

§ 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.)

§ 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), 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), 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.

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

§ 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.)

§ 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