

(1) Board

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

(2) Commerce

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

(3) Consumer information

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

(4) Department

The term “Department” means the Department of Agriculture.

(5) Industry information

The term “industry information” means information or a program that will lead to the development of—

(A) new markets, new marketing strategies, or increased efficiency for the popcorn industry; or

(B) activities to enhance the image of the popcorn industry.

(6) Marketing

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

(7) Order

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

(8) Person

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

(9) Popcorn

The term “popcorn” means unpopped popcorn (*Zea Mays* L) that is—

(A) commercially grown;

(B) processed in the United States by shelling, cleaning, or drying; and

(C) introduced into a channel of commerce.

(10) Process

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

(11) Processor

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

(12) Promotion

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

(13) Research

The term “research” means any type of study to advance the image, desirability, mar-

ketability, production, product development, quality, or nutritional value of popcorn.

(14) Secretary

The term “Secretary” means the Secretary of Agriculture.

(15) State

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

(16) United States

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

(Pub. L. 104–127, title V, §573, Apr. 4, 1996, 110 Stat. 1075.)

§ 7483. Issuance of orders**(a) In general**

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

(b) Procedure**(1) Proposal or request for issuance**

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

(2) Notice and comment concerning proposed order

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

(3) Issuance of order

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

(c) Amendments

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

(Pub. L. 104–127, title V, §574, Apr. 4, 1996, 110 Stat. 1076.)

§ 7484. Required terms in orders**(a) In general**

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

(b) Establishment and membership of Popcorn Board**(1) In general**

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

(2) Nominations

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

(3) Geographical diversity

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

(4) Terms

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

(5) Compensation and expenses

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

(c) Powers and duties of Board

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

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

(d) Plans and budgets**(1) In general**

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

(2) Budgets

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

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

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

(2) Requirements

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

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

(3) Processor organizations

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

(f) Assessments**(1) Processors**

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

(2) Direct marketers

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

(3) Rate**(A) In general**

The rate of assessment prescribed in the order shall be a rate established by the

Board but not more than \$.08 per hundred-weight of popcorn.

(B) Adjustment of rate

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

(4) Use of assessments

(A) In general

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

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

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

(B) Expenditures based on source of assessments

In implementing plans and projects of promotion, research, consumer information, and industry information, the Board shall expend funds on—

(i) plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments collected on domestically marketed popcorn; and

(ii) plans and projects for exported popcorn in proportion to the amount of assessments collected on exported popcorn.

(C) Notification

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

(g) Prohibition on use of funds

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

(h) Books and records of Board

The order shall require the Board to—

(1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(3) account for the receipt and disbursement of all funds entrusted to the Board.

(i) Books and records of processors

(1) Maintenance and reporting of information

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

(A) maintain, and make available for inspection, such books and records as are required by the order; and

(B) file reports at such time, in such manner, and having such content as is prescribed in the order.

(2) Use of information

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

(3) Confidentiality

(A) In general

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

(B) Disclosure by Secretary

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

(i) the Secretary considers the information relevant;

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

(iii) the information relates to the order.

(C) Disclosure to other agency of Federal Government

(i) In general

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

(ii) Penalty

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

(D) General statements

Nothing in this paragraph prohibits—

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

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

(j) Other terms and conditions

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

(Pub. L. 104-127, title V, §575, Apr. 4, 1996, 110 Stat. 1077.)

§ 7485. Referenda

(a) Initial referendum

(1) In general

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

(2) Approval of order

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

(b) Additional referenda

(1) In general

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

(2) Representative group of processors

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

(3) Disapproval of order

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

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

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

(c) Costs of referendum

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

(d) Method of conducting referendum

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

(e) Confidentiality of ballots and other information

(1) In general

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

(2) Penalty for violations

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

(Pub. L. 104-127, title V, §576, Apr. 4, 1996, 110 Stat. 1081.)

§ 7486. Petition and review

(a) Petition

(1) In general

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

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

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

(2) Statute of limitations

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

(3) Hearings

The petitioner shall be given the opportunity for a hearing on a petition filed under paragraph (1), in accordance with regulations issued by the Secretary.

(4) Ruling

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

(b) Review

(1) Commencement of action

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

(2) Process

Service of process in a proceeding under paragraph (1) may be made on the Secretary