

title. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of this title and Tables.

Public Law 91-670, referred to in subsec. (a)(3), is Pub. L. 91-670, Jan. 11, 1971, 84 Stat. 2040, as amended. Title III of Pub. L. 91-670, known as the Potato Research and Promotion Act, is classified generally to chapter 58 (§2611 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 2611 of this title and Tables.

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.

Public Law 94-294, referred to in subsec. (a)(5), is Pub. L. 94-294, May 28, 1976, 90 Stat. 529, as amended, known as the Beef Research and Information Act, which is classified generally to chapter 62 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Public Law 98-180, referred to in subsec. (a)(6), is Pub. L. 98-180, Nov. 29, 1983, 97 Stat. 1128, as amended. Title I of Pub. L. 98-180 is known as the Dairy Production Stabilization Act of 1983. Subtitle B of title I is classified generally to subchapter I (§4501 et seq.) of chapter 76 of this title. For complete classification of title I to the Code, see Short Title note set out under section 4501 of this title and Tables.

Public Law 98-590, referred to in subsec. (a)(7), is Pub. L. 98-590, Oct. 30, 1984, 98 Stat. 3115, as amended, known as the Honey Research, Promotion, and Consumer Information Act, which is classified generally to chapter 77 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Public Law 99-198, referred to in subsec. (a)(8), (9), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. Subtitle B of title XVI of Pub. L. 99-198, known as the Pork Promotion, Research, and Consumer Information Act of 1985, is classified generally to chapter 79 (§4801 et seq.) of this title. Subtitle C of title XVI of Pub. L. 99-198, known as the Watermelon Research and Promotion Act, is classified generally to chapter 80 (§4901 et seq.) of this title. For complete classification of subtitles B and C to the Code, see Short Title notes set out under sections 4801 and 4901, respectively, of this title and Tables.

Public Law 101-624, referred to in subsec. (a)(10), (11), (12), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended, known as the Food, Agriculture, Conservation, and Trade Act of 1990. Subtitle B of title XIX of Pub. L. 101-624, known as the Mushroom Promotion, Research, and Consumer Information Act of 1990, is classified generally to chapter 90 (§6101 et seq.) of this title. Subtitle E of title XIX of Pub. L. 101-624, known as the Soybean Promotion, Research, and Consumer Information Act, is classified generally to chapter 92 (§6301 et seq.) of this title. Subtitle H of title XIX of Pub. L. 101-624, known as the Fluid Milk Promotion Act of 1990, is classified generally to chapter 93 (§6401 et seq.) of this title. For complete classification of subtitles B, E, and H to the Code, see Short Title notes set out under sections 6101, 6301, and 6401, respectively, of this title and Tables.

Public Law 103-190, referred to in subsec. (a)(13), is Pub. L. 103-190, Dec. 14, 1993, 107 Stat. 2266, known as the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, which is classified generally to chapter 97 (§6801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

Public Law 103-407, referred to in subsec. (a)(14), is Pub. L. 103-407, Oct. 22, 1994, 108 Stat. 4210, known as the Sheep Promotion, Research, and Information Act of

1994, which is classified generally to chapter 99 (§7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SHORT TITLE

Section 511 of title V of Pub. L. 104-127 provided that: "This subtitle [subtitle B (§§511-526) of title V of Pub. L. 104-127, enacting subchapter II of this chapter] may be cited as the 'Commodity Promotion, Research, and Information Act of 1996'."

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'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7414 of this title.

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

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

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

§ 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.

(Pub. L. 104-127, title V, §512, Apr. 4, 1996, 110 Stat. 1032.)

§ 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.

(Pub. L. 104-127, title V, §513, Apr. 4, 1996, 110 Stat. 1033.)

§ 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.

(Pub. L. 104-127, title V, §514, Apr. 4, 1996, 110 Stat. 1035.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7412 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 Sec-

retary 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, infor-

mation 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.

(Pub. L. 104-127, title V, §515, Apr. 4, 1996, 110 Stat. 1036.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7415 of this title.

§ 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.

(Pub. L. 104-127, title V, § 516, Apr. 4, 1996, 110 Stat. 1041.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7414, 7416 of this title.

§ 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.

(Pub. L. 104-127, title V, §517, Apr. 4, 1996, 110 Stat. 1042.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7414, 7415, 7417 of this title.

§ 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 referenda

(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 referenda

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 referenda

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.

(Pub. L. 104-127, title V, §518, Apr. 4, 1996, 110 Stat. 1043.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7414, 7416, 7421, 7422 of this title.

§ 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.

(Pub. L. 104-127, title V, §519, Apr. 4, 1996, 110 Stat. 1044.)

§ 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.

(Pub. L. 104-127, title V, §520, Apr. 4, 1996, 110 Stat. 1045.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (c)(1), was in the original “this Act” and was translated as reading “this subtitle”, meaning subtitle B (§§511-526) of title V of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 1032, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7418 of this title.

§ 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.

(Pub. L. 104-127, title V, §521, Apr. 4, 1996, 110 Stat. 1047.)

§ 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
- (2) as soon as practicable, suspend or terminate, as the case may be, activities under the order in an orderly manner.

(Pub. L. 104-127, title V, §522, Apr. 4, 1996, 110 Stat. 1047.)

§ 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.

(Pub. L. 104-127, title V, §523, Apr. 4, 1996, 110 Stat. 1047.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7413 of this title.

§ 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.

(Pub. L. 104-127, title V, §524, Apr. 4, 1996, 110 Stat. 1047.)

§ 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.

(Pub. L. 104-127, title V, §525, Apr. 4, 1996, 110 Stat. 1048.)

§ 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.

(Pub. L. 104-127, title V, §526, Apr. 4, 1996, 110 Stat. 1048.)

SUBCHAPTER III—CANOLA AND RAPESEED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

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

§ 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 to develop new markets and uses for canola, rapeseed, and canola and rapeseed products.

(c) Construction

Nothing in this subchapter provides for the control of production or otherwise limits the