concerning the matter under investigation.

(3) **Contempt**

A failure to obey an enforcement order of the court under paragraph (2) may be punished by the court as a contempt of the court.

(4) **Process**

Process in a case under this subsection may be served in the judicial district in which the person resides or carries on business or wherever the person may be found.


§ 7489. Relation to other programs

Nothing in this subchapter preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.


§ 7490. Regulations

The Secretary may issue such regulations as are necessary to carry out this subchapter.


§ 7491. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subchapter. Amounts made available under this section or otherwise made available to the Department, and amounts made available under any other marketing or promotion order, may not be used to pay any administrative expense of the Board.