

(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.

(Pub. L. 104-127, title V, §534, Apr. 4, 1996, 110 Stat. 1050.)

§ 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);

(8) to enter into contracts or agreements, subject to subsection (e), 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 De-

partment, 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.

(Pub. L. 104-127, title V, §535, Apr. 4, 1996, 110 Stat. 1051.)

§ 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).

(b) Limitation on assessments

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

(c) Remitting of assessments

(1) In general

Assessments required under subsection (a) 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

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